

Section II Proposed Rules

DEPARTMENT OF TRANSPORTATION

RULE NOS.:	RULE TITLES:
14-10.0011	General Provisions
14-10.0022	Outdoor Advertising Sign Inventory
14-10.003	Licenses
14-10.004	Permit
14-10.0041	Annual Renewal Billing – Licenses and Permits
14-10.0042	Denial or Revocation of Licenses or Permits
14-10.006	Permitting Criteria

PURPOSE AND EFFECT: Rule Chapter 14-10, F.A.C., is being amended to update existing language, and clarify the requirements for obtaining and maintaining outdoor advertising sign permits.

SUMMARY: Rule Chapter 14-10, F.A.C., is being amended to incorporate recent statutory changes.

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: 334.044(2), 479.02 FS.

LAW IMPLEMENTED: 215.34, 334.044(28), 339.05, 479.02, 479.04, 479.05, 479.07, 479.08, 479.106, 479.111, 479.24 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: July 10, 2010, 2:00 p.m.

PLACE: Florida Department of Transportation, Haydon Burns Building, Room 479, 605 Suwannee Street, Tallahassee, Florida 32399-0458

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: Deanna R. Hurt, Assistant General Counsel and Clerk of Agency Proceedings, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458. 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: Deanna R. Hurt, Assistant General Counsel and Clerk of Agency Proceedings, Florida Department

of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULES IS:

14-10.0011 General Provisions.

(1) Definitions. All terms in this rule chapter shall have the same meanings as ~~those defined~~ in Section 479.01, F.S. Additionally, the following terms are defined:

(a) “Applicant” means the person or entity seeking permission for an outdoor advertising sign under this rule chapter. ~~“Address of Record” means the mailing address submitted by the licensee or permittee with the initial application for license, the first permit applied for, the transfer affidavit when a permit is transferred to a new permit holder, or the amended address if amended pursuant to paragraph (2)(c); below.~~

~~(b) “Charitable Organizations” means those institutions defined by Section 212.08(7)(c)2.b., F.S.~~

~~(b)(e)~~ “Completed Sign,” for purposes of Section 479.07(5)(a), F.S., means an erected sign structure with attached facing and a posted message.

~~(c)(d)~~ “Crown” means the highest point of elevation on the road pavement of the main traveled way immediately adjacent to the ~~outdoor advertising~~ sign.

~~(d)(e)~~ “Embellishment” means a temporary extension of a ~~the~~ sign face which contains a portion of the message or informative contents, and which is added, modified, or removed when the message is changed.

~~(e)(f)~~ “Height Above Ground Level (HAGL)” means the distance between the ground and the bottom of the sign face, excluding any border and trim, as measured from the point on the sign facing closest to the main-traveled way.

~~(f)(g)~~ “Location or site” means the specific place or position of a proposed or existing sign. Location is generally identified by specifying a milepost on which is fixed reference to the Roadway Characteristics Inventory (RCI) system together with a distance from the edge of the pavement or the right of way line; by specifying reference to the State Plane Coordinates Coordinate system; or by specifying the reference to latitude and longitude.

~~(g)(h)~~ “Permitted Sign” means a sign, whether erected or not, for which an Outdoor Advertising Permit, Form 575-070-30, Rev. 07/01, incorporated herein by reference, has been issued, which permit has not been revoked, canceled, expired, or declared void. ~~Form 575-070-030 may be obtained from the State Outdoor Advertising and Permit Office, Florida Department of Transportation, 605 Suwannee Street, Mail Station 22, Tallahassee, Florida 32399-0450.~~

~~(h)(+)~~ “Public or Court Officer Official” means as described in Section 112.3173, F.S. ~~for purposes of Section 479.16(4), Florida Statutes, shall mean a person holding a position created by the Constitution or Legislature, or authorized by the Governor.~~

~~(i)(+)~~ “Rest Area” means a publicly owned, controlled, and designated place for emergency stops, relaxation, and recreation, including with sanitary and other facilities within or adjacent to the highway right of way, ~~reasonably necessary to accommodate the traveling public.~~

~~(j)(+)~~ “Sign Structure Height” means the total vertical distance from the crown of the main-traveled way to the top of the highest sign face, including any border or trim, excluding but not including embellishments.

~~(k)(+)~~ “Working Day” means ~~each regular period when Department offices are open for official business.~~

(2) Names and Addresses.

(a) For consideration of a license or sign permit under this rule chapter, completed forms must be sent to:

Outdoor Advertising License and Permit Office
Florida Department of Transportation
605 Suwannee Street, MS 22
Tallahassee, Florida 32399-0450

Forms referenced in this rule may be obtained at the above address or at the website: dot.state.fl.us/rightofway.

~~(b)(+)~~ Licenses and sign permits may only be issued in the current legal name or registered fictitious name of the applicant licensee or permittee, whether an individual, business, or corporation. Any notice issued by the Department to a fictitious name filed with the Department shall have the same effect as if issued in the legal name of the permittee or licensee.

~~(c)(b)~~ All The Address of Record shall be considered the official address for correspondence from the Department to the licensee or permittee including. Such correspondence may include billing, notices of violation, or other information provided or issued by the Department will be sent to the address provided on the application, unless the licensee or permittee has updated the information in accordance with paragraph (d) below.

~~(d)(+)~~ A licensee or permittee shall notify the Department, in writing, within 30 calendar days of any change in address. This notification shall include:

1. The date the change of name or address becomes effective;
2. The account name as listed on the Department billing;
3. The ~~(typed or printed)~~ name of the individual authorized to sign the notice; and
4. The authorized signature.

~~(e)(+)~~ Notices or any other correspondence issued by the Department to the address addresses on file prior to receipt of such written notification of an address change are valid and shall be considered received by the licensee or permittee.

~~(f)(+)~~ License Applications, Permit Applications, Replacement Requests, Transfer Requests, and Cancellation Certifications must contain a statement by the signatory that he/she is the authorized representative and has the authority to sign for the applicant.

Rulemaking Specific Authority 334.044(2), 479.02(7) FS. Law Implemented 334.044(28), 479.02 FS. History–New 6-28-98, Amended 8-19-01,_____.

14-10.0022 Outdoor Advertising Sign Inventory.

Pursuant to Section 479.02(8), ~~F.S. Florida Statutes~~, the Department shall update its outdoor advertising database inventory information for all permitted signs no less than every two years. This inventory shall provide, as a minimum, the following current information derived from field review and historical information contained in the Department’s files:

- (1) Location of the sign;
- (2) Original sign permit issue date;
- (3) Date the sign was erected;
- (4) Height, width and square footage of each sign facing;
- (5) Number and type of support structures used;
- (6) Height above ground level of the sign facing;
- (7) Sign structure height;
- (8) Whether the sign is lighted ~~or not lighted~~;
- (9) Whether the sign is in conformance with local land use requirements;
- (10) Whether the sign is in an urban area;
- (11) Whether the sign is in an incorporated area;
- (12) Status of the sign, whether conforming, nonconforming, or illegal;
- (13) Permittee’s name and address;
- (14) Sign pPermit number(s), current and previous, assigned to the sign facing;
- (15) Status of the sign permit, whether active or canceled, revoked, expired, or void; and
- (16) Date the sign was removed, when applicable.

Changes made to the Department’s previous inventory records to reflect physical characteristics of a sign or sign facing existing at the time of an inventory update shall not create a waiver or constitute forgiveness of any violation of the provisions of Chapter 479, F.S.

Rulemaking Specific Authority 334.044(2), 479.02(7), (8) FS. Law Implemented 339.05, 479.01, 479.02, 479.03, 479.07(9) FS. History–New 6-28-98, Amended _____.

14-10.003 Licenses.

(1) Outdoor Advertising License Required. A person or entity is considered to be in the business of outdoor advertising and is required to have an outdoor advertising license if that person or entity receives compensation from constructing, erecting, operating, using, maintaining, leasing, or selling outdoor advertising structures, outdoor advertising signs, or

outdoor advertisements. Persons or entities solely advertising their own businesses and ~~general~~ contractors who construct signs under contract to outdoor advertising licensees or permittees, are exempt from the licensing requirement.

(2) Application Form. An application for a license to engage in the business of outdoor advertising shall be made on an Outdoor Advertising License Application, Form 575-070-02, Rev. 10/06, incorporated herein by reference. ~~Form 575-070-02 may be obtained from the State Outdoor Advertising License and Permit Office, Florida Department of Transportation, 605 Suwannee Street, Mail Station 22, Tallahassee, Florida 32399-0450.~~

~~Rulemaking Specific Authority 334.044(2), 479.02(7) FS. Law Implemented 120.60, 215.34(2), 334.044(28), 339.05, 479.02, 479.04, 479.05, 479.07 FS. History—New 3-28-76, Amended 4-21-77, 12-10-77, 1-1-86, Formerly 14-10.03, Amended 6-28-98, 8-19-01, 1-25-04, 12-31-06, _____.~~

14-10.004 Permits.

(1) Applications. An application for a new sign permit is made by completing and submitting an Application for Outdoor Advertising Permit, Form 575-070-04, Rev. 02/09, incorporated herein by reference, to the address listed in ~~paragraph subsection 14-10.0011(2)(a) 14-10.003(2), F.A.C. Applications may be obtained from the State Outdoor Advertising License and Permit Office.~~

(a) ~~A separate application is required for each sign permit requested (i.e. a back to back sign will require two applications). The applicant shall submit Separate payment instruments of for each application is recommended for a new permit, in order to avoid denial of multiple applications should for one application be being denied.~~

(b) Prior to issuing a sign ~~any~~ permit, the Department will inspect the proposed sign site ~~for to assure~~ compliance with Chapter 479, F.S., and this rule chapter. To ensure that the site ~~being~~ inspected is the same site specified in the application, the applicant shall mark the proposed ~~sign~~ site in such a manner that the markings are visible from the main-traveled way. The markings shall be displayed ~~upon from the time of~~ submission of the application and shall be maintained by the applicant until the Department has approved or denied the application.

(c) The Department will act on sign permit applications in order of the date and time of receipt of complete applications.

1. An application will be considered complete when all items on the application form have been filled in, all required attachments have been received, and the correct permit ~~fees~~ have fee has been submitted. All information provided on the application ~~by the applicant~~ must be certified as being true and correct. Information required on the application from the local zoning official providing allowable land use and local government approval, must be current as of the date the complete application is received by the Department and the applicant must demonstrate that the conditions are still in effect.

2. Applications containing incorrect information will be denied.

3. Incomplete sign permit applications will be returned to the applicant along with any sign permit fees ~~which were~~ submitted with the application.

4. Completion of, or corrections to, the original submitted document must be initialed by the applicant on the original application.

5. ~~Pursuant to Section 479.07(3)(b), F.S., (The written statement from the landowner required by Section 479.07(3)(b), F.S.,~~ must have been issued to the applicant, or on behalf of the applicant. If a lease document is submitted as the statement from the landowner, the applicant must be the named lessee, or the document must be accompanied by a properly executed transfer of the leasehold rights to the applicant. The written statement must:

a. Identify the property on which the sign is to be located;

b. Indicate that the person authorizing placement of the sign on the property is the owner or the person in lawful control of the property. If the person authorizing placement of the sign is not the owner of the property, the legal status which gives him or her lawful control of the property must be indicated;

c. Grant the permission to or on behalf of the applicant; and

d. Authorize placement of the sign on the subject property.

(2)(~~d~~) Application status. Complete applications will be either approved or denied within 30 calendar days of receipt by the Department; unless an earlier application for that site or a competing site is under review, ~~or the applicant is seeking a vegetation management permit, or removal of a conflicting sign is pending application falls within paragraph (g) or (h); below.~~

(a) ~~A~~ If denied, ~~the~~ application will remain in a pending status until the time to request an administrative hearing pursuant to Sections 120.569 and 120.57, F.S. below Rule 14-10.002, F.A.C., has elapsed. If a hearing is requested, the application shall remain in a pending status until a final order has been issued and the time to request an appeal of the ~~of a final order~~ has elapsed. If an appeal is taken, the application will remain in a pending status until the mandate is issued by the appellate court. Subsequent applications for conflicting competing sites shall be held without action until the pending status of the earlier application is resolved.

(b)(~~e~~) If an application is approved, all subsequently received applications for conflicting competing sites shall be denied.

(f) ~~For purposes of paragraph (e), above, when a valid permit is being conditionally canceled pursuant to subsection 14-10.004(9), F.A.C., the Outdoor Advertising Permit Cancellation Certification, Form 575-070-12, Rev. 10/06, incorporated herein by reference, and Application for Outdoor Advertising Permit, Form 575-070-04, Rev. 02/09, must be~~

submitted simultaneously to the Department. Form 575-070-12 may be obtained from the address listed in subsection 14-10.003(2), F.A.C. The date the Department receives the cancellation and complete application documents shall be considered the date the application is received.

~~(c)(g)~~ When a permit application is received for a new sign site where requiring vegetation management is required pursuant to Section 479.106, F.S., the permit application will not be issued considered complete until the applicant has been issued a vegetation management permit by the Department in accordance with Rule 14-40.030, F.A.C., and has removed two nonconforming signs, which the Department has approved as meeting the requirements of Section 479.106(5), F.S. A permit shall not be issued to an applicant for a location at which unpermitted cutting, removal, or trimming of vegetation has occurred until such time as payment of the administrative penalty and mitigation as required by Rule 14-40.030, F.A.C., and Section 479.106(7), F.S., respectively, have been accomplished and the applicant has surrendered two nonconforming signs for surrender in accordance with Section 479.106(5), F.S. If a permit is granted where the applicant has stated that no cutting, removal, or trimming of vegetation is required to create a view zone for the sign, the permittee may only maintain the view existing at the time the sign permit is issued.

~~(d)(h)~~ Applications for sign permits at for locations which conflict with spacing requirements relating to the location of an expired or canceled sign permit will not be processed until the sign for which the expired or canceled permit was issued is removed, except for unless a sign permit is being canceled as a condition for issuance of a new sign permit.

~~(i)~~ A permit shall not be issued to an applicant for a location at which unpermitted cutting, removal, or trimming of vegetation has occurred until such time as payment of the administrative penalty and mitigation required by Rule 14-40.030, F.A.C., and Section 479.106(7), F.S., have been accomplished and the applicant has identified two nonconforming signs for surrender in accordance with Section 479.106(5), F.S.

~~(3)(2)~~ Changeable messages – A permit shall be granted for an automatic changeable facing provided:

(a) The static display time for each message is at least a minimum of six seconds;

(b) The time to completely change from one message to the next is a maximum of two seconds;

(c) The change of message occurs simultaneously for the entire sign face; and

(d) The application meets all other permitting requirements.

~~(e)~~ All signs with changeable messages ~~Any such sign shall contain a default design that will ensure no flashing, intermittent message, or any other apparent movement is displayed should hold the face of the sign in one position if a malfunction occur occurs.~~

~~(4)(3)~~ Changes to Roadway Designations.

~~(a)~~ A Notwithstanding any other provisions of this rule chapter, an outdoor advertising sign existing at a location which was previously not previously subject to the permitting requirements of this rule chapter, but has subsequently which become subject to the requirements of this chapter due to changes in the jurisdictional designation of highways, shall be granted a state permit in accordance with the process outlined below:

~~1.(a)~~ The Department shall conduct an inventory of outdoor advertising signs on the highway section subject to jurisdictional change and, within 60 calendar days of the effective date of the proposed change, advise all affected sign owners and local governments that the change is being considered, the regulatory effect of the change, and when the change may become effective.

~~2.(b)~~ Upon approval of the jurisdictional change, the Department will provide a second notice to sign owners and local governments advising that the change in jurisdiction has become effective and that sign owners have 30 calendar days from receipt of the second notice to submit an application for a sign permit.

~~3.(e)~~ When the Department is unable to provide the advance notice referenced in paragraph (a), above, the Department will advise the affected sign owners that they have 90 calendar days, from receipt of the notice, that the change in jurisdiction has become effective and to submit an application for a sign permit.

~~4.(d)~~ The Department shall issue an Outdoor Advertising Permit, Form 575-070-30, Rev. 07/01, to the sign owner upon receipt of a complete Application for Outdoor Advertising Permit, Form 575-070-04, Rev. 02/09, together with all items required pursuant to by Section 479.07(3)(b), F.S. For existing signs, the written statement required by Section 479.07(3)(b), F.S., shall be any written document from the appropriate local governmental official indicating compliance with local requirements as of the date of the permit application. A previously issued building permit shall be accepted as the statement from an appropriate local governmental official, except in cases where the local government has provided notice to the sign owner that the sign is illegal or has undertaken action to cause the sign to be removed. When a building permit is submitted as the statement of the local government, the applicant shall certify in writing that the local government has not provided notice that the sign is illegal, and that the local government has taken no action to cause the sign to be removed.

~~(b)(4)~~ When a change in the designation of a highway removes that highway from the Department's regulatory jurisdiction, a notice will be provided to all permittees owners of outdoor advertising permits on the affected roadway informing them their sign is no longer subject to the Department's jurisdiction and their permit will not be renewed is cancelled. The notice will advise permit holders of the Department's intent to revoke the permits, and will include a statement of the recipient's right to appeal the Department's action.

~~(c)(5)~~ When a controlled road, or any portion of a controlled road, is designated as a scenic highway or scenic byway pursuant to Section 335.093, F.S., new permits will not be issued for outdoor advertising signs visible from the portion of the highway designated as a scenic highway or byway.

~~(5)(6)~~ Posting of Tags. The permanent metal permit tag issued by the Department must be posted ~~by the permittee~~ at the sign site within 30 calendar days of issuing the sign permit issuance, and must remain in place at all times, whether or not a sign has been erected, or a previously erected sign has been removed. If a permit tag is lost, stolen, or destroyed, the permittee must apply to the Department for a replacement tag on Outdoor Advertising Permit Tag Replacement Request, Form 575-070-01, Rev. 06/09 ~~10/06~~, incorporated herein by reference, and shall include a replacement fee of \$~~12.00~~ ~~3.00~~ per tag. Alternatively, the permittee may provide its own replacement tags pursuant to Section 479.07(5)(b), F.S., provided all of the fabrication specifications listed below are met. Form 575-070-01 may be obtained from the address listed in subsection 14-10.003(2), F.A.C.

(a) 6 inch x 12 inch constructed of durable material and four-hole placement according to State of Florida regular license tag standard;

(b) Coated with 5-year white reflective sheeting;

(c) Embossed black text as follows:

1. The left vertical edge of the tag shall read FLA SIGN PERMIT in 5/8 inch characters;

2. The top horizontal alpha characters shall be embossed toward the FLA text and will be in 2 and 15/16 inch characters;

3. The vertical legend of three numbers located under the alpha characters shall be 2 and 15/16 inch characters.

(d) The letters and numbers of the replacement tag must be identical to the tag being replaced.

(e) When a permittee elects to provide its own tag, the permittee shall notify the Department that they will replace the tag within 30 days of notification that the tag is not properly displayed. The new tag shall be posted at the permitted location within 60 days of the department's notification.

~~(6)(7)~~ Transfer of Permits. Requests Authorization to transfer a permit pursuant to in accordance with Section 479.07(6), F.S., shall be submitted on an Outdoor Advertising Permit Transfer Request, Form 575-070-25, Rev. 10/06, incorporated herein by reference, ~~to the State Outdoor~~

~~Advertising License and Permit Office at the address listed in subsection 14-10.003(2), F.A.C. The request shall be made in accordance with Section 479.07(6), F.S. Form 575-070-25 may be obtained from the address listed in subsection 14-10.003(2), F.A.C.~~

(a) The recipient of the transferred permit transferee shall certify that written permission from of the landowner, or other person in lawful control of the sign site, to maintain the sign on the site pursuant to in accordance with Section 479.07(2), F.S., has been secured.

~~(b) If the transferee and transferor are on different billing cycles, Transfer requests will not be processed without payment of permit fees in the amount necessary to prevent permit expiration, if the transferee and transferor are on different billing cycles.~~

~~(b)(e)~~ If a transfer of permit is made when the permit has been determined to be is in violation of Chapter 479, F.S., or in violation of this rule chapter, or if a revocation proceeding is pending, the permit is subject to conditions existing at the time of transfer. The Department's approval of a permit transfer shall not constitute a waiver of rights on the part of the Department, nor shall a permit transfer in any way prohibit the issuance of notices of violation, or preclude the Department from revoking the transferee's permit pursuant to in accordance with Section 479.08, F.S., or this rule chapter.

~~(c)(d)~~ If a transfer of sign permit is made during the initial 270 days from the date of permit issuance, the permit transferee receives the sign permit subject to all conditions which were applicable to the original applicant.

~~(7)(8)~~ Cancellation of Permits. Permit cancellation notification must be submitted ~~to the State Outdoor Advertising License and Permit Office at the address listed in subsection 14-10.003(2), F.A.C.~~, on Outdoor Advertising Permit Cancellation Certification, Form 575-070-12, Rev. 10/06, incorporated herein by reference. All canceled tags must be returned to the Department with the certification, or otherwise be accounted for in writing. Pursuant to Section 479.07(8)(b), F.S., if the sign has not been removed by the former permittee, it shall be removed by the Department and the cost assessed against the former permittee.

~~(8)(9)~~ Conditional Permit Cancellation. When In instances where an applicant requests cancellation of one permit in order to obtain a new permit, the existing permit shall be canceled simultaneously with the issuance of the new permit. Outdoor Advertising Permit Cancellation Certification, Form 575-070-12, Rev. 10/06, incorporated herein by reference, and Application for Outdoor Advertising Permit, Form 575-070-04, Rev. 02/09, shall must be submitted simultaneously to the Department. If a new permit does not meet current permitting requirements and cannot be issued, the existing permit will not be canceled.

~~(9)(10)~~ Permits Canceled, or Not Renewed, in Error – Petition for Reinstatement. Pursuant to Section 479.07(8)(b), F.S., a petition for reinstatement of permits canceled, or not renewed, in error by the permittee shall be submitted to the State Outdoor Advertising License and Permit Office at the address listed in subsection 14-10.003(2), F.A.C. The petition must be in writing, ~~must~~ list the affected permit(s), and ~~shall~~ ~~must~~ certify that:

- (a) The permit was canceled, or not renewed, in error by the permittee;
- (b) The permit tag for the canceled or expired permit was returned to the Department or otherwise accounted for;
- (c) The sign has not been disassembled; and
- (d) The local government has not declared the sign illegal or taken any other action to have it removed.

If the Reinstatement Petition is denied by the Department, a new permit may be issued for a sign only if the sign meets all current permitting requirements. The reinstatement fee is \$200.00 for a sign facing of 200 square feet or less, and \$300.00 for a sign facing greater than 200 square feet.

~~(11) Pursuant to the criteria set forth in Section 479.105(1)(c), F.S., the Department may issue a permit for an unpermitted sign, which has been structurally unchanged and continuously maintained for a period of seven or more years.~~

~~(10)(12) Reestablishment.~~ Where the expansion or relocation of a transportation facility causes a sign to be located in the right of way, or within fifteen feet of the right of way, and the ~~permittee permit holder~~ desires to ~~reestablish~~ ~~relocate~~ the sign ~~at a conforming location perpendicular to the roadway from the site of the existing sign,~~ the Department shall allow the ~~reestablishment relocation~~ of the ~~permitted~~ sign in conformance with the following:

- (a) The ~~permittee permit holder~~ must submit a completed application for the ~~reestablished relocated~~ sign site ~~pursuant to in accordance with~~ Section 479.07(3), F.S.
- (b) The ~~reestablished sign site shall meet~~ ~~must determine~~ that the ~~relocated sign site is in conformance with~~ all ~~current~~ requirements for permitting.

~~(11) Relocation.~~ Where a Department project causes a ~~nonconforming sign to be located in the right of way, the Department shall allow the relocation of the sign provided all the requirements of Sections 479.15(3), (4), (5), (6), F.S., are met. The relocated sign must be of the same materials, size and configuration as the original.~~

Rulemaking Specific Authority 334.044(2), 479.02(7) FS. Law Implemented 215.34, 334.044(28), 339.05, 479.01(14), 479.02, 479.04, 479.07, 479.106(5), 479.24 FS. History–(Formerly part of Rule 14-10.04, Permits; 14-15.05, Right of Way Bureau Operating Procedures), New 3-28-76, Amended 4-21-77, 12-10-77, 6-26-78, 12-31-78, 1-1-86, Formerly 14-10.04, Amended 7-7-92, 6-28-98, 8-10-99, 8-19-01, 1-25-04, 3-15-05, 12-31-06, 4-2-09,_____.

14-10.0041 Annual Renewal Billing – Licenses and Permits.

(1) All licenses and sign permits expire annually and shall be renewed pursuant to ~~in accordance with~~ Section 479.07(8), F.S Florida Statutes.

(2) Annual renewal of a license ~~shall~~ ~~must~~ include the annual license fee, and the fees for all sign permits being renewed by ~~the~~ ~~that~~ licensee. Acceptance by the Department of renewal fees for a sign permit against which a violation notice has been issued, or which may be issued, shall not constitute waiver by the Department of any right to pursue remedies for the violation.

(a) Any of the following shall result in the return of submitted fees to the applicant, and shall constitute nonpayment:

1. Payment of renewal fees for any amount less than the amount shown as due on the Department’s billing statement (or its adjusted billing statement prepared in response to a timely notice from the permittee of corrections, additions, or deletions). When an overpayment of renewal fees is submitted, the Department shall accept the fees due amount as shown on the billing statement (or the adjusted billing statement), and provide for the issuance of a refund to the payor in the amount of the overpayment. Acceptance of payment in an amount greater than the amount due shall not constitute acceptance of renewal fees for sign permits which have been declared invalid.

2. Failure to return or provide an accounting for the nonrenewed sign permit tags on the Cancellation Certification.

3. Failure to submit affidavits and transfer fees for any sign permits being transferred.

(b) Payment for sign permits being transferred at the time of permit renewal shall be submitted with the sign permit renewal payment, but must be in a separate payment instrument.

Rulemaking Specific Authority 334.044(2), 479.02(7) FS. Law Implemented 479.02, 479.07 FS. History–New 6-28-98, Amended 8-19-01,_____.

14-10.0042 Denial or Revocation of Licenses or Permits.

(1) If the Department intends to deny an application for a license or sign permit, deny reinstatement of a sign permit cancelled or not renewed in error, or intends to revoke a license or sign permit, the Department shall provide, by certified mail, return receipt requested, or by personal delivery with receipt, notice of the facts which warrant ~~the~~ ~~such~~ action. The written notice shall contain:

- (a) The particular facts or bases for the Department’s action;
- (b) The statute or rule relied upon;
- (c) A statement that the applicant, licensee, or permittee has the right to an administrative hearing pursuant to Section 120.57, F.S Florida Statutes.

(d) A statement that the Department's action shall become conclusive and the final agency action and that the sign permit or license shall will be denied or revoked if no request for a hearing is filed within 30 calendar days of receipt of the notice of the Department's intended action.

(2) If a licensee fails to renew its license, or its license is revoked, any sign permits owned by the licensee shall become subject to revocation, pursuant to Section 479.08, F.S. Florida Statutes.

~~(3) Requests for Administrative Hearings.~~

~~(a) All requests for administrative hearings shall be made in writing and shall be filed with the Clerk of Agency Proceedings, Florida Department of Transportation, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458. Requests for hearing filed in response to notices issued pursuant to Sections 479.08 479.07(8)(a), 479.105(1), or 479.107(1), Florida Statutes, must be filed within 30 calendar days of receipt of the notice of the Department's action. Any request for hearing filed in response to a notice issued pursuant to Sections 479.07(8)(a), 479.105(1), or 479.107(1), F.S., must be filed within 30 calendar days of the date of the notice of the Department's action. A request for hearing is filed when it is received by the Clerk of Agency Proceedings. A request for hearing is not timely filed unless it is received by the Clerk of Agency Proceedings within the specified time.~~

~~(b) A request for hearing shall conform to the requirements of Rule 28 106.201 or 28 106.301, F.A.C. If the sign owner, applicant, licensee, or permittee fails to file a timely request for a hearing, the Department's action shall become conclusive and final agency action.~~

Rulemaking Specific Authority 334.044(2), 479.02, FS. Law Implemented 120.60, 479.05, 479.08 FS. History—New 6-28-98, Amended _____.

14-10.006 Additional Permitting Criteria.

Each application for ~~a an outdoor advertising~~ sign permit shall meet the requirements of Sections 479.07(9) and 479.11, F.S. In addition, each ~~an~~ application must comply with the requirements of the agreement between the State of Florida state and the United States Department of Transportation pursuant to ~~referenced~~ in Section 479.02(1), F.S., ~~which have not been duplicated in Sections 479.07(9) and 479.11, F.S., or superseded by stricter provisions in those statutes.~~ The requirements are:

(1) Size.

(a) The area of a sign facing shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof, which will encompass the entire sign facing including all embellishments.

(b) The maximum allowable height of ~~for~~ a sign facing is 30 feet.

(c) The maximum allowable length of a sign facing is 60 feet.

(d) The maximum area size limitations shall apply to each sign facing.

(e) Embellishments shall ~~may~~ not extend more than five feet beyond the permanent sign face, and are included in any measurement of the height, width, or area of the sign facing.

(f) Signs containing both on-premise and off-premise advertising shall ~~may~~ not exceed 950 square feet, including all sign faces.

(2) Number of Sign Faces. There shall be no more than two faces showing at one time for ~~to~~ each sign facing showing at one time.

(3) Location. Signs shall ~~may~~ not be located in such a manner as to obscure or otherwise physically interfere with the effectiveness of an official traffic sign, signal, or device.

(4) Spacing. The minimum required distance between the location for which a permit is sought and the nearest permitted sign shall be measured along the edge of pavement of the main-traveled way from the location marked by the applicant in accordance with Rule 14-10.004, F.A.C., to the location of the permitted sign. In the case of a permitted sign that has not been constructed, the milepost location reflected on the application shall be used as the location of the permitted sign. Measurement along the edge of pavement shall be based on the point perpendicular to a tangent to the edge of the main-traveled way nearest the location of the sign.

(a) For V-type, or back-to-back signs, to be counted as one sign for spacing purposes, the sign facings on such signs shall ~~must~~ be connected by the same sign structure or cross-bracing, or the sign structures shall not be ~~must be~~ located more than 15 feet apart, their nearest point.

(b) Official signs, signs exempt under Section 479.16, F.S., and structures that are not permitted signs shall not be considered for purposes of determining compliance with spacing requirements.

(c) When an intersection is encountered in determining measurements for spacing compliance, the width of such intersection is included in the measured distance. This distance is measured in a direct line from the points of intersection of the edges of the main-traveled ways.

(d) No sign permit shall be issued for a sign located on any portion of the interstate highway system, which is outside the boundaries of an incorporated municipality, and which is within 500 feet of an interchange, intersection at grade, or rest area. The 500 feet shall be measured along the interstate in the direction leading away from the interchange, intersection at grade, or rest area, ~~from the beginning~~ at the pavement of ~~payment~~ widening of ~~at~~ the exit from the main-traveled way, or the end of pavement widening of ~~at~~ the entrance to the main-traveled way on an interstate highway. For the purposes of this subsection, all portions of the entrance and exit ramps ~~ramp~~ shall be considered part of an interchange.

(e) When a sign or a proposed sign is, or would be located within the controlled area and visible from any portion of the main-traveled way of more than one highway subject to the jurisdiction of the Department, pursuant to Section 479.07(1), F.S., the sign shall ~~must~~ meet the permitting requirements of, and be permitted to, the roadway with the stricter controls both highways. If the sign is visible to more than one roadway with the same level of control, the location must meet the permitting requirements of each roadway.

(5) Sign Structure Height. The height of a sign structure shall be measured from a point on the sign structure which is at the same elevation as the crown of the main-traveled way to the top of the highest sign face, excluding embellishments.

(6) Lighting. Signs may be illuminated except those which ~~contain, include, or~~ are illuminated in any way by any flashing, intermittent, or moving light. Flashing, intermittent, or moving light or lights embodied in a sign may be used to provide public service information. ~~Further, No~~ sign shall be ~~so~~ illuminated so that it interferes with the effectiveness of, or obscures, an official traffic sign, device, or signal.

(7) For purposes of compliance with Section 479.11(4), F.S., the 100 feet shall be measured from the property line. ~~When, except in cases where~~ a school or church is the applicant for a permit, or has given written permission for the placement of a sign, ~~In such cases~~ the 100 foot required distance shall be measured from the outer edges of the primary building; or primary building complex when the individual units of the complex are connected by covered walkways.

(8) For applications to be considered under the pilot program defined in Section 479.07(9)(c), F.S., the applicant must submit the following information in addition to the requirements of above Rule 14-10.004, F.A.C.:

(a) A copy of the local government adopted policy, ordinance, or other official document authorizing the placement of a new outdoor advertising sign on an interstate highway, in exchange for the removal of an existing sign from areas specifically designated by the local government; and

(b) A copy of the agreement between the local government and the affected sign owner allowing such removal and replacement.

~~(9)(8)~~ Copies of the agreement between the State of Florida ~~state~~ and the United States Department of Transportation, referenced in Section 479.02(1), F.S., may be obtained from the address listed in subsection 14-10.003(2), F.A.C.

Rulemaking Specific Authority 334.044(2), 479.02(7) FS. Law Implemented 339.05, 479.02, 479.07(9), 479.08, 479.11 FS. History—New 3-28-77, Amended 12-10-77, 1-1-86, Formerly 14-10.06, Amended 12-26-95, 6-28-98, 8-19-01, 12-31-06, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
John L. Garner, Director, Office of Right of Way

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Stephanie C. Kopelousos, Secretary
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 9, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 25, 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."

STATE BOARD OF ADMINISTRATION

RULE NOS.:	RULE TITLES:
19-7.010	Pooled Investment Accounts
19-7.011	Rate of Return Calculation
19-7.012	Pool Participation
19-7.013	Reporting Procedures
19-7.015	Allocation of Earnings
19-7.016	Close of Business
19-7.017	Pooled Investment Account Reserve Fund

PURPOSE AND EFFECT: To amend the rate of return calculation rule to reflect that the calculation will be in accordance with the yield methodology of SEC Rule 2a-7 for money market funds; to amend the reporting procedures rule to eliminate investment service charges; to amend the allocation of earnings rule to allow the closing of an account if the balance is less than \$1,000; to amend the close of business rule to indicate 1:00 p.m. EST as the close of business; to delete Rules 19-7.012 and 19-7.017, F.A.C.; to update references.

SUMMARY: Revised Local Government Surplus Trust Funds account procedures; revised rate of return calculation; updated references.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that these rules will not have an impact on small business. A SERC has been prepared in an abundance of caution.

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: 218.405, 218.412 FS.

LAW IMPLEMENTED: 218.405, 218.409, 215.515 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: Monday, July 12, 2010, 9:00 a.m. – 11:00 a.m.

PLACE: Room 116 (Hermitage Conference Room), 1801 Hermitage Blvd., Tallahassee, FL 32308

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Tina Joanos, Agency Clerk, Office of the General Counsel, State Board of Administration, 1801 Hermitage Blvd., Tallahassee, FL 32308; (850)413-1197; tina.joanos@sbafl.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 RULES IS: Ruth A. Smith, Assistant General Counsel, Office of the General Counsel, State Board of Administration, 1801 Hermitage Blvd., Tallahassee, FL 32308; (850)413-1182; ruth.smith@sbafla.com

THE FULL TEXT OF THE PROPOSED RULES IS:

19-7.010 Pooled Investment Accounts.

Rules ~~19-7.001~~ ~~19-7.010~~ through 19-7.016, F.A.C., are developed for the Local Government Surplus Funds Trust Fund Pooled Investment Account pursuant to Section 218.409, Florida Statutes.

Rulemaking Specific Authority 218.405, 218.412 FS. Law Implemented Ch. 218, Part IV FS. History–New 8-24-82, Formerly 19-7.10, Amended 3-26-02,_____.

19-7.011 Rate of Return Calculation.

The Rate of Return for the Local Government Surplus Funds Trust Fund shall be calculated in accordance with the yield methodology set forth by the Securities and Exchange Commission (SEC) Rule 2a-7 (17 CFR §270.2a-7) under the Investment Company Act of 1940 for money market funds. Rule 2a-7 can be obtained by accessing the SEC website at sec.gov and clicking on the Laws & Regulations section. For the purposes of comparing the yield of the Local Government Surplus Funds Trust Fund to that of a performance benchmark for participant reporting, a net-of-fees methodology will be utilized for all reporting periods for both the Local Government Surplus Funds Trust Fund and the performance benchmark.

~~The Rate of Return Calculation for the Pooled Investment Account shall be as follows:~~

~~(1) Daily Rate of Return:~~

$$\begin{aligned}
 \text{DRR} &= \text{DAE} \times 360 \text{ IB} \\
 \text{DRR} &= \text{Daily Rate of Return} \\
 &\text{(stated as a decimal fraction)} \\
 \text{DAE} &= \text{Daily Accrued Earnings} \\
 \text{IB} &= \text{Investment Balance at Cost (End of Day)}
 \end{aligned}$$

~~(2) Moving 30 Day Average Rate of Return:~~

$$\begin{aligned}
 \text{MRR} &= \frac{\text{MAE} \times (360/30)}{\text{AIB}} \\
 \text{MRR} &= \text{Monthly Average Rate of Return (stated as a decimal fraction)} \\
 \text{MAE} &= \text{30 Previous Day's Cumulative DAE} \\
 \text{AIB} &= \text{Average Daily Investment Balance at Cost of the 30 previous days}
 \end{aligned}$$

~~(3) Definitions:~~

~~(a) Daily Accrued Earnings:~~

- ~~1. Accrued coupon income;~~
- ~~2. Accretion/Amortization on securities; and~~
- ~~3. Realized gains/losses on security sales.~~

~~All computations for the components of Daily Accrued Earnings are in conformance with the "Standard Securities Calculation Methods" published by the Securities Industry Association.~~

~~(b) Investment Balance at Cost (end of day) is the total of all investments held in inventory for the Pooled Investment Account totaled on a cost basis.~~

~~(c) Average Daily Investments Balance at Cost is the average of the daily investment balance at cost for each day of the time period cited.~~

Rulemaking Specific Authority 218.405, 218.412 FS. Law Implemented 218.409(4) FS. History–New 8-24-82, Formerly 19-7.11, Amended 4-8-92, 3-26-02,_____.

19-7.012 Pool Participation.

~~All units of Local Government that qualify to be participants in the Local Government Surplus Funds Trust Fund after January 1, 1982, will normally have surplus funds deposited into the Pooled Investment Account. During the pendency of a major market disruption which causes a suspension of trading or liquidity is impaired, the Executive Director shall limit contributions to the fund or withdrawals from the fund to ensure that the Board can invest the monies entrusted to it exercising its fiduciary responsibility as trustee. Funds designated by a unit of Local Government for the purpose of investment management by a private investment asset manager shall not be deposited into the Pooled Investment Account nor into any separate account established within the Local Government Surplus Funds Trust Fund.~~

Rulemaking Specific Authority 218.405, 218.412 FS. Law Implemented 218.407(2), 218.409(1), (3) FS. History–New 8-24-82, Formerly 19-7.12, Amended 12-20-87, 2-16-92, 3-26-02, Repealed_____.

19-7.013 Reporting Procedures.

The State Board of Administration shall generate for forward ~~to~~ each Pool participant a monthly statement containing each account's activity including deposits, withdrawals, balances, and earnings and investment services charges. If no errors are

reported to the Board within 14 days, the statement will be considered correct. ~~A semi-annual portfolio activity statement will be forwarded to each participant.~~

Rulemaking Specific Authority 218.405, 218.412 FS. Law Implemented 218.409(6) FS. History–New 8-24-82, Formerly 19-7.13, Amended 12-18-88, 11-7-99, 3-26-02, _____.

19-7.015 Allocation of Earnings.

The Local Government Surplus Funds Trust Fund System is used to keep current account balance information for individual accounts participating in the ~~P~~ooled ~~I~~nvestment ~~A~~ccount and to apportion the pooled investment earnings back to each account. At the end of each month, pool month-to-date accrued earnings minus accrued expenses are apportioned to the participants directly proportionate to the respective net amounts deposited in the Fund and the length of time such amounts remain therein. The resulting proportionate amount is credited to each account at that time. ~~An investment service charge is then deducted from the account. If the investment service charge is less than one dollar, a minimum charge of one dollar or the account ending balance, whichever is less, will be deducted as satisfaction of the investment service charge for that month. If the end of the month account balance falls below \$1,000.00 is less than \$1.00, the State Board of Administration may choose to close the account may be closed upon satisfaction of the investment service charge and return the residual balance to the participant.~~

Rulemaking Specific Authority 218.405, 218.412 FS. Law Implemented ~~215.515~~, 218.409(4), (5) FS. History–New 8-24-82, Formerly 19-7.15, Amended 6-26-95, 3-26-02, _____.

19-7.016 Close of Business.

Any requests for funds to be returned or notification of funds to be wired for investment after 1:00 p.m. EST ~~11:00 a.m.~~ may be included in the following day’s business. In the event that the Board is informed by 1:00 p.m. EST ~~11:00 a.m.~~ of a deposit for investment that day, and the funds are not transmitted to the Board’s bank account by the close of business that day, which results in a shortfall, a fee shall be charged to the participant for each day until the shortfall is corrected. The fee will be based on the current overdraft fee charged by the bank on the amount of the shortfall.

Rulemaking Specific Authority 218.405, 218.412 FS. Law Implemented 215.515 ~~218.409(2)~~ FS. History–New 8-24-82, Formerly 19-7.16, Amended 6-26-95, 3-26-02, _____.

19-7.017 Pooled Investment Account Reserve Fund.

~~A Pooled Investment Account Reserve Fund shall be established in order to protect the Pooled Investment Account in accordance with Section 218.409(3), F.S. The funds required to establish said Reserve Fund shall be deducted from “pooled investment earnings” as the term is used in Rule 19-7.015, F.A.C. If the size of the Reserve Fund is reduced, then the excess moneys in the Reserve Fund shall be distributed in~~

~~accordance with the formula set forth in Rule 19-7.015, F.A.C., at the end of the month during which the Reserve Fund was reduced.~~

Rulemaking Specific Authority 218.405, 218.412 FS. Law Implemented 218.409(3) FS. History–New 8-17-92, Amended 3-26-02, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Michael McCauley

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Trustees of the SBA

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 16, 2010

STATE BOARD OF ADMINISTRATION

RULE NOS.:	RULE TITLES:
19-8.010	Reimbursement Contract
19-8.012	Procedures to Determine Ineligibility for Participation in the Florida Hurricane Catastrophe Fund and to Determine Exemption from Participation in the Florida Hurricane Catastrophe Fund due to Limited Exposure
19-8.013	Revenue Bonds Issued Pursuant to Section 215.555(6), F.S.
19-8.029	Insurer Reporting Requirements
19-8.030	Insurer Responsibilities

PURPOSE AND EFFECT: The State Board of Administration, Florida Hurricane Catastrophe Fund, seeks to amend the rules listed above to implement Section 215.555, Florida Statutes, including the changes made to the law during the 2010 legislative session.

SUMMARY: The rules and certain incorporated forms are being amended to reflect legislative changes to the governing act made during the 2010 legislative session, including a change in the Reimbursement Contract year date.

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: 215.555(3) FS.

LAW IMPLEMENTED: 215.555(2), (3), (4), (5), (6), (7), (10), (16), (17) 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 RULES IS: Tracy Allen, Senior FHCF Attorney, State Board of Administration, P. O. Box 13300, Tallahassee, Florida 32317-3300; telephone (850)413-1341; email tracy.allen@sbafla.com

THE FULL TEXT OF THE PROPOSED RULES IS:

19-8.010 Reimbursement Contract.

(1) through (15) No change.

(16) The reimbursement contract for the ~~2010-2011~~ contract year, including all Addenda, required by Section 215.555(4), F.S., which is called Form FHCF-2010K-“Reimbursement Contract” or “Contract” between (name of insurer) (the “Company”)/NAIC #() and The State Board of Administration of the State of Florida (“SBA”) which administers the Florida Hurricane Catastrophe Fund (“FHCF”), rev. 05/10, as amended, is hereby adopted and incorporated by reference into this rule. This contract is effective from June 1, 2010 through May 31, 2011 ~~December 31, 2010~~.

Rulemaking Authority 215.555(3) FS. Law Implemented 215.555 FS. History–New 5-31-94, Amended 8-29-95, 5-19-96, 6-19-97, 5-28-98, 5-17-99, 9-13-99, 6-19-00, 6-3-01, 6-2-02, 11-12-02, 5-13-03, 5-19-04, 8-29-04, 5-29-05, 11-13-05, 5-10-06, 9-5-06, 5-8-07, 8-13-07, 6-8-08, 9-2-08, 3-30-09, 8-23-09, 3-30-10, _____.

19-8.012 Procedures to Determine Ineligibility for Participation in the Florida Hurricane Catastrophe Fund and to Determine Exemption from Participation in the Florida Hurricane Catastrophe Fund due to Limited Exposure.

(1) through (3)(d)1. No change.

2. If the Board determines that the insurer has an aggregate exposure of less than \$10 million for covered policies, as defined in Section 215.555(2)(c), F.S., and in Article V of the reimbursement contract, as adopted and incorporated by reference in Rule 19-8.010, F.A.C., and that granting the exemption will not adversely affect the actuarial soundness of the Fund, the Board will notify the insurer that its request has been approved and note that the insurer must immediately notify the Board if its exposure becomes \$10 million or more in the aggregate. If this occurs, the insurer will be treated as a “new participant” and will be subject to the provisions of subparagraph 19-8.028(4)(c)3., F.A.C., if its exposure becomes \$10 million or more during the period from June 1 through November 30 or will be subject to the provisions of subparagraph 19-8.028(4)(c)4., F.A.C., if its exposure becomes \$10 million or more during the period from December 1 through May 31 for the contract year for contract years prior to the 2010 contract year, or if its exposure becomes \$10 million or more during the period from December 1 through December 31 beginning with the 2010 contract year.

(e) through (g) No change.

Rulemaking Authority 215.555(3) FS. Law Implemented 215.555(2)(c), (3), (4), (5) FS. History–New 2-17-97, Amended 6-2-02, 5-13-03, 5-19-04, 5-29-05, 5-10-06, 6-8-08, 3-30-09, 3-30-10, _____.

19-8.013 Revenue Bonds Issued Pursuant to Section 215.555(6), F.S.

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

(g) ~~Contract Year, prior to June 1, 2010,~~ means the time period which begins at 12:00:01 Eastern Time on June 1 of each calendar year and ends at 12:00 p.m. midnight on May 31 of the following calendar year. ~~The period of time which begins at 12:00:01 Eastern Time on June 1, 2010 and ends at 12:00 p.m. midnight on December 31, 2010 shall be considered the 2010 Contract Year. All Contract Years beginning after December 31, 2010 shall begin at 12:00:01 Eastern Time on January 1 of each calendar year and end at 12:00 p.m. midnight on December 31 of that calendar year.~~

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

(b) Pursuant to the Order issued by the Office of Insurance Regulation levying the Emergency Assessment, each Assessable Insurer shall remit to the entity identified in the Order, an amount equal to the required percentage of its direct written premium for the preceding calendar quarter from all Assessable Lines, except those lines specifically exempted in Section 215.555, F.S. Medical malpractice is an Assessable Line of business but only as to covered events occurring on or after June 1, 2010. In addition, policies issued as part of the National Flood Insurance Program are not subject to the Emergency Assessment. The required percentage will be determined in accordance with Section 215.555(6)(b), F.S., and the procedures set out in subsection (4) of this rule.

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

(d)2. Assessable Lines. Note that the numbers below preceding the names of the lines of business do not correspond to the line numbers of the property and casualty annual statement referenced in subparagraph 1., immediately above.

- a. Fire.
- b. Allied Lines.
- c. Multiple Peril Crop.
- d. Farmowners Multiple Peril.
- e. Homeowners Multiple Peril.
- f. Commercial Multiple Peril (non-liability).
- g. Commercial Multiple Peril (liability).
- h. Mortgage Guaranty.
- i. Ocean Marine.
- j. Inland Marine.
- k. Financial Guaranty.

l. Medical Malpractice (Medical Malpractice insurance premiums are subject to certain time limited exemptions, refer to Section 215.555, F.S., for those limitations) are not subject

~~to Emergency Assessments attributable to covered events occurring prior to the Contract Year that begins on June 1, 2010).~~

- m. Earthquake.
- n. Other Liability.
- o. Products Liability.
- p. Private Passenger Auto No-Fault.
- q. Other Private Passenger Auto Liability.
- r. Commercial Auto No-Fault.
- s. Other Commercial Auto Liability.
- t. Private Passenger Auto Physical Damage.
- u. Commercial Auto Physical Damage.
- v. Aircraft (all perils).
- w. Fidelity.
- x. Surety.
- y. Burglary and Theft.
- z. Boiler and Machinery.
- aa. Credit.
- bb. Warranty.
- cc. Aggregate Write Ins for Other Lines of Business.

Rulemaking Authority 215.555(3) FS. Law Implemented 215.555(2), (3), (4), (5), (6), (7) FS. History—New 9-18-97, Amended 12-3-98, 9-12-00, 6-1-03, 5-19-04, 5-29-05, 5-10-06, 9-5-06, 6-8-08, 3-30-09, 3-30-10,_____.

19-8.029 Insurer Reporting Requirements.
 (1) through (2)(b) No change.

(c) ~~Contract Year, prior to June 1, 2010,~~ means the time period which begins at 12:00:01 Eastern Time on June 1 of each calendar year and ends at 12:00 p.m. midnight on May 31 of the following calendar year. ~~The period of time which begins at 12:00:01 Eastern Time on June 1, 2010 and ends at 12:00 p.m. midnight on December 31, 2010 shall be considered the 2010 Contract Year. All Contract Years beginning after December 31, 2010 shall begin at 12:00:01 Eastern Time on January 1 of each calendar year and end at 12:00 p.m. midnight on December 31 of that calendar year.~~

(d) through (4)(k) No change.

(l) For the 2010/2011 Contract Year, the reporting shall be in accordance with Form FHCF-D1A, “Florida Hurricane Catastrophe Fund 2010 Data Call,” rev. 05/10, hereby adopted and incorporated by reference into this rule. The form may be obtained from the Fund’s Administrator at the address stated in subsection (6) below. A new participant writing covered policies on or after June 1 but prior to December 1, shall report its actual exposure as of December 31 of the Contract Year on or before March 1 of the Contract Year following calendar year, to the Administrator.

(5) through (7)(e) No change.

(f) For the 2010/2011 Contract Year, the applicable Interim Loss Report is the “Contract Year 2010 Interim Loss Report, Florida Hurricane Catastrophe Fund (FHCF)”,

FHCF-L1A, rev. 05/10, which is hereby adopted and incorporated by reference into this rule. The applicable Proof of Loss Report is the “Contract Year 2010 Proof of Loss Report, Florida Hurricane Catastrophe Fund (FHCF),” FHCF-L1B, rev. 05/10, which is hereby adopted and incorporated by reference into this rule. The forms may be obtained from the Fund’s Administrator at the address stated in subsection (6) above.

(8) No change.

Rulemaking Authority 215.555(3) FS. Law Implemented 215.555(2), (3), (4), (5), (6), (7), (15) FS. History—New 5-17-99, Amended 6-19-00, 6-3-01, 6-2-02, 11-12-02, 5-13-03, 5-19-04, 8-29-04, 5-29-05, 5-10-06, 5-8-07, 6-8-08, 3-30-09, 8-2-09,3-30-10,_____.

19-8.030 Insurer Responsibilities.

(1) through (3)(d) No change.

(e) ~~Contract Year, prior to June 1, 2010,~~ means the time period which begins at 12:00:01 Eastern Time on June 1 of each calendar year and ends at 12:00 p.m. midnight on May 31 of the following calendar year. ~~The period of time which begins at 12:00:01 Eastern Time on June 1, 2010 and ends at 12:00 p.m. midnight on December 31, 2010 shall be considered the 2010 Contract Year. All Contract Years beginning after December 31, 2010 shall begin at 12:00:01 eastern Time on January 1 of each calendar year and end at 12:00 p.m. midnight on December 31 of that calendar year.~~

(f) through (4)(b) No change.

~~(c)1. For Contract Years prior to the 2010 Contract Year, New Participants during the period of December 1 through May 31: Those Insurers that first begin writing Covered Policies from December 1 through May 31 of a Contract Year, along with the Insurers described in paragraph (b) immediately above, are New Participants. However, these Insurers shall not complete and submit the Data Call (Form FHCF-D1A) but shall meet all other requirements for New Participants.~~

~~2. For Contract Years 2010 and later, New Participants during the period of December 1 through December 31: Those Insurers that first begin writing Covered Policies from December 1 through December 31 of a Contract Year, along with the Insurers described in paragraph (b) above, are New Participants. However, these Insurers shall not complete and submit the Data Call (Form FHCF-D1A) but shall meet all other requirements for New Participants.~~

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

(b) Current Participants: Each Insurer, with Covered Policies as of June 1 of a Contract Year must participate in the FHCF and must complete and submit the Data Call. The Data Call is incorporated into Rule 19-8.029, F.A.C., and is due, correctly completed, no later than September 1 of the Contract Year.

(c) through (6)(a) No change.

(b) New Participants during the period of June 1 through November 30: Those Insurers that first begin writing Covered Policies from June 1 through November 30 of a Contract Year must submit a payment of \$1,000 on or before the date indicated on the invoice. Once a New Participant's Data Call, which is filed on or before March 1 of the Contract Year, has been reviewed by the Administrator and the company's actual Reimbursement Premium has been determined on its actual exposure, an invoice with the amount due, if any, will be sent to the Company by the Administrator. Payment, if any amounts are shown as due on the invoice, is due within 30 days from the date on the invoice. In no event will the Premium be less than the \$1,000.

~~1. For Contract Years prior to the 2010 Contract Year, the New Participant's Data Call is due on or before March 1 of the Contract Year.~~

~~2. For Contract Years 2010 and later, the New Participant's Data Call is due on or before March 1 of the following calendar year.~~

(c) New Participants during the period of December 1 through May 31:

~~Those 1. For Contract Years prior to the 2010 Contract Year, those~~ Insurers that first begin writing Covered Policies from December 1 through May 31 of a Contract Year shall pay a \$1,000 Premium within 30 days from the date on the invoice sent to the Insurer by the FHCF.

~~2. For Contract Years 2010 and later, those Insurers that first begin writing Covered Policies from December 1 through December 31 of a Contract Year shall pay a \$1,000 Premium within 30 days from the date on the invoice sent to the Insurer by the FHCF.~~

(d) through (7)(a)7. No change.

8. For the 2010/2011 Contract Year, the applicable exposure examination instructions form is the "Florida Hurricane Catastrophe Fund (FHCF) Exposure Examination – Contract Year 2010 Advance Preparation Instructions," FHCF-EAP1, rev. 05/10. The applicable loss examination instructions form is the "Florida Hurricane Catastrophe Fund (FHCF) Loss Reimbursement Examination – Contract Year 2010 Advance Preparation Instructions," FHCF-LAP1, rev. 05/10. These forms are hereby adopted and incorporated by reference into this rule. Copies of these forms may be obtained from the FHCF website, www.sbafla.com/fhcf or by contacting the State Board of Administration. The mailing address is P. O. Box 13300, Tallahassee, Florida 32317-3300. The street address is 1801 Hermitage Blvd., Tallahassee, Florida 32308.

(b) through (8)(d) No change.

(e) For the Contract Year 2010-2011, the applicable "Florida Hurricane Catastrophe Fund Interim Loss Report," is the FHCF-L1A rev. 05/10 and the applicable "Florida Hurricane Catastrophe Fund Proof of Loss Report," is the FHCF-L1B rev. 05/10. These forms are hereby adopted and incorporated by reference into this rule.

These forms are hereby adopted and incorporated by reference into this rule and may be obtained from the Fund's Administrator, Paragon Strategic Solutions Inc., 8200 Tower, 5600 West 83rd Street, Suite 1100, Minneapolis, Minnesota 55437. Companies must submit a detailed claims listing (in a delimited ASCII format) to support the losses reported in the FHCF-L1B, Proof of Loss Report, at the same time it submits its first Proof of Loss Report for a specific Covered Event that qualifies the company for reimbursement under that Covered Event, and should be prepared to supply a detailed claims listing for any subsequent Proof of Loss Report upon request. Refer to Form FHCF-LAP1 for the required file layout. The Proof of Loss Report and the detailed claims listing are required to be sent to the FHCF Administrator, Paragon Strategic Solutions Inc., at the address listed above. If your company submits its Proof of Loss Reports electronically through the FHCF's Online Claims System at www.sbafla.com/fhcf, the detailed claims listing may be attached to the Company's submission.

(9) through (12) No change.

Rulemaking Authority 215.555(3) FS. Law Implemented 215.555 FS. History—New 5-13-03, Amended 5-19-04, 5-29-05, 5-10-06, 5-8-07, 8-13-07, 6-8-08, 3-30-09, 3-30-10,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jack E. Nicholson, FHCF Chief Operating Officer, State Board of Administration

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Trustees of the State Board of Administration of Florida

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 28, 2010

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.501
 RULE TITLE: Discharge of an Inmate

PURPOSE AND EFFECT: The purpose and effect is to repeal the rule.

SUMMARY: Rule 33-601.501, F.A.C., is being repealed, as the provisions of the rule are obsolete and no longer in accordance with applicable statutory authority.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will not have an impact on small business. A SERC has not 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: 20.315 FS.

LAW IMPLEMENTED: 20.315, 944.293 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: Kendra Lee Jowers, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.501 Discharge of an Inmate.

Rulemaking Specific Authority 20.315 FS. Law Implemented 20.315, 944.293 FS. History—New 10-8-76, Formerly 33-7.05, Amended 1-26-86, 11-4-92, 11-16-97, Formerly 33-7.005, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: George Sapp, Deputy Secretary of Institutions
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Walter McNeil, Secretary
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 3, 2010

COMMISSION ON ETHICS

RULE NO.: 34-7.010
RULE TITLE: List of Forms and Instructions

PURPOSE AND EFFECT: The purpose of the proposed amendment is to transfer the forms used in the Executive Branch Lobbying program to Chapter 34-12, Florida Administrative Code – the substantive rule chapter implementing the Executive Branch Lobbying statute – Section 112.3215, Florida Statutes.

SUMMARY: CE Form 20, (Executive Branch Lobbyist Registration), CE Form 20-R (Executive Branch Lobbyist Renewal), and CE Form 24 (Executive Branch Quarterly Compensation Report) are affected by this rulemaking.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will not have an impact on small business. A SERC has not been prepared by the agency.

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

RULEMAKING AUTHORITY: Art. II, Sec. 8(i), Fla. Const., 112.3144, 112.3145, 112.3147, 112.3215(14), 112.322(9) FS., Ch. 2009-85, LOF.

LAW IMPLEMENTED: 112.313(9), (12), 112.3143, 112.3144, 112.3145, 112.3148, 112.3149, 112.3215 FS., Art. II, Sec. 8(a), (f), (h), Fla. Const., Ch. 2009-85, LOF.

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

DATE AND TIME: July 16, 2010, 9:00 a.m.
PLACE: Senate Office Building, Room 37S, 404 South Monroe Street, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Julia Cobb Costas, Assistant General Counsel, Florida Commission on Ethics, telephone: (850)488-7864

THE FULL TEXT OF THE PROPOSED RULE IS:

34-7.010 List of Forms and Instructions.

(1) The following forms and instructions are adopted by reference and are used by the Commission in its dealings with the public:

(a) through (h) No change.

~~(i) Form 20, Executive Branch Lobbyist Registration. To be utilized by lobbyists for compliance with Section 112.3215(3), F.S. Effective 1/2010.~~

~~(j) Form 20 R, Executive Branch Lobbyist Renewal. To be utilized by lobbyists for compliance with Section 112.3215(3), F.S. Effective 6/2006.~~

~~(k) Form 24, Executive Branch Quarterly Compensation Report. To be utilized by executive branch lobbying firms for compliance with Section 112.3215(5), F.S. Effective 6/2006.~~

(l) through (r) renumbered (i) through (o) No change.

(2) No change.

Rulemaking Authority Art. II, Sec. 8(i), Fla. Const., 112.3144, 112.3145, 112.3147, 112.3215(14), 112.322(9) FS., Chapter 2009-85, Laws of Florida. Law Implemented Art. II, Sec. 8(a), (f), (h), Fla. Const., 112.313(9), (12), 112.3143, 112.3144, 112.3145, 112.3148, 112.3149, 112.3215 FS., Chapter 2009-85, Laws of Florida. History—New 4-11-76, Formerly 34-7.10 through 7.22, 8.10, Amended 2-23-77, 4-7-77, 5-17-77, 10-20-77, 2-25-79, 1-29-80, 4-29-81, 1-12-82, 3-25-82, 2-21-83, Formerly 34-7.10, Amended 7-10-88, 3-4-91, 10-6-91, 10-29-91, 12-22-91, 7-5-92, 10-15-92, 12-6-92, 11-10-93, 12-27-93, 11-21-94, 2-16-95, 12-26-95, 1-27-97, 1-1-98, 1-1-99, 1-1-00, 1-1-00, 12-4-00, 12-21-00, 10-14-01, 11-22-01, 1-1-02, 1-1-03, 1-1-04, 1-1-05, 1-1-06, 6-15-06, 1-1-07, 1-1-10, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Julia Cobb Costas, Assistant General Counsel

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Philip C. Claypool, Executive Director and General Counsel

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 9, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 16, 2010

COMMISSION ON ETHICS

RULE NOS.: 34-12.200
34-12.330
34-12.400
RULE TITLES: Registration Requirements
Annual Renewals
Compensation Reporting Requirements

PURPOSE AND EFFECT: The proposed amendments to Chapter 34-12, F.A.C., are intended to adopt the forms used by Executive Branch lobbyists and lobbying firms in Chapter 34-12, F.A.C., rather than in Chapter 34-7, F.A.C., where other Commission forms are listed.

SUMMARY: Chapter 34-12, F.A.C., is being amended to adopt by reference the forms used to register as an Executive Branch lobbyist (CE Form 20), to renew the annual registration as an Executive Branch lobbyist (CE Form 20-R), and for lobbying firms to file the quarterly compensation report (CE Form 24). The requirement on the instructions for the CE Form 20 that the original signature of the principal or the principal's representative is required, is being deleted to make registration similar to that of the Legislature's lobbyist registration process. The amendments also update the reference to the *North American Industry Classification System – United States, 2007*, as the appropriate version of the 6-digit NAICS that principals should use to identify and designate their main business, and notes that Section 112.32155, Florida Statutes, requires lobbying firms to create and submit their quarterly compensation reports (CE Form 24) through the Lobbyist Registration Office's Electronic Filing System.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will not have an impact on small business. A SERC has not been prepared by the agency.

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

RULEMAKING AUTHORITY: 112.3215, 112.32155, 112.322(9) FS., Section 5, Chapter 2005-359, LOF.

LAW IMPLEMENTED: 112.3215, 112.32155 FS., Section 5, Chapter 2005-359, LOF.

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

DATE AND TIME: July 16, 2010, 9:00 a.m.

PLACE: Senate Office Building, Room 37S, 404 South Monroe Street, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Julia Cobb Costas, Assistant General Counsel, Florida Commission on Ethics, telephone: (850)488-7864

THE FULL TEXT OF THE PROPOSED RULES IS:

34-12.200 Lobbyist Registration Requirements.

(1) through (2) No change.

(3) The registrant shall include a separate statement signed by the principal or the principal's representative that the registrant is authorized to represent the principal. On this statement, the principal will also identify and designate its main business using the 6-digit NAICS code published in the

North American Industry Classification System – United States, 2007 2002, which is hereby incorporated by reference. Classification system information can be obtained by contacting the NAICS Association, 129 Lakeshore Drive, Rockaway, NJ 07866, or by visiting its website: www.naics.com.

(4) through (6) No change.

(7) CE Form 20, Executive Branch Lobbyist Registration. Effective 9/2010. To be utilized by lobbyists to register as an Executive Branch lobbyist. This form and instructions may be obtained without cost from the Lobbyist Registration Office, 111 West Madison Street, Room G-68, Tallahassee, Florida 32399, telephone (850)922-4990, or downloaded at: www.leg.state.fl.us/Lobbyist.

Rulemaking Specific Authority 112.3215, 112.322(9) FS., Section 5, Chapter 2005-359, LOF. Law Implemented 112.3215 FS., Section 5, Chapter 2005-359, LOF. History–New 10-12-89, Amended 12-6-92, 6-15-06,_____.

34-12.330 Annual Renewals.

(1) Each lobbyist must renew his or her registration to lobby an agency on behalf of a principal on a calendar year basis by filing a CE Form 20-R, Lobbyist Renewal Form and the annual registration fee of \$25.00 for each principal represented. Prior to January 1 of each year, the Commission will mail to each currently registered lobbyist CE Form 20-R, together with a notice which states that the lobbyist must renew his or her registration of those principals the lobbyist continues to represent before agencies of the executive branch by filing the form and paying the annual registration fee.

(2) CE Form 20-R, Executive Branch Lobbyist Renewal. Effective 6/2006. To be utilized by lobbyists to renew their annual registration as an Executive Branch lobbyist. The form is generated by the Lobbyist Registration Office and mailed to registered lobbyists prior to January 1 of each year. Examples of the form may be obtained without cost from the Lobbyist Registration Office, 111 West Madison Street, Room G-68, Tallahassee, Florida 32399, Telephone (850)922-4990.

Rulemaking Specific Authority 112.3215, 112.322(9) FS., Section 5, Chapter 2005-359, LOF. Law Implemented 112.3215 FS., Section 5, Chapter 2005-359, LOF. History–New 10-12-89, Amended 10-6-91, 7-5-92, 12-6-92, 1-1-97, 11-24-97, 1-1-02, 6-15-06,_____.

34-12.400 Compensation Reporting Requirements.

(1) Each lobbying firm shall file a CE Form 24, Executive Branch Quarterly Compensation Report, with the Commission on Ethics for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. Pursuant to Section 112.32155, Florida Statutes, compensation reports must be filed electronically. The Quarterly Compensation Report shall include:

(a) Full name, business address, and telephone number of the lobbying firm;

(b) Name of each of the firm's lobbyists; and

(c) Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories:

1. - 0 -
2. \$1 to \$49,999
3. \$50,000 to \$99,999
4. \$100,000 to \$249,999
5. \$250,000 to \$499,999
6. \$500,000 to \$999,999
7. \$1 million or more
- (2) through (6) No change.

(7) CE Form 24, Executive Branch Quarterly Compensation Report. Effective 6/2006. CE Form 24 must be created and submitted through the Lobbyist Registration Office's Electronic Filing System, not later than 11:59 p.m. Eastern on the date of the filing deadline. Proof of electronic filing will be by electronic receipt indicating the date and time that the report was submitted. The Lobbyist Registration Office's Electronic Filing System may be accessed at <http://olcr.leg.state.fl.us>. Examples of the form may be obtained without cost from the Lobbyist Registration Office, 111 West Madison Street, Room G-68, Tallahassee, Florida 32399, telephone (850)922-4990. A Quarterly Compensation Report must be filed no later than 5:00 p.m. of the report due date. However, any report that is postmarked by the United States Postal Service no later than midnight of the due date shall be deemed to have been filed in a timely manner. A certificate of mailing obtained from and dated by the United States Postal Service at the time of mailing, or a receipt from an established courier company which bears a date on or before the due date, shall also be proof of mailing in a timely manner.

~~(8) When it becomes feasible for the Commission, Quarterly Compensation Reports may be filed by electronic means.~~

Rulemaking Specific Authority 112.3215, 112.32155, 112.322(9) FS., Section 5, Chapter 2005-359, L.O.F. Law Implemented 112.3215, 112.32155 FS., Section 5, Chapter 2005-359, LOF. History-New 10-12-89, Amended 7-5-92, 12-6-92, 1-4-94, 1-1-97, 12-21-00, 6-15-06,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Julia Cobb Costas, Assistant General Counsel
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Philip C. Claypool, Executive Director and General Counsel
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 9, 2010
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 16, 2010

**LAND AND WATER ADJUDICATORY COMMISSION
 Huntington Hammocks Community Development District**

RULE NOS.:	RULE TITLES:
42LLL-1.001	Establishment
42LLL-1.002	Boundary
42LLL-1.003	Supervisors

PURPOSE AND EFFECT: In 2008, the Florida Land and Water Adjudicatory Commission adopted Rule Chapter 42LLL-1, F.A.C., setting forth the establishment, boundaries, and initial board of supervisors of the Huntington Hammocks Community Development District (District). On February 24, 2010, the District's Board of Supervisors filed a petition requesting the Commission dissolve the District through the repeal of Rule Chapter 42LLL-1, F.A.C. Section 190.046(9), F.S., allows for the dissolution of a community development district which has no outstanding financial obligations and no operating or maintenance responsibilities by the repeal of the rule that established the district. The District has received consent to dissolve from 100% of the landowners within the District; has not issued any bonds, notes or other debt instruments; and has not levied any special assessments against the lands located within the District for the purpose of funding ongoing operating costs or planned community development services.

SUMMARY: In 2008, the Florida Land and Water Adjudicatory Commission adopted Rule Chapter 42LLL-1, F.A.C., setting forth the establishment, boundaries, and initial board of supervisors of the Huntington Hammocks Community Development District (District). On February 24, 2010, the District's Board of Supervisors filed a petition requesting the Commission dissolve the District through the repeal of Rule Chapter 42LLL-1, F.A.C. Section 190.046(9), F.S., allows for the dissolution of a community development district which has no outstanding financial obligations and no operating or maintenance responsibilities by the repeal of the rule that established the district. The District has received consent to dissolve from 100% of the landowners within the District; has not issued any bonds, notes or other debt instruments; and has not levied any special assessments against the lands located within the District for the purpose of funding ongoing operating costs or planned community development 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: 190.005 FS.
 LAW IMPLEMENTED: 190.004, 190.005 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: Thursday, July 15, 2010, 10:00 a.m. – 12:00 Noon

PLACE: Room 2103, The Capitol, 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 two days before the workshop/meeting by contacting: Barbara Leighty, Senior Policy Analyst, Florida Land and Water Adjudicatory Commission, The Capitol, Room 1801, Tallahassee, Florida 32399-0001, (850)487-1884. 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: Barbara Leighty, Senior Policy Analyst, Florida Land and Water Adjudicatory Commission, The Capitol, Room 1801, Tallahassee, Florida 32399-0001, (850)487-1884

THE FULL TEXT OF THE PROPOSED RULES IS:

42LLL-1.001 Establishment.

Rulemaking Specific Authority 190.005 FS. Law Implemented 190.004, 190.005 FS. History–New 3-9-08, Repealed

42LLL-1.002 Boundary.

Rulemaking Specific Authority 190.005 FS. Law Implemented 190.004, 190.005 FS. History–New 3-9-08, Repealed

42LLL-1.003 Supervisors.

Rulemaking Specific Authority 190.005 FS. Law Implemented 190.004, 190.005 FS. History–New 3-9-08, Repealed

NAME OF PERSON ORIGINATING PROPOSED RULE: Lisa Saliba, Director, Florida Land and Water Adjudicatory Commission

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Land and Water Adjudicatory Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2010

DEPARTMENT OF MANAGEMENT SERVICES

State Technology Office

RULE NOS.:	RULE TITLES:
60DD-2.001	Purpose; Definitions; Policy; Applicability; Agency Security Programs; Roles and Responsibilities; Risk Management

60DD-2.002	Control of Computers and Information Resources
60DD-2.003	Physical Security and Access to Data Processing Facilities
60DD-2.004	Logical and Data Access Controls
60DD-2.005	Data and System Integrity
60DD-2.006	Network Security
60DD-2.007	Backup and Disaster Recovery
60DD-2.008	Personnel Security and Security Awareness
60DD-2.009	Systems Acquisition, Disposal, Auditing, and Reporting
60DD-2.010	Standards Adopted

PURPOSE AND EFFECT: The purpose of the notice is to repeal the rules under Rule Chapter 60DD-2, F.A.C. Rule Chapter 60DD-2, F.A.C., contains the “Florida Information Resource Security Policies and Standards”, which were promulgated by the former State Technology Office of the Department of Management Services. The Office of Information Technology of the Agency for Enterprise Information Technology is proposing new rules under Rule Chapter 71A-1, F.A.C., which are intended to replace the policies and standards set forth in Rule 60DD-2.002, F.A.C. The Notice of Proposed Rulemaking for the proposed rules under Rule Chapter 71A-1, F.A.C., is contained in this edition of the Florida Administrative Weekly and intended to take effect when the rules under Chapter 60DD-2, F.A.C., are repealed.

SUMMARY: Rule Chapter 60DD-2, F.A.C., relating to “Florida Information Resource Security Policies and Standards”, is repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A statement of estimated regulatory cost has not been prepared by the agency. The agency has determined that small businesses will not be impacted by the rule chapter repeal.

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: 282.102(2), (6), (16) FS.

LAW IMPLEMENTED: 120.54(8), 252.365, 282.0041, 282.101, 282.301, 282.318 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 RULES IS: Renee Harkins, Project Analyst, Agency for Enterprise Information Technology, 4030 Esplanade Way, Suite 135, Tallahassee, Florida 32399, telephone (850)414-6771

THE FULL TEXT OF THE PROPOSED RULES IS:

60DD-2.001 Purpose; Definitions; Policy; Applicability; Agency Security Programs; Roles and Responsibilities; Risk Management.

(1) Purpose.

(a) Rules 60DD-2.001-.010, F.A.C., shall be known as the Florida Information Resource Security Policies and Standards.

(b) The purpose of the Florida Information Resource Security Policies and Standards is to:

1. Promulgate state policies regarding the security of data and information technology resources. Policies are broad principles underlying the state's information resource security program.

2. Define minimum security standards for the protection of state information resources. Standards are required administrative procedures or management controls, utilizing current, open, non-proprietary or non-vendor specific technologies.

(c) Nothing in this rule chapter shall be construed to impair the public's access rights under Chapter 119, F.S., and Article I, Section 24 of the Florida Constitution.

(d) The policies and standards set forth in this rule chapter shall not affect the supervision, control, management or coordination of information technology and information technology personnel that any cabinet officer listed in s. 4, Art. IV, Florida Constitution, deems necessary for the exercise of his or her statutory or constitutional duties.

(2) Definitions.

(a) The following terms are defined:

1. Access—To approach, view, instruct, communicate with, store data in, retrieve data from, or otherwise make use of computers or information resources.

2. Access Control—The enforcement of specified authorization rules based on positive identification of users and the systems or data they are permitted to access.

3. Access password—A password used to authorize access to data and distributed to all those who are authorized similar access.

4. Access Point—A station that transmits and receives data.

5. Advanced Encryption Standard or "AES"—A Federal Information Processing Standard (FIPS 197) developed by NIST to succeed DES. Intended to specify an unclassified, publicly disclosed, symmetric encryption algorithm, available royalty-free worldwide, to protect electronic data.

6. Agency—Those entities described in Section 216.011(1)(qq), F.S.

7. Asymmetric Encryption—A modern branch of cryptography (sometimes called "public key cryptography") in which the algorithms employ a pair of keys (a public key and a private key) and use a different component of the pair for different steps of the algorithm.

8. Attack—An assault on system security that derives from an intelligent threat, i.e., an intelligent act that is a deliberate attempt (especially in the sense of a method or technique) to violate the security of a system.

9. Audit—See: Security Audit.

10. Authentication—The process that verifies the claimed identity or access eligibility of a station, originator, or individual as established by an identification process.

11. Authorization—A positive determination by the information resource/data owner or delegated custodian that a specific individual may access that information resource, or validation that a positively identified user has the need and the resource/data owner's permission to access the resource.

12. Availability—The security goal that generates the requirement for protection against intentional or accidental attempts to perform unauthorized deletion of data or otherwise causes a denial of service of system resources.

13. Back Door—A hardware or software mechanism that provides access to a system and its resources by other than the usual procedure, was deliberately left in place by the system's designers or maintainers, and usually is not publicly known.

14. Business Continuity Plan—See: Disaster Preparedness Plan.

15. Best Practice—A technique or methodology that, through experience and research, has proven to reliably lead to a desired result. A commitment to using the best practices in any field is a commitment to using all the knowledge and technology at one's disposal to ensure success.

16. Block Cipher—An encryption algorithm that breaks plaintext into fixed-size segments and uses the same key to transform each plaintext segment into a fixed-size segment of cipher-text.

17. Central Computer Room—A facility dedicated to housing significant computing resources, such as mainframe computers and libraries; commonly referred to as a data center.

18. Client—A system entity that requests and uses the service provided by another system entity called a "server".

19. Comprehensive Risk Analysis—A process that systematically identifies valuable system resources and threats to those resources, quantifies loss exposures (i.e., loss potential) based on estimated frequencies and costs of occurrence, and recommends how to allocate resources to countermeasures so as to minimize total exposure. The analysis lists risks in order of cost and criticality, thereby determining where countermeasures should be applied first.

20. Computer Security—measures that implement and assure security in a computer system, particularly those that assure access control; usually understood to include functions, features and technical characteristics of computer hardware and software, especially operating systems.

21. Confidential Information — Information that is excepted from disclosure requirements under the provisions of applicable state or federal law, e.g., the Florida Public Records Act.

22. Confidentiality — The state that exists when confidential information is held in confidence and available only to a limited set of authorized individuals pursuant to applicable law. Confidentiality is the security goal that generates the requirement for protection from intentional or accidental attempts to perform unauthorized data reads.

23. Contingency Plan — A plan for emergency response, backup operations, and post-disaster recovery in a system as part of a security program to ensure availability of critical system resources and facilitate continuity of operations in a crisis. See: Disaster Preparedness Plan.

24. Continuity of Operations Plan (COOP) — See: Disaster Preparedness Plan.

25. Control — Any action, device, policy, procedure, technique, or other measure that improves security.

26. Critical Information Resource — That resource determined by agency management to be essential to the agency's critical mission and functions, the loss of which would have an unacceptable impact.

27. Current — Most recent; not more than one year old.

28. Custodian of an Information Resource — Guardian or caretaker; the holder of data; the agent charged with the resource owner's requirements for processing, communications, protection controls, access controls, and output distribution for the resource; a person responsible for implementing owner defined controls and access to an information source. The custodian is normally a provider of services.

29. Data — A representation of facts or concepts in an organized manner that may be stored, communicated, interpreted, or processed by people or automated means.

30. "Data Encryption Algorithm" or "DEA" — A symmetric block cipher, defined as part of the United States Government's Data Encryption Standard. DEA uses a 64-bit key, of which 56 bits are independently chosen and 8 are parity bits, and maps a 64-bit block into another 64-bit block.

31. "Data Encryption Standard" or "DES" — A United States Government standard (Federal Information Processing Standard 46-3) that specifies the data encryption algorithm and states policy for using the algorithm to protect data.

32. Data Integrity — The condition existing when the data is unchanged from its source and has not been accidentally or maliciously modified, altered or destroyed.

33. Data Security — The protection of data from disclosure, alteration, destruction, or loss that either is accidental or is intentional but unauthorized.

34. Data Security Administrator — The person charged with monitoring and implementing security controls and procedures for a system. Whereas each agency will have one Information Security Manager, agency management may designate a number of data security administrators.

35. Denial of Service — The prevention of authorized access to a system resource or the delaying of system operations and functions.

36. "Disaster Preparedness Plan" or "Continuity of Operations Plan" — An effort within individual departments and agencies pursuant to Section 252.365, F.S., to ensure the continued performance of minimum essential functions during a wide range of potential emergencies. An operational and tested information technology continuity plan should be in line with the overall agency disaster preparedness plan and its related requirements and take into account such items as criticality classification, alternative procedures, back-up and recovery, systematic and regular testing and training, monitoring and escalation processes, internal and external organizational responsibilities, business continuity activation, fallback and resumption plans, risk management activities, assessment of single points of failure, and problem management. Provisions should be documented in the plan and reviewed to establish back-up and off-site rotation of non-critical application software and job execution language libraries, data files, and systems software to facilitate restoration following recovery of critical applications.

37. Encryption — Cryptographic transformation of data (called "plaintext") into a form (called "cipher-text") that conceals the data's original meaning to prevent it from being known or used. If the transformation is reversible, the corresponding reversal process is called "decryption", which is a transformation that restores encrypted data to its original state. Encryption and decryption involve a mathematical algorithm for transforming data. In addition to the data to be transformed, the algorithm has one or more inputs that are control parameters: a key value that varies the transformation and, in some cases, an initialization value that establishes the starting state of the algorithm.

38. End User — A system entity, usually a human individual, that makes use of system resources, primarily for application purposes as opposed to system management purposes. This includes State employees, contractors, vendors, third parties and volunteers in a part time or fulltime capacity.

39. Environment — The aggregate of physical, organizational, and cultural circumstances, objects, or conditions surrounding an information resource.

40. Exposure — Vulnerability to loss resulting from accidental or intentional unauthorized acquisition, use, disclosure, modification, or destruction of information resources.

41. FIPS PUB (NR.)— Federal Information Processing Standard Publication (Nr.), a federal standard issued by the National Institute of Science and Technology (formerly the National Bureau of Standards).

42. Information Custodians— Agency employees responsible for assisting Information Owners in classifying data and specifying and implementing the technical mechanisms required to enforce policy to a degree of certainty required, based on a comprehensive risk analysis that considers the probability of compromise and its potential operational impact.

43. Information Owners or “Owner of an Information Resource”— Agency managers who are responsible for specifying the security properties associated with the information their organization possesses and are responsible for the integrity and accuracy of that information. This includes what categories of users are allowed to read and write various items and what the operational impact of violations of policy would be.

44. Information Resources— Data, automated applications, and information technology resources as defined in subparagraph 60DD 2.001(2)(a)47., F.A.C. and Sections 282.0041(7) and 282.101, F.S.

45. Information Security Alert— A notice sent by state agencies pursuant to paragraph 60DD 2.006(6)(b), F.A.C., regarding potential information security abnormalities or threats.

46. Information Security Manager (ISM)— The person designated to administer the agency’s information resource security program and plans in accordance with Section 282.318(2)(a)1., F.S., and the agency’s internal and external point of contact for all information security matters.

47. “Information Technology,” “information technology resources,” “information resources” or “information technology system” include any transmission, emission, and reception of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems and includes all facilities and equipment owned, leased, or used by all agencies and political subdivisions of state government, and a full service information processing facility offering hardware, software, operations, integration, networking, and consulting services.

48. Information Technology Security Plan or Information Resource Security Plan— A written plan periodically reviewed that provides an overview of the security requirements of the information systems and describes the controls in place or planned for meeting those requirements. It covers critical data policies, backup, disaster recovery, and user policies. Its purpose is to protect the integrity, availability, and confidentiality of IT resources (i.e., data, information, applications, and systems) and to support the missions of the State of Florida. The Information Technology Security Plan also encompasses policies, procedures and guidelines together

with methodology employed for protection, e.g., firewalls, user authentication, data encryption, key management, digital certificates, intrusion detection systems (IDS), virus detection, and virtual private networks (VPN).

49. Information Technology Security Program or Information Resource Security Program— A coherent assembly of plans, project activities, and supporting resources contained within an administrative framework, whose purpose is to support the agency’s mission and establish controls to assure adequate security for all information processed, transmitted or stored in agency automated information systems, e.g., Information Technology Security Plans, contingency plans, security awareness and training and systems acquisition, disposal and auditing.

50. Integrity— The security goal that generates the requirement for protection against either intentional or accidental attempts to violate data integrity (the property that data has when it has not been altered in an unauthorized manner) or system integrity (the quality that a system has when it performs its intended function in an unimpaired manner, free from unauthorized manipulation).

51. Networks or Networking— Networks provide design, programming, development and operational support for local area networks (“LANs”), wide area networks (“WANs”) and other networks. Networks support client/server applications, telephony support, high speed or real-time audio and video support and may develop and/or utilize bridges, routers, gateways, and transport media.

52. NIST— National Institute of Standards and Technology.

53. Password— A protected word or string of characters which serves as authentication of a person’s identity (“personal password”), or which may be used to grant or deny access to private or shared data (“access password”).

54. Personal Identifier or User Identification Code— A data item associated with a specific individual, that represents the identity of that individual and may be known by other individuals.

55. Personal Password— A password that is known by only one person and is used to authenticate that person’s identity.

56. Platform— The foundation technology of a computer system. The hardware and systems software that together provide support for an application program and the services they support.

57. Provider— Third party such as contractor, vendor, or private organization providing products, services or support.

58. Public Records Act— Section 119.01, et seq., F.S.

59. Remote Access— The ability to connect to a computer from a remote location and exchange information or remotely operate the system.

60. ~~Review~~—A formal or official examination of system records and activities that may be a separate agency prerogative or a part of a security audit.

62. ~~Risk Analysis~~—See: Comprehensive Risk Analysis.

61. ~~Risk~~—The likelihood or probability that a loss of information resources or breach of security will occur.

63. ~~Risk Assessment~~—See: Comprehensive Risk Analysis.

64. ~~Risk Management~~—Decisions and subsequent actions designed to accept exposure or to reduce vulnerabilities by either mitigating the risks or applying cost-effective controls.

65. ~~Router Transport Service~~—The State wide multi-protocol fully-routed data communications service.

66. ~~Security Audit~~—An independent formal review and examination of system records and activities to determine the adequacy of system controls, ensure compliance with established security policy and operational procedures, detect breaches in security, and recommend any indicated changes in any of the foregoing.

67. ~~SSID~~—A Service Set Identifier—A sequence of characters that uniquely names a wireless local area network.

68. ~~Security Controls~~—Hardware, software, programs, procedures, policies, and physical safeguards that are put in place to assure the availability, integrity and protection of information and the means of processing it.

69. ~~Security incident or breach~~—An event which results in loss, unauthorized disclosure, unauthorized acquisition, unauthorized use, unauthorized modification, or unauthorized destruction of information resources whether accidental or deliberate.

70. ~~Security Officer~~—See Data Security Administrator.

71. ~~Security Risk Analysis~~—The process of identifying and documenting vulnerabilities and applicable threats to information resources.

72. ~~Security Risk Management~~—See Risk Management.

73. ~~Security Standard~~—A set of practices and rules that specify or regulate how a system or organization provides security services to protect critical system resources.

74. ~~Security Vulnerability Assessment~~—An examination of the ability of a system or application, including current security procedures and controls, to withstand assault. A vulnerability assessment may be used to: identify weaknesses that could be exploited and predict the effectiveness of additional security measures in protecting information resources from attack. Systematic examination of a critical infrastructure, the interconnected systems on which it relies, its information, or product to determine the adequacy of security measures, identify security deficiencies, evaluate security alternatives, and verify the adequacy of such measures after implementation.

75. ~~Sensitive Locations~~—Physical locations such as a data center, financial institution, network operations center or any location where critical, confidential or exempt information resources can be accessed, processed, stored, managed or maintained.

76. ~~Sensitive Software~~—Software exempt under Section 119.07(3)(o), F.S.; those portions of data processing software, including the specifications and documentation, used to: collect, process, store and retrieve information which is exempt from the Public Records Act under Section 119.07, F.S.; collect, process, store and retrieve financial management information of the agency, such as payroll and accounting records; or control and direct access authorizations and security measures for automated systems.

77. ~~Server~~—A system entity that provides a service in response to requests from other system entities called “clients”.

78. ~~Session~~—The time during which two computers maintain a connection and are usually engaged in transferring data or information.

79. ~~Site Survey~~—A report on the physical, architectural, geographical and electrical limitations of the site and their effect on a wireless solution.

80. ~~Special Trust or Position of Trust~~—A position in which an individual can view or alter confidential information, or is depended upon for continuity of information resource imperative to the operations of the agency and its mission.

81. ~~Standard~~—See: Security Standard.

82. ~~Storage or Computer Storage~~—The holding of data in an electromagnetic form for access by a computer processor; the process of storing information in computer memory or on a magnetic tape or disk.

83. ~~Symmetric Cryptography~~—A branch of cryptography involving algorithms that use the same key for two different steps of the algorithm (such as encryption and decryption, or signature creation and signature verification). Symmetric cryptography is sometimes called “secret-key cryptography” (versus public-key cryptography) because the entities that share the key, such as the originator and the recipient of the message, need to keep the key secret.

84. ~~System Control Data~~—Data files such as programs, password files, security tables, authorization tables, etc., which, if not adequately protected, could permit unauthorized access to information resources.

85. ~~Third Party~~—See Provider.

86. ~~Triple Data Encryption Standard or “Triple DES” or “3DES”~~—A block cipher, based on DES, that transforms each 64-bit plaintext block by applying a data encryption algorithm three successive times, using either two or three different keys, for an effective key length of 112 or 168 bits.

87. ~~Unauthorized disclosure~~—A circumstance or event whereby an entity gains access to data for which the entity is not authorized.

88. Universal Access Service—State sanctioned secure, single point of access to enterprise applications and information.

89. User—See: End User.

90. Virtual Private Network or “VPN”—A restricted-use, logical (i.e., artificial or simulated) computer network that is constructed from the system resources of a relatively public, physical (i.e., real) network (such as the Internet), often by using encryption (located at hosts or gateways), and often by tunneling links of the virtual network across the real network.

91. Vulnerability—A flaw or weakness in a system’s design, implementation, or operation and management that could be exploited to violate the system’s security.

92. Wi Fi or Wireless Fidelity—The Wi Fi Alliance certification standard signifying interoperability among 802.11b products.

93. Wireless—Wireless includes any data communication device (e.g., personal computers, cellular phones, PDAs, laptops, etc.) that is connected to any network of the State of Florida. This includes any form of Wireless communications device capable of transmitting packet data.

(b) Other terms shall have their commonly understood meaning.

(3) Policy. Information technology resources residing in the various agencies are strategic and vital assets held in trust and belonging to the people of Florida. It is the policy of the State of Florida that information system security ensure the confidentiality, integrity and availability of information. A loss of confidentiality is the unauthorized disclosure of information. A loss of integrity is the unauthorized modification or destruction of information. A loss of availability is the disruption of access to or use of information or an information system. Each agency shall develop, implement, and maintain an information technology security program to be reviewed by the State Technology Office as set forth in this rule. All documents regarding the development, implementation and maintenance of such programs shall be maintained by the agency’s Information Security Manager (ISM). Each agency shall develop, implement, and maintain an information resource security program that produces the following end products:

(a) Documented and distributed security policies that incorporate the following issues:

1. State information resources are valuable assets of the State of Florida and its citizens and must be protected from unauthorized modification, destruction, disclosure, whether accidental or intentional, or use. The acquisition and protection of such assets is a management responsibility.

2. Access requirements for state information resources must be documented and strictly enforced.

3. Responsibilities and roles of Information Security Managers and data security administrators must be clearly defined.

4. Information that, by law, is confidential or exempt must be protected from unauthorized disclosure, replication, use, destruction, acquisition, or modification.

5. Information resources that are essential to critical state functions must be protected from unauthorized disclosure, replication, use, destruction, acquisition, or modification.

6. All information resource custodians, users, providers, and his/her management must be informed of their respective responsibilities for information resource protection and recovery. These responsibilities must be clearly defined and documented.

7. All information resource custodians, users, providers, and his/her management must be informed of the consequences of non-compliance with his/her security responsibilities. These consequences must be clearly stated in writing.

8. Risks to information resources must be managed. The expense of implementing security prevention and recovery measures must be appropriate to the value and criticality of the assets being protected, considering value to both the state and potential intruders. Procedures for recording and responding to security breaches should be developed and disseminated to appropriate information resource custodians, users, providers, and their management, pursuant to each agency’s internal security procedures.

9. The integrity of data, its source, its destination, and processes applied to it must be assured. Data must change only in authorized, predictable, auditable, and acceptable ways.

10. Information resource custodians, users, providers and their management must be made aware of their responsibilities in disaster preparedness plans required to continue critical governmental services, to insure that information resources are available.

11. Security needs must be considered and addressed in all phases of development or acquisition of new information processing systems.

12. The Information Resource Security Program or Information Technology Security Program must be responsive and adaptable to changing environments, vulnerabilities and technologies affecting state information resources.

13. The state should support and uphold the legitimate proprietary interests of intellectual property owners in accordance with applicable federal and state law.

14. Providers shall comply with the Florida Information Resource Security Policies and Standards.

(b) Implementation and maintenance of a documented ongoing training program for information resource security awareness. The training program will include initial security awareness training for all new information resource users, custodians, providers, and their management and ongoing reinforcement covering agency security program components and applicable security related job responsibilities. Each individual must be held accountable for his or her actions relating to information resources.

~~(c) A set of defined roles and responsibilities of Information Security Managers and data security administrators.~~

~~(d) Documentation of employees and providers acknowledgment and acceptance of agency's security policies, procedures, and responsibilities. An individual acknowledgment of accountability shall be included in such documentation.~~

~~(e) Clearly defined and current security responsibilities for each information resource user, custodian, provider, and his/her management.~~

~~(f) Documentation for managing access criteria for information resources.~~

~~(g) Current lists of information resource owners approved and maintained by the agency or secretary of the agency.~~

~~(h) Current lists of information resource users approved and maintained by the agency or secretary of the agency. Except as permitted under paragraph 60DD-2.004(1)(a), F.A.C., information resource users shall be individually identified.~~

~~(i) Current lists of information resource custodians approved and maintained by the agency or secretary of the agency.~~

~~(j) Current documented procedures for conducting background checks for positions of special trust and responsibility or positions in sensitive locations approved and maintained by the agency or secretary of the agency.~~

~~(k) An ongoing documented program of risk management, including risk analysis for all critical information resources, and periodic comprehensive risk analyses of all information resources. Comprehensive risk analyses shall be conducted after major changes in the software, procedures, environment, organization, or hardware.~~

~~(l) Current identification of all agency critical information resources approved and maintained by the agency's Information Security Manager (ISM). Agencies shall categorize all information and information systems in accordance with Federal Information Processing Standard 199, incorporated by reference at subsection 60DD-2.010(6), F.A.C., and Sections 119.07(3)(c) and 282.318, F.S.~~

~~(m) For all critical information resources, current documentation for implementing and maintaining auditable disaster preparedness plans including: procedures for cross training of critical or unique skills; responsibilities and procedures for information resource custodians, owners, and users; procedures for maintaining current data on critical information resources (including hardware, software, data, communications, configurations, staff, special forms, and supplies); and interdependencies between and among resources (both internal and external).~~

~~(n) Current documentation for executing and maintaining test scenarios for disaster preparedness plans.~~

~~(4) Applicability.~~

(a) The information security policies and standards of this rule chapter apply to those entities described in Section 216.011(1)(qq), F.S. They apply to state automated information systems that access, process, or have custody of data. They apply to mainframe, minicomputer, distributed processing, and networking environments of the state. They apply equally to all levels of management and to all supervised personnel.

(b) State information security policies and standards of this rule chapter apply to information resources owned by others, such as political subdivisions of the state or agencies of the federal government, in those cases where the state has a contractual or fiduciary duty to protect the resources while in the custody of the state. In the event of a conflict, the more restrictive security measures apply.

(c) Exceptions.

1. Heads of executive agencies are authorized to exempt from the application of paragraph 60DD-2.004(2)(b), subsection 60DD-2.004(4), paragraph 60DD-2.005(3)(a), 60DD-2.005(3)(b), or 60DD-2.005(4)(b), F.A.C., of this rule, information resources used for classroom or instructional purposes, provided the head of the agency has documented his or her acceptance of the risk of excluding these resources, and further provided that the information resources used for classroom or instructional purposes are not critical.

2. The head of an executive agency is authorized to exempt from the application of paragraph 60DD-2.004(2)(b), subsection 60DD-2.004(4), paragraph 60DD-2.005(3)(a), 60DD-2.005(3)(b), or 60DD-2.005(4)(b), F.A.C., of this rule, stand-alone end-user workstations, provided these workstations are not used to process, store, or transmit critical information resources.

(5)(a) Agency Security Program. The purpose of agency security program is to ensure that the security of the information resources of the agency is sufficient to reduce the risk of loss, modification or disclosure of those assets to an acceptable level. As identified in the agency's comprehensive risk analysis, the expense of security safeguards must be commensurate with the value of the assets being protected.

(b) Standard. Each agency shall develop an Information Resource Security Program that includes a documented and maintained current internal Information Resource Security Plan(s) approved by the agency Chief Information Office (CIO), and maintained by the agency's Information Security Manager (ISM). The agency security program and plan(s) shall include written internal policies and procedures for the protection of information resources, be an instrument implementing the Florida Information Resource Security Policies and Standards, be applicable to all elements of the agency, and be signed by the agency head.

(6)(a) Responsibility; Security Audits. The State Technology Office, in consultation with each agency head, is responsible for the security of each agency's information resources and for establishing information security

requirements on an agency wide basis. To assist the State Technology Office in carrying out security responsibilities, the duties and functions which management has determined to be appropriate for each agency need to be explicitly assigned. When necessary, based on the outcome of risk analysis, to ensure integrity, confidentiality and availability of state information and resources or to investigate possible security incidents to ensure conformance this rule chapter and Florida law, the State Technology Office shall conduct or contract with a third party to conduct a security audit on any system within the State of Florida networks to determine compliance with the Florida Information Resource Security Policies and Standards. Pursuant to Section 282.318(2)(a)5., F.S., the State Technology Office shall also ensure that each agency conducts periodic internal audits and evaluations of its Information Technology Security Plan.

(b) Standard. Pursuant to Section 282.318(2)(a)1., F.S., the State Technology Office shall, in consultation with each agency head, appoint in writing an Information Security Manager (ISM) to administer the agency information resource security program and shall prescribe the duties and responsibilities of the function for each agency.

(7)(a) Owner, Custodian, and User Responsibilities. The major objective of information resource security is to provide cost-effective controls to ensure that information is not subject to unauthorized acquisition, use, modification, disclosure, or destruction. To achieve this objective, procedures that govern access to information resources must be in place. The effectiveness of access rules depends to a large extent on the correct identification of the owners, custodians, and users of information. Owners, custodians, and users of information resources shall be identified, documented, and their responsibilities defined.

(b) Standard. Owner responsibilities. All information resources shall be assigned an owner. In cases where information resources are aggregated for purposes of ownership, the aggregation shall be at a level that assures individual accountability. The owner or his or her designated representative(s) are responsible for and authorized to:

1. Approve, access and formally assign custody of an information resources asset;
2. Determine the asset's value;
3. Specify data control requirements and convey them to users and custodians;
4. Specify appropriate controls, based on risk assessment, to protect the state's information resources from unauthorized modification, deletion, or disclosure. Controls shall extend to information resources outsourced by the agency;
5. Confirm that controls are in place to ensure the accuracy, authenticity, and integrity of data;
6. Ensure compliance with applicable controls;

7. Assign custody of information resource assets and provide appropriate authority to implement security control and procedures; and

8. Review access lists based on documented agency security risk management decisions.

(e) Standard. Custodian responsibilities. Custodians of information resources, including entities providing outsourced information resources services to state agencies or other providers, must:

1. Implement the controls specified by the owner(s);
2. Provide physical and procedural safeguards for the information resources;
3. Assist owners in evaluating the cost effectiveness of controls and monitoring; and
4. Implement the monitoring techniques and procedures for detecting, reporting and investigating incidents.

(d) Standard. User responsibilities. Users of information resources shall comply with established controls.

(8) Risk Management. Risk analysis is a systematic process of evaluating vulnerabilities and threats to information resources. Risk analysis provides the basis for risk management; i.e., assumption of risks and potential losses, or selection of cost effective controls and safeguards to reduce risks to an acceptable level. The goal of risk analysis is to determine the probability of potential risks, in order to integrate financial objectives with security objectives.

(a) Standard. Agencies shall perform or update a comprehensive risk analysis of all critical information processing systems when major changes occur and as specified in subsection 60DD-2.001(3), F.A.C. Comprehensive risk analysis results shall be presented to the State Technology Office and to the owner of the information resource for subsequent risk management.

(b) Standard. Agencies shall implement appropriate security controls determined through comprehensive risk analysis to be cost effective in the reduction or elimination of identified risks to information resources. Any delegation by the agency head of authority for risk management decisions shall be documented.

(c) Standard. The State Technology Office shall evaluate potentially useful risk analysis programs and methodologies. Only those programs and methodologies approved by the State Technology Office shall be accepted as meeting the requirements for comprehensive risk analysis as specified in paragraph 60DD-2.001(8)(a), F.A.C.

(d) Standard. Agencies shall perform a risk analysis consistent with NIST Risk Management Guide for Information Technology Systems, Special Publication 800-30, incorporated by reference at subsection 60DD-2.010(7), F.A.C.

Rulemaking Specific Authority 282.102(2), (6), (16) FS. Law Implemented 282.0041, 282.101, 282.318 FS. History—New 8-10-04, Repealed _____.

60DD-2.002 Control of Computers and Information Resources.

~~(1)(a) Use of State Information Resources:~~

~~(b) Standard. Access to data files and programs shall be limited to those individuals authorized to view, process, or maintain particular systems.~~

~~(2) Access to and Handling of Confidential or Exempt Information:~~

~~(a) Standard. Confidential or exempt information shall be accessible only to personnel who are authorized by the agency on the basis of the performance of responsibilities or as authorized by law. Data containing any confidential or exempt information shall be readily identifiable.~~

~~(b) Standard. An auditable, continuous chain of custody shall record the transfer of confidential or exempt information. When confidential or exempt information from an agency is received by another agency in connection with the transaction of official business, the receiving agency shall maintain the confidentiality of the information in accordance with the applicable law.~~

~~(3)(a) Audit Trails:~~

~~(b) Standard. Audit trails shall be maintained to provide accountability for all accesses to confidential and exempt information and software, for all modifications to records that control movement of funds or fixed assets, and for all changes to automated security or access.~~

~~Rulemaking Specific Authority 282.102(2), (6), (16) FS. Law Implemented 282.318 FS. History—New 8-10-04, Repealed _____.~~

60DD-2.003 Physical Security and Access to Data Processing Facilities.

~~(1)(a) Central Computer Rooms. All state information processing areas must be protected by physical controls appropriate for the size and complexity of the operations and the criticality of the systems operated at those locations.~~

~~(b) Standard. Physical access to central information resources facilities shall be managed and documented by the agency head or his or her designated representative. Physical access to central information resources facilities shall be restricted to only authorized personnel. Authorized visitors shall be recorded and supervised.~~

~~(c) Standard. Reviews of physical security measures for information resources shall be conducted annually by the agency head or designated representative(s). Written emergency procedures shall be developed, updated, and tested at least annually in accordance with Rule 60DD 2.007, F.A.C.~~

~~(2)(a) Outside Central Computer Rooms:~~

~~(b) Standard. While handled or processed by terminals, communications switches, and network components outside the central computer room, confidential or exempt information shall receive the level of protection necessary to ensure its integrity and confidentiality. Physical or logical controls, or a mix thereof may achieve the required protection.~~

~~(c) Standard: Workstation use. Agencies shall implement policies and procedures that specify the proper functions to be performed, the manner in which those functions are to be performed, and the physical attributes of the surroundings of a specific workstation or class of workstation.~~

~~(d) Standard: Workstation security. Agencies shall implement physical safeguards for all workstations that access confidential or exempt information, to restrict access to authorized users.~~

~~(3)(a) Environmental Controls. One of the major causes of computer downtime is the failure to maintain proper controls over temperature, humidity, air movement, cleanliness, and power. Information resources shall be protected from environmental hazards. Environmental controls must also provide for safety of personnel.~~

~~(b) Standard. Employees and information resources shall be protected from environmental hazards. Designated employees shall be trained to monitor environmental control procedures and equipment and shall be trained in desired response in case of emergencies or equipment problems.~~

~~Rulemaking Specific Authority 282.102(2), (6), (16) FS. Law Implemented 282.318 FS. History—New 8-10-04, Repealed _____.~~

60DD-2.004 Logical and Data Access Controls.

~~(1) Personal Identification, Authentication, and Access:~~

~~(a) Standard. Except for public web page information resources, each user of a multiple-user information resource shall be assigned a unique personal identifier or user identification. User identification shall be authenticated before access is granted.~~

~~(b) Standard. When a unique personal identifier or user identification has been assigned that user's access authorization shall be removed when the user's employment is terminated or the user transfers to a position where access to the information resource is no longer required.~~

~~(2)(a) Password Controls. Personal passwords are used to authenticate a user's identity and to establish accountability. Access passwords are used to grant access to data and may be used where individual accountability is not required. Federal Information Processing Standards Publication 112 (FIPS PUB 112) (incorporated by reference at subsection 60DD 2.010(2), F.A.C.) specifies basic security criteria in the use of passwords to authenticate personal identity and data access authorization.~~

~~(b) Standard. Systems that use passwords shall conform to the federal standard contained in FIPS PUB 112. A current Password Standard Compliance Document that specifies the criteria to be met for the ten factors contained in the standard shall be maintained for all systems which use passwords.~~

~~(c) Standard: Agency Heads and Agency Chief Information Officers shall ensure that all personnel (including providers and end users who utilize State of Florida information technology resources) that have a user account on the State of Florida internal network have read and~~

acknowledged a written password policy (or other authentication policy, if applicable) by signing through a physical or electronic process a Statement of Understanding. The Statement of Understanding shall indicate that the employee has read the policy and agrees to abide by it as consideration for continued employment with the State of Florida and that violation of password or other authentication policies may result in dismissal. Agency Heads and Chief Information Officers shall also ensure that information technology professionals enforce the parts of the policy within the scope of their capability, and that periodic compliance audits are performed.

(3) ~~Standard. Authentication Controls. All agency authentication controls shall ensure that information is not accessed by unauthorized persons and that information is not altered by unauthorized persons in a way that is not detectable by authorized users.~~

(4) ~~Standard. Access to Software and Data. Controls shall ensure that users of information resources cannot access stored software or system control data unless they have been authorized to do so.~~

~~(5) Encryption.~~

~~(a) Standard. Activities storing or transmitting confidential or exempt information shall require encryption processes approved by the State Technology Office if necessary to ensure that the information remains confidential. Individual users must use State Technology Office approved encryption products and processes for sending an encrypted e-mail, encrypting a desktop work file, protecting a personal private key or digital certificate, or encrypting a saved e-mail. Key escrow and Key recovery processes must be in place, and verified prior to encryption of any confidential or exempt agency data. Federal Information Processing Standard (FIPS) Pub 140-2, May 25, 2001 (<http://csrc.nist.gov/encryptval/140-2.htm>) incorporated by reference at subsection 60DD-2.010(3), F.A.C.~~

~~(b) Standard. Encryption keys should not be stored on the same electronic storage device as the information that has been encrypted using the keys. Access to encryption keys should be restricted to authorized users and authorized processes using an access control mechanism.~~

~~(c) Standard. Remote administration of hardware, software, or applications should be performed over an encrypted communications session consistent with the Florida Information Resource Security Policies and Standards.~~

~~Rulemaking Specific Authority 282.102(2), (6), (16) FS. Law Implemented 282.318 FS. History—New 8-10-04, Repealed _____.~~

~~60DD-2.005 Data and System Integrity.~~

~~No end user of a state information resource, even if authorized, shall be permitted to make modifications to information resources in such a way that state data is lost or corrupted. It is the policy of the State of Florida that electronic data must be~~

~~protected in all of its forms, on all media or devices, during all phases of its life cycle, from unauthorized or inappropriate access, use, modification, disclosure, or destruction. This policy applies to all data assets that exist in any State processing environments.~~

~~(1)(a) Standard. Controls shall be established to ensure the accuracy and completeness of data.~~

~~(2)(a) Separation of Functions. The purpose of separation of functions is to minimize the opportunity for any one person to subvert or damage information resources.~~

~~(b) Standard. For tasks that are susceptible to fraudulent or other unauthorized activity, departments shall ensure adequate separation of functions for controlled execution.~~

~~(3) Testing Controls and Program Maintenance.~~

~~(a) Standard. The test functions shall be kept either physically or logically separate from the production functions.~~

~~(b) Standard. After a new system has been placed in operation, all program changes shall be approved before implementation to determine whether they have been authorized, tested, and documented. Change management will be practiced for modifications to existing systems and applications to include the introduction of new systems and applications.~~

~~(4)(a) Transaction History. Automated chronological or systematic records of changes to data are important in the reconstruction of previous versions of the data in the event of corruption. Such records, sometimes referred to as journals, are useful in establishing normal activity, in identifying unusual activity, and in the assignment of responsibility for corrupted data.~~

~~(b) Standard. A sufficiently complete history of transactions shall be maintained for each session involving access to critical information to permit an audit of the system by tracing the activities of individuals through the system. Individuals accessing critical information will be uniquely identified through appropriate authentication and/or account and password controls.~~

~~Rulemaking Specific Authority 282.102(2), (6), (16) FS. Law Implemented 282.318 FS. History—New 8-10-04, Repealed _____.~~

~~60DD-2.006 Network Security.~~

~~Networking, including distributed processing, concerns the transfer of information among users, hosts, servers, applications, voice, video and intermediate facilities. During transfer, data is particularly vulnerable to unintended access or alteration.~~

~~(1) Network Controls, General.~~

~~(a) Standard. Network resources used in the access of confidential or exempt information shall assume the sensitivity level of that information for the duration of the session. Controls shall be implemented commensurate with the highest risk.~~

(b) Standard. All network components under state control must be identifiable and restricted to their intended use.

(2)(a) Security at Network Entry and Host Entry. State owned or leased network facilities and host systems are state assets. Their use must be restricted to authorized users and purposes. State employees who have not been assigned a user identification code and means of authenticating their identity to the system are not distinguishable from public users and must not be afforded broader access.

(b) Standard. Owners of information resources served by networks shall prescribe sufficient controls to ensure that access to network services and host services and subsystems are restricted to authorized users and uses only. These controls shall selectively limit services based upon:

1. User identification and authentication (e.g., password); or

2. Designation of other users, including the public where authorized, as a class (e.g., public access through dial up or public switched networks), for the duration of a session.

(c) Third Party Connections.

1. Agency third party connection agreements shall determine the responsibilities of the third party, including approval authority levels and all terms and conditions of the agreement.

2. All agency third party network connections must meet the requirements of the Florida Information Resource Security Policies and Standards. Blanket access is prohibited. Service provided over third party network connections is limited to services, devices and equipment needed.

(d) Internet connectivity. Internet connectivity is allowable only if the applicable service agreement permits.

(e) Any external individual or entity needing access to the state's secure network inside state firewalls shall do so through Universal Access Service, Route Transport Service Extranet, Virtual Private Network or Frame Relay Network Extranet.

(f) Audits. Each agency shall audit third party network connections by conducting Security Vulnerability Assessments.

(3)(a) Application level Security.

(b) Standard. Network access to an application containing confidential or exempt data, and data sharing between applications, shall be as authorized by the application owners and shall require authentication.

(4) Data and File Encryption.

(a) Security through encryption depends upon both of the following:

1. Proper use of an approved encryption methodology; and
2. Only the intended recipients holding the encryption key variable (key) for that data set or transmission.

(b) Standard. While in transit, information which is confidential, exempt or information which in and of itself is sufficient to authorize disbursement of state funds shall be

encrypted if sending stations, receiving stations, terminals, and relay points are not all under positive state control, or if any are operated by or accessible to personnel who have not been authorized access to the information, except under the following conditions:

1. The requirement to transfer such information has been validated and cannot be satisfied with information which has been sanitized; and

2. The agency head, or the designated official if the agency head has delegated authority for risk management decisions, has documented acceptance of the risks of not encrypting the information based on evaluation of the costs of encryption against exposures to all relevant risks.

(c) Standard. For systems employing encryption as required by paragraph 60DD 2.006(4)(b), F.A.C., procedures shall be prescribed for secure handling, distribution, storage, and construction of Data Encryption Standard (DES) key variables used for encryption and decryption. Protection of the key shall be at least as stringent as the protection required for the information encrypted with the key.

(d) Standard. Confidential or exempt data or information shall be encrypted pursuant to the Advanced Encryption Standard or "AES" defined in Federal Information Processing Standard Publication 197, incorporated by reference at subsection 60DD 2.010(5), F.A.C., or the Triple Data Encryption Standard known as "Triple DES" or "3DES". Legacy systems not supporting the "AES" or "3DES" shall not store confidential or exempt data or information, but may use the federal Data Encryption Standard or "DES" defined in Federal Information Processing Standard Publication, (FIPS PUB 46-3), incorporated by reference at subsection 60DD 2.010(1), F.A.C., for other data or information as necessary.

(e) Standard. A minimum requirement for digital signature verification shall be in accordance with the Federal Information Processing Digital Signature Standard, (FIPS PUB 186-2), incorporated by reference at subsection 60DD 2.010(4), F.A.C.

(5)(a) Remote Access.

(b) Standard. For services other than public access, users of state dial up services shall be positively and uniquely identifiable and their identity authenticated (e.g., by password) to the network accessed and to the systems being accessed.

(6)(a) Security Alerts.

(b) Standard. The State Technology Office will maintain the capability to monitor the Internet and appropriate global information security resources for any abnormalities or threats present on the Internet, including the detection of backdoors or hardware or software that is intentionally included or inserted in a system for a harmful purpose. Such abnormalities or threats will then be translated into Information Security Alerts and provided to state agencies. In response to each Information Security Alert, agencies shall log corrective actions and to

implement the recommended remediation actions contained in the Information Security Alerts within the alert's recommended time frame. Agencies shall notify the State Technology Office in writing when remediation is complete. The State Technology Office shall verify that agencies are implementing the requisite Information Security Alert remediation actions.

(c) Standard. The State Technology Office shall keep a log of all Information Security Alerts sent. The log shall contain tracking information on all formats of alerts issued, and the associated actions taken as reported by each agency. The State Technology Office shall report any non-compliance with Information Security Alerts to applicable agency heads.

(7)(a) Virus Detection and Prevention.

(b) Standard. All State computers and systems must have anti-virus software that provides protection to computer systems and media from computer virus intrusion, provides detection of computer viruses on an infected computer system or media, and provides for recovery from computer virus infection. Anti-virus software shall be installed and scheduled to run at regular intervals. Real-time scanning shall be enabled. The anti-virus software and the virus pattern files must be kept current. Virus-infected computers or systems must be removed from the network until they are verified as virus-free. This rule applies to State of Florida computers that are personal computer ("PC")-based or utilize PC file directory sharing, including desktop computers, laptop computers, servers (including domain controllers, proxy, ftp, file and print, etc.), and any PC-based equipment such as firewalls, intrusion detection systems (IDS), gateways, routers, and wireless devices.

(c) Standard. Each State agency is responsible for creating procedures that ensure anti-virus software is run at regular intervals and that computers and systems are verified as virus-free.

(8) Mobile Device Security.

(a) Standard. State agencies shall prepare written policies and procedures for mobile device use incorporating core security measures consistent with the Florida Information Resource Security Policies and Standards. Agencies shall, consistent with the capability of the device and its software, utilize a secure operating system offering secure logon, file level security, and data encryption. Agencies shall enable a strong password for mobile device use consistent with paragraphs 60DD-2.004(2)(a)-(e), F.A.C. Agencies mobile devices shall utilize anti-virus software consistent with paragraph 60DD-2.006(7)(b), F.A.C.

(b) Standard. Agencies shall asset tag or engrave laptops, permanently marking (or engraving) the outer case of the laptop with the agency name, address, and phone number or utilizing a metal tamper resistant commercial asset tag.

(c) Standard. Agencies shall register mobile devices with the manufacturer and retain the registration correspondence and any applicable serial numbers in the agency's records.

(9) Wireless Connectivity.

(a) Wireless security is essential to:

1. Safeguard security of the State's network systems and data.
2. Prevent interference between different agency implementations and other uses of the Wireless spectrum.
3. Ensure that a baseline level of connection service quality is provided to a diverse user community.

(b) Standard. A site survey shall be conducted prior to wireless implementation that includes identification of security risks and threats.

(c) Standard. If VPN services are used, split tunnel mode shall be disabled when connected to any wireless network.

(d) Standard. Strong mutual user authentication shall be utilized.

(e) Standard. When passing wireless traffic over public networks use of strong encryption or utilization of State of Florida sanctioned VPNs shall be used.

(f) Standard. The SSID name shall be changed from the default and administrative passwords shall be changed every 180 days.

(g) Standard. Security features of the Access Point vendors shall be enabled.

(h) Standard. Access points shall be Wi-Fi compliant pursuant to IEEE Standard 802.11, incorporated by reference at subsection 60DD-2.010(17), F.A.C. Standard 802.11 specifies medium access and physical layer specifications for 1 Mbps and 2 Mbps wireless connectivity between fixed, portable, and moving stations within a local area.

(i) Standard. IP forwarding shall be disabled on all wireless clients.

(j) Standard. Master keys shall be changed annually, and key rotation schemes shall be changed at least once every 15 minutes.

(k) Standard. Theft or loss of a wireless-enabled device shall be reported to the agency Information Security Manager in order to retire the device's credentials.

(l) Standard. Wireless devices shall not be connected simultaneously to another wired or wireless network other than standard utilization of a commercial carrier signal.

(m) Standard. Wireless devices shall be password protected and must automatically time out in 15 minutes or less.

(n) Standard. Wireless devices having the features of personal firewalls and anti-virus capability shall be enabled.

(10) Web Servers and Network Servers.

(a) Security of Web Servers providing Public Internet access is essential to address:

1. Proper configuration and operation of the host servers to prevent inadvertent disclosure or alteration of confidential or exempt information.

2. Preventing compromise of the host server.

3. Users unable to access the Web site due to a denial of service.

(b) ~~Standard. Agencies shall secure network and public web servers consistent with the Carnegie Mellon Software Engineering Institute's Security Improvement Module, "Securing Network Servers" incorporated by reference at subsection 60DD-2.010(19), F.A.C., and NIST Guidelines on Securing Public Web Servers, Special Publication 800-44, incorporated by reference at subsection 60DD-2.010(10), F.A.C.~~

(c) ~~Standard. Network Servers housed in the State Technology Office, Shared Resource Center shall be subject to a Security Vulnerability Assessment prior to connection to the State Technology Internal Network.~~

(11) ~~Electronic Mail Security. Standard. Agencies shall utilize NIST Guidelines on Electronic Mail Security, Special Publication 800-45, incorporated by reference at subsection 60DD-2.006(11), F.A.C., as a standard for electronic mail security.~~

(12) ~~Firewalls. Standard. Agencies shall utilize NIST Guidelines on Firewalls and Firewall Policy, Special Publication 800-41, incorporated by reference at subsection 60DD-2.010(9), F.A.C., as a standard for firewalls.~~

(13) ~~Patching of Network Servers, Workstations and Mobile Devices. Standard. Agencies shall utilize NIST Procedures for Handling Security Patches, Special Publication 800-40, incorporated by reference at subsection 60DD-2.010(8), F.A.C., as a standard for patching of network servers, workstations and mobile devices.~~

~~Rulemaking Specific Authority 282.102(2), (6), (16) FS. Law Implemented 282.318 FS. History-New 8-10-04, Repealed _____.~~

60DD-2.007 Backup and Disaster Recovery.

(1)(a) ~~Backing up of Data. On-site backup is employed to have readily available current data in machine-readable form in the production area in the event operating data is lost, damaged, or corrupted, without having to resort to reentry from data sources, i.e., other electronic or hard copy records. Off-site backup or storage embodies the same principle but is designed for longer term protection in a more sterile environment, requires less frequent updating, and is provided additional protection against threats potentially damaging to the primary site and data.~~

(b) ~~Standard. Data and software essential to the continued operation of critical agency functions shall be backed up. The security controls over the backup resources shall be as stringent as the protection required of the primary resources.~~

(2) ~~Contingency Planning. Disaster Preparedness Plans, as described in subparagraph 60DD-2.001(2)(a)36., F.A.C., specify actions management has approved in advance to achieve each of three objectives. The emergency component assists management in identifying and responding to disasters so as to protect personnel and systems and limit damage. The backup and disaster recovery plan specifies how to accomplish critical portions of the mission in the absence of a critical resource such as a computer. The overall Disaster Preparedness Plan directs recovery of full mission capability.~~

(a) ~~Standard. All information resource owner, custodian, and user functions identified as critical to the continuity of governmental operations shall have written and cost effective disaster preparedness plans to provide for the prompt and effective continuation of critical state missions in the event of a disaster.~~

(b) ~~Standard. Disaster preparedness plans as required by paragraph 60DD-2.007(2)(a), F.A.C., shall be tested at least annually.~~

~~Rulemaking Specific Authority 282.102(2), (6), (16) FS. Law Implemented 252.365, 282.318 FS. History-New 8-10-04, Repealed _____.~~

60DD-2.008 Personnel Security and Security Awareness.

(1)(a) ~~End User Requirements, General.~~

(b) ~~Standard. Every employee shall be held responsible for information resources security to the degree that his or her job requires the use of information resources.~~

(2)(a) ~~Positions of Special Trust or Responsibility or in Sensitive Locations. Individual positions must be analyzed to determine the potential vulnerabilities associated with work in those positions. Agencies shall prepare written procedures for personnel in positions of special trust or having access to sensitive locations. Agencies shall utilize ISO/EC 17799-2000(E), 8.6.3, Information Handling Procedures, incorporated by reference at subsection 60DD-2.010(15), F.A.C., as a guide for development of procedures.~~

(b) ~~Standard. Agencies shall establish procedures for reviewing data processing positions that are designated as special trust or are in sensitive locations.~~

(c) ~~Standard. Agencies shall conduct background investigations for personnel in positions of special trust or having access to sensitive locations as set forth in Sections 110.1127 and 435.04, F.S.~~

(3) ~~Security Awareness and Training. An effective level of awareness and training is essential to a viable information resource security program.~~

(a) ~~Standard. Agencies shall provide an ongoing awareness and training program in information security and in the protection of state information resources for all personnel whose duties bring them into contact with critical state information resources. Security training sessions for these~~

personnel shall be ongoing. Agencies shall utilize NIST Building an Information Security Technology Awareness and Training Program, Special Publication 800-50, incorporated by reference at subsection 60DD-2.010(12), F.A.C., as a guide for development of such programs.

(b) Standard. Awareness and training in security shall not be limited to formal training sessions, but shall include ongoing briefings and continual reinforcement of the value of security consciousness in all employees whose duties bring them into contact with critical state information resources.

(c) Standard. Departments shall apply appropriate sanctions against any employee who fails to comply with its security policies and procedures.

Rulemaking Specific Authority 282.102(2), (16) FS. Law Implemented 282.318 FS. History—New 8-10-04, Repealed _____.

60DD-2.009 Systems Acquisition, Disposal, Auditing, and Reporting.

(1)(a) Systems Acquisition. Major system development decisions must be based on consideration of security and audit requirements during each phase of life cycle development.

(b) Standard. Appropriate information security and audit controls shall be incorporated into new systems. Each phase of systems acquisition shall incorporate corresponding development or assurances of security and auditability controls.

(2)(a) Systems Disposal. Device and media controls. Agencies shall implement policies and procedures that govern the receipt and removal of hardware and electronic media/devices that contain confidential or exempt information into and out of a facility, and the movement of these items within the facility.

(b) Implementation specifications. Agencies shall implement policies and procedures to address the final disposition of confidential or exempt information, and the hardware or electronic media on which it is stored.

(c) Media and Devices re use or disposal. Agencies shall implement procedures for removal of confidential or exempt information from electronic media before the media are made available for re use or disposal in accordance with ISO 17799 2000(E), 7.2.6, Secure disposal or re use of equipment, and 8.6.2, Disposal of Media, incorporated by reference at subsection 60DD-2.010(15), F.A.C., and NIST Security Considerations in the Information System Development Life Cycle, Special Publication 800-64, incorporated by reference at subsection 60DD-2.010(13), F.A.C.

(3) Audits. The establishment and maintenance of a system of internal control is an important management function. Internal audits of information resource management functions, including security of data and information technology resources in accordance with paragraph 60DD-2.001(6)(a), F.A.C., are an integral part of an overall security program. The frequency, scope, and assignment of

internal audits for security of data and information technology resources should be established to ensure that agency management has timely and accurate information concerning functions management is responsible to perform.

(a) Standard. An internal audit of the agency information security function shall be performed annually or when there are major system changes, or as directed by the head of the department.

(b) Standard. Automated systems which process confidential or exempt information must provide the means whereby authorized personnel have the ability to audit and establish individual accountability for any action that can potentially cause access to, generation of, or effect the release of the information.

(4) Incident Reporting.

(a) Continuous analysis of trends and types of security incidents and breaches is important to the integrity of agency and state information resource security programs. Security incident reporting provides a basis for a continuing evaluation of agency and state information security postures. The objective of such analysis is to refine security rules, policies, standards, procedures, guidelines, and training programs to assure their continued effectiveness and applicability.

(b) Standard. Security incidents and breaches shall be promptly investigated and reported to the appropriate authorities.

(c) Standard. The State Technology Office shall provide analysis and centralized reporting of trends and incidents to agencies, and shall initiate appropriate changes to state policies, rules, standards, guidelines, training programs, or statutes.

(d) Standard. Response teams. Each agency shall create an organized team to address cyber alerts and responses. Each team shall include at least one individual with expertise from the agency's legal, human resources, inspector general and information technology areas, as well as the Chief Information Officer and the Information Security Manager of the agency. The team shall report computer security incidents to the State Technology Office's Office of Information Security, convene as required upon notification of a reported computer security incident, respond to activities that may interrupt the information technology services of the area for which the team is responsible during duty and non duty hours, classify, document and investigate agency security incidents, and maintain an awareness of and implement procedures for effective response to computer security incidents. The team shall provide regular reports to the agency's Chief Information Officer and shall follow the direction of the Chief Information Officer during incident response activities.

Rulemaking Specific Authority 282.102(2), (16) FS. Law Implemented 281.301, 282.318 FS. History—New 8-10-04, Repealed _____.

60DD-2.010 Standards Adopted.

(1) Federal Information Processing Standard Publication Number 46-3 Data Encryption Standard, October 25, 1999, is hereby incorporated by reference.

(2) Federal Information Processing Standard Publication Number 112 Password Usage, May 30, 1985, is hereby incorporated by reference.

(3) Federal Information Processing Standard Publication Number 140-2, Security Requirements for Cryptographic Modules, is hereby incorporated by reference.

(4) Federal Information Processing Standard Publication Number 186-2, Digital Signature Standard, is hereby incorporated by reference.

(5) Federal Information Processing Standard Publication Number 197, Advanced Encryption Standard, is hereby incorporated by reference.

(6) Federal Information Processing Standard Publication Number 199 Standards for Security Categorization of Federal Information and Information Systems, December 5, 2003, is hereby incorporated by reference.

(7) NIST Risk Management Guide for Information Technology Systems, Special Publication 800-30, is hereby incorporated by reference.

(8) NIST Procedures for Handling Security Patches, Special Publication 800-40, is hereby incorporated by reference.

(9) NIST Guidelines on Firewalls and Firewall Policy, Special Publication 800-41, is hereby incorporated by reference.

(10) NIST Guidelines on Securing Public Web Servers, Special Publication 800-44, is hereby incorporated by reference.

(11) NIST Guidelines on Electronic Mail Security, Special Publication 800-45, is hereby incorporated, is hereby incorporated by reference.

(12) NIST Building an Information Security Technology Awareness and Training Program, Special Publication 800-50, is hereby incorporated by reference.

(13) NIST Security Considerations in Information System Development Life Cycle, Special Publication 800-64, is hereby incorporated by reference.

(14) Copies of these standards are available for downloading from the National Institute of Standards and Technology at www.nist.gov or by writing orders@ntis.gov or:

United States Department of Commerce
National Technical Information Service
5285 Port Royal Road
Springfield, Virginia 22161

(15) Section 7.2.6 (“Secure Disposal or Re-Use of Equipment”), Section 8.6.2 (“Disposal of Media”), and Section 8.6.3 (“Information Handling Procedures”) of International Organization for Standardization ISO/IEC Standard 17799 are hereby incorporated by reference.

(16) Copies of these sections of the standard are available from the American National Standards Institute at www.ansi.org or at info@ansi.org or by writing:

American National Standards Institute
25 West 43rd Street, 4th Floor
New York, New York 10036

(17) Institute of Electrical and Electronics Engineers Standard 802.11 is hereby incorporated by reference.

(18) Copies of this standard are available from the Institute of Electrical and Electronics Engineers, at www.ieee.org or at ieeccusa@iecc.org or by writing:

Institute of Electrical and Electronic Engineers
1828 L. Street, N.W., Suite 1202
Washington, D.C. 20036-5104

(19) The Carnegie Mellon Software Engineering Institute’s Security Improvement Module, “Securing Network Servers,” is hereby incorporated by reference.

(20) Copies of this security improvement module are available from the Carnegie Mellon Software Engineering Institute at www.cert.org or at webmaster@cert.org or by writing:

Software Engineering Institute
Carnegie Mellon University
Pittsburgh, Pennsylvania 15213-3890

Rulemaking Specific Authority 282.102(2) FS. Law Implemented 120.54(8), 282.318 FS. History—New 8-10-04, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mike Russo, State Chief Information Officer, Office of Information Security, Agency for Enterprise Information Technology, 4030 Esplanade Way, Suite 135, Tallahassee, Florida 32399, telephone (850)922-7502

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2010

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Pilot Commissioners

RULE NO.: RULE TITLE:

61G14-17.005 Citations

PURPOSE AND EFFECT: The Board proposes the rule amendment to add new language to clarify what violations with fines may be disposed of by citations and to update the rule to meet changes in the statute.

SUMMARY: The rule amendment will add new language to clarify what violations with fines may be disposed of by citations and to update the rule to meet changes in the statute.

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: 455.224, 455.225 FS., Chapter 94-119, Laws of Florida.

LAW IMPLEMENTED: 455.224 FS., Chapter 94-119, Laws of Florida.

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, Board of Pilot Commissioners, 1940 North Monroe Street, Tallahassee, Florida 32399-0783

THE FULL TEXT OF THE PROPOSED RULE IS:

61G14-17.005 Citations.

(1) through (2) No change.

(3) The following violations with accompanying fine may be disposed of by citation:

(a) Unintentional failure to timely file a marine incident report. The fine shall be \$100. (See Section 310.111, F.S.)

(b) Failure to report in writing to the Board within 30 days after the licensee is convicted or found guilty of, or entered a plead of nolo contendere or guilty to, regardless of adjudication a crime in any jurisdiction. The fine shall be \$100. (See Section 455.227(1)(t), F.S.)

(4) through (7) No change.

Rulemaking Specific Authority 455.224, 455.225 FS., Chapter 94-119, Laws of Florida. Law Implemented 455.224 FS., Chapter 94-119, Laws of Florida. History--New 2-16-92, Amended 8-24-92, Formerly 21SS-7.006, 21SS-17.005, Amended 9-27-94, 10-19-97, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pilot Commissioners

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pilot Commissioners

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 29, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 21, 2010

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Veterinary Medicine

RULE NO.: RULE TITLE:

61G18-11.002 Examination and Licensure

PURPOSE AND EFFECT: The Board proposes to the rule amendment to add a passing score for national examination.

SUMMARY: A passing score for the national examination will be added to the rule.

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: 455.217, 474.206, 474.2065, 474.207 FS.

LAW IMPLEMENTED: 455.217, 474.2065, 474.207 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: Juanita Chastain, Executive Director, Board of Veterinary Medicine, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G18-11.002 Examination and Licensure.

(1) through (3) No change.

(4) In order to obtain licensure, the candidate must receive a passing score on each portion of the examination ~~based on the laws and rules in effect at the time the application is being acted upon.~~ The candidate must receive a score of 425 on the NAVLE. A candidate who fails to achieve a passing score on any part of the examination will only be required to retake the parts failed so long as those scores remain valid.

(5) through (6) No change.

Rulemaking Specific Authority 455.217, 474.206, 474.2065, 474.207 FS. Law Implemented 455.217, 474.2065, 474.207 FS. History--New 11-14-79, Amended 5-11-80, 7-9-80, 5-4-81, 12-10-81, 12-5-82, 5-15-83, 11-5-84, 5-7-85, 11-5-85, Formerly 21X-11.02, Amended 3-1-88, 11-24-88, 4-3-89, 4-13-92, 3-30-93, 7-13-93, Formerly 21X-11.002, Amended 7-4-94, 3-20-95, 3-29-95, 5-1-95, 5-27-99, 12-25-05, 6-28-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Veterinary Medicine

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Veterinary Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 12, 2010

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

DEPARTMENT OF HEALTH

Board of Respiratory Care

RULE NO.: 64B32-2.001
 RULE TITLE: License by Endorsement

PURPOSE AND EFFECT: The Board proposes the rule amendment to modify the application form DH-MQA 1145.

SUMMARY: The rule amendment will modify the application form DH-MQA 1145.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Cost has been prepared and is available by contacting Allen Hall, Executive Director, at the address listed below. However, the Board determined that small business would not be affected by this rule. The following is a summary of the SERC:

- The number of applications received each year will vary so the precise number impacted in future years is not available.
- The only costs incurred by the Division of Medical Quality Assurance are rule-making costs as well as costs associated with enforcing the proposed changes.
- The proposed change is not expected to impact small business, small counties or small cities.

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: 465.353(1), 4868.358(3) FS.

LAW IMPLEMENTED: 468.358(2), (3), 468.365 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 Respiratory Care Specialists/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B32-2.001 License by Endorsement.

(1) Applicants for licensure as a Registered Respiratory Therapist or Certified Respiratory Therapist in the state of Florida shall apply on Form DH-MQA 1145, Application by

Endorsement, Revised 04/10 ~~10/09~~, incorporated herein as this Board's application form and available on the web at <http://www.doh.state.fl.us/mqa/respiratory/index.html>.

(2) through (3) No change.

Rulemaking Authority 468.353(1), 468.358(3) FS. Law Implemented 468.358(2), (3), 468.365 FS. History—New 4-29-85, Formerly 21M-34.02, 21M-34.002, 61F6-34.002, 59R-71.002, 64B8-71.002, Amended 7-22-02, 8-28-05, 6-12-07, 5-15-08, 5-25-09, 5-10-10,

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Respiratory Care Specialists

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Respiratory Care Specialists

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 9, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 14, 2010

DEPARTMENT OF HEALTH

Board of Respiratory Care

RULE NO.: 64B32-5.007
 RULE TITLE: Citations

PURPOSE AND EFFECT: The Board proposes the rule amendment to eliminate the requirement of legal review of citations prior to issuance by removing section (3) from Rule 64B32-5.007, F.A.C., and renumbering the rule accordingly.

SUMMARY: The rule amendment will eliminate the requirement of legal review of citations prior to issuance by removing section (3) from Rule 64B32-5.007, F.A.C., and renumbering the rule accordingly.

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: 456.077 FS.

LAW IMPLEMENTED: 456.072(3), 456.077 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 Respiratory Care Specialists/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B32-5.007 Citations.

(1) through (2) No change.

(3) Citations shall be issued to licensee by the Bureau of Investigative Services only after review by the legal staff of the Department of Health, Division of Regulation. Such review may be by telephone, in writing, or by facsimile.

(4) through (6) renumbered (3) through (5) No change.

Rulemaking Authority 456.077 FS. Law Implemented 456.072(3), 456.077 FS. History—New 5-19-96, Formerly 59R-74.006, 64B8-74.006, Amended 1-6-02, 5-31-04, 2-23-06, 3-28-10,

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Respiratory Care Specialists
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Respiratory Care Specialists
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 9, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 14, 2010

DEPARTMENT OF FINANCIAL SERVICES

Division of Accounting and Auditing

RULE NOS.: RULE TITLES:
69I-69.001 Definitions
69I-69.002 Statement of County Funded Court-Related Functions
69I-69.003 Additional Auditing Procedures
69I-69.004 Priority for Allocation of Funds

PURPOSE AND EFFECT: Section 29.0085, F.S., requires counties to annually submit to the Chief Financial Officer (CFO) a statement of revenues and expenditures that identifies the total county expenditures on each service outlined in Sections 29.008 and 29.0085, F.S., authorizes the CFO to prescribe the form and manner of the statement. Counties are also required to submit a statement of compliance from their independent certified public accountant certifying that the statement of expenditures is in compliance with Sections 29.008 and 29.0085, F.S. The proposed rule amendments implement the CFO's duties under Sections 29.008 and 29.0085, F.S.

SUMMARY: The proposed changes to Rule 69I-69.001, F.A.C., update the definitions. The proposed changes to Rule 69I-69.002, F.A.C., adopt the Statement of County Funded Court-Related Functions Form (Report) that each county is required to annually file with the Department; provides that the Report may be filed with the Department either electronically or by U.S. Mail; and requires that the Report be accompanied by a Statement of Compliance from the county's independent certified public accountant that the Report is in compliance with Sections 29.008 and 29.0085, F.S. The proposed changes to Rule 69I-69.003, F.A.C., update the additional auditing procedures that can be used by the CFO. Rule 69I-69.004, F.A.C., is repealed since the underlying statute was repealed in 2005.

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: 17.29, 29.0085(3) FS.

LAW IMPLEMENTED: 29.008, 29.0085 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: July 14, 2010, 10:00 a.m.

PLACE: Room 430, Fletcher Building, 101 E. 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: Justin Young (850)413-5712 or Justin.Young@myfloridacfo.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 RULES IS: Justin Young, Financial Administrator, Bureau of Local Government, 200 East Gaines Street, Tallahassee, FL 32399-0354, (850)413-5712 or Justin.Young@myfloridacfo.com

THE FULL TEXT OF THE PROPOSED RULES IS:

69I-69.001 Definitions.

For the purpose of this chapter, the following terms shall have the meanings indicated:

(1) "~~Department of Financial Services Chief Financial Officer~~" means the Bureau of Local Government Accounting, Division of Accounting and Auditing, ~~Department of Financial Services~~, which is the organizational unit delegated responsibility ~~responsible~~ for receiving Reports by the State's Chief Financial Officer ~~the Statement of Revenues, Expenditures and Allocation of Funds (DFS AA 691)~~.

(2) "~~Annually~~" or "~~within 6 months~~" means filed with the Chief Financial Officer on or before March 31 of each year for the preceding fiscal year.

(2)(3) "Report" means the Statement of County Funded Court-Related Functions Report. "~~Statement~~" means the Statement of Revenues, Expenditures and Allocation of Funds.

(3)(4) "Statement" means the Statement of Compliance prepared by the county's independent certified public accountant attesting that the Report is in compliance with Sections 29.008 and 29.0085, F.S. "~~Net rentable square feet~~"

means the actual square footage occupied by the State Attorney or Public Defender and shall not include common areas such as hallways and restrooms.

Rulemaking Specific Authority 17.29, 29.0085(3) 27.3455(8) FS. Law Implemented 29.008, 29.0085 27.3455 FS. History--New 4-25-90, Amended 11-30-94, 5-12-97, Formerly 3A-69.001, Amended _____.

69I-69.002 Statement of County Funded Court-Related Functions Revenues, Expenditures and Allocation of Funds.

(1) Each county must submit a Report signed by the county's finance officer to the Department of Financial Services by January 31, on an annual basis. The Clerk of the Court shall deposit the additional court costs collected pursuant to Section 27.3455(1), Florida Statutes, net of any service charges retained, into a special trust fund of the county. A new and separate fund shall be established, and the accounting shall not be commingled with any existing fund.

(2) Each Report must also be accompanied by a Statement of Compliance from the county's independent certified public accountant that the Report is in compliance with Sections 29.008 and 29.0085, F.S. county shall submit annually to the Chief Financial Officer and the Auditor General the statement as set forth in Section 27.3455(4), Florida Statutes.

(3) Each county must report revenue collected by the county that is restricted to fund local requirements which are approved by the chief judge of the county's circuit. The statement shall be completed in full by each county and certified by the appropriate official. The Statement of Revenues, Expenditures and Allocation of Funds, Form DFS-AA-691 and instructions, revised September 1996, is incorporated herein by reference and is available from:

Bureau of Accounting
Division of Accounting and Auditing
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399 0354

(4) Each Report must include the county's expenditures for each of the court-related functions identified in Section 29.008, F.S., for the most recent county fiscal year. It is the responsibility of each county to maintain its accounting records in sufficient detail to allow its independent certified public accountant to perform the certification function pursuant to this chapter.

(5) The Report, Form DFS-A6-693 (Rev. 11/2009) and instructions for submitting the Report, both of which are hereby incorporated by reference, are available at the Bureau of Local Government's website: <http://www.myfloridacfo.com/aadir/localgov/>. Within six (6) months of the close of the local government fiscal year, each county shall submit to the Chief Financial Officer a statement of compliance from its independent certified public accountant that the certified statement was in accordance, in all material respects, with

Sections 27.34(2), 27.54(3) and 27.3455, Florida Statutes. All discrepancies noted by the independent certified public accountant shall be included in the statement furnished by the county to the Chief Financial Officer.

(6) The Report and Statement may be submitted electronically as an attachment to an e-mail to localgov@myfloridacfo.com or by U.S. mail to:

Bureau of Local Government
200 East Gaines Street
Tallahassee, FL 32399-0354

(7) Each county must maintain its accounting records in sufficient detail to allow its independent certified public accountant to prepare a Statement that complies with applicable law.

Rulemaking Specific Authority 17.29, 29.0085(3) 27.3455(8) FS. Law Implemented 29.008, 29.0085 27.3455 FS. History--New 4-25-90, Amended 11-30-94, 1-7-98, Formerly 3A-69.002, Amended _____.

69I-69.003 Additional Auditing Procedures.

(1) If ~~Should~~ the Chief Financial Officer determines that additional auditing procedures are necessary appropriate because (a) the county failed to submit timely its annual Report statement; (b) discrepancies were noted by the independent certified public accountant; or (c) the county failed to file before March 31 of each year the certified public accountant Sstatement of Ceompliance before January 31; the Chief Financial Officer shall, upon thirty (30) days prior written notice and in the absence of any correction by the county of any such failure within thirty (30) days subsequent to such notice, shall assign his or her personnel or contract for any and all necessary services to bring the county into compliance. The costs incurred by the Chief Financial Officer must shall be paid within ninety (90) days by the county upon certification by the Chief Financial Officer.

(2) If ~~Where~~ the Chief Financial Officer elects to utilize the services of an independent contractor to perform auditing procedures under this rule, such certification by the Chief Financial Officer may require the county to make direct payments to the a contractor.

Rulemaking Specific Authority 17.29, 29.0085(3) 27.3455(8) FS. Law Implemented 29.008, 29.0085 27.3455 FS. History--New 4-25-90, Formerly 3A-69.003, Amended _____.

69I-69.004 Priority for Allocation of Funds.

Rulemaking Specific Authority 17.29, 27.3455(8) FS. Law Implemented 27.3455 FS. History--New 4-25-90, Amended 11-30-94, 5-12-97, Formerly 3A-69.004, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Justin Young, Division of Accounting and Auditing,
Department of Financial Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink, Chief Financial Officer

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 2, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 23, 2010

DEPARTMENT OF FINANCIAL SERVICES

Division of Worker's Compensation

RULE NO.: 69L-6.026
RULE TITLE: Periodic Reports

PURPOSE AND EFFECT: The purpose of the proposed rule is to establish procedures for filing periodic reports by employers issued Stop-Work Orders for failing to comply with the coverage requirements of Chapter 440, F.S., where assessed penalties exceed \$50,000.00. As a condition of release from a Stop-Work Order, subject employers must submit quarterly reports to the Department using new form DFS-F4-2018, "Bureau of Compliance Quarterly Report Form," to document their continuing compliance with the coverage requirements of Chapter 440, F.S.

SUMMARY: The proposed rule provides guidance to employers regarding quarterly reports that must be submitted to the Department following an employer's conditional release from a Stop-Work Order for violation of the coverage requirements of Chapter 440, F.S., where an assessed penalty exceeds \$50,000.00. Following the conditional release from Stop-Work Order, subject employers are to utilize new form DFS-F4-2018 to file quarterly reports which document their ongoing compliance with the coverage requirements of Chapter 440, F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: There will be certain minimal costs associated with the time and effort required by those entities and individuals required to comply with the proposed rule to prepare and submit a quarterly form to the Department. Based on recent historical data, less than 10% of all employers issued Stop-Work Orders will be required to comply with this proposed rule on an annual basis. There is no increase in projected costs to the Department as a result of this proposed 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: 440.107(7)(a), 440.591 FS.

LAW IMPLEMENTED: 440.107 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: Thursday, July 15, 2010, 10:00 a.m.

PLACE: 104J Hartman Building, 2012 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: Tasha carter, (850)413-1878 or Tasha.Carter@myfloridacfo.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: Tasha Carter, Chief, Bureau of Compliance, Division of Workers' Compensation, Department of Financial Services, 200 E. Gaines Street, Tallahassee, Florida 32399-4228, (850)413-1878 or Tasha.Carter@myfloridacfo.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69L-6.026 Periodic Reports.

(1) Pursuant to Section 440.107(7)(a), F.S., as a condition of release from a Stop-Work Order, the Department shall require an employer that was issued a Stop-Work Order for failure to comply with the coverage requirements of Section 440.38, F.S., and was assessed a penalty in excess of \$50,000, to submit periodic reports to the Department demonstrating the employer's continued compliance with Chapter 440, F.S.

(2) If the Department determines that an employer meets the criteria in subsection (1), the employer must submit information to the Department for eight consecutive quarters that demonstrates the employer's continued compliance with Chapter 440, F.S. Such information shall be submitted on the Bureau of Compliance Quarterly Report Form (DFS-F4-2018) or in an electronic format, via the Division's website at <http://www.myfloridacfo.com/WC/>.

(a) The Department must receive the Bureau of Compliance Quarterly Report Form (DFS-F4-2018) no later than thirty days after the last day of each quarter. If the Bureau of Compliance Quarterly Report Form (DFS-F4-2018) is sent in an electronic format, the received date is the date the Bureau of Compliance Quarterly Report Form (DFS-F4-2018) is submitted to the Bureau and a confirmation is sent to the employer.

(b) The quarterly reporting periods are:

1. January 1 – March 31

2. April 1 – June 30

3. July 1 – September 30

4. October 1 – December 31

(3) An employer is required to submit its first Bureau of Compliance Quarterly Report Form (DFS-F4-2018) for the quarter in which the release or conditional release from the Stop-Work Order has been issued.

(4) If an employer fails to timely submit a complete Bureau of Compliance Quarterly Report Form (DFS-F4-2018), the Department is authorized to initiate an investigation upon the employer pursuant to Section 440.107, F.S.

(5) The Department hereby adopts and incorporates the following form by reference. Copies of the form can be obtained by writing to the Division of Workers' Compensation, Bureau of Compliance, 200 East Gaines Street, Tallahassee, Florida 32399-4228.

(a) DFS-F4-2018 – Bureau of Compliance Quarterly Report Form.

Rulemaking Authority 440.107(7)(a), 440.591 FS. Law Implemented 440.107 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Tasha Carter, Chief, Bureau of Compliance, Division of Workers' Compensation, 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: June 2, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 5, 2010

FINANCIAL SERVICES COMMISSION

Office of Insurance Regulation

RULE NO.: 690-167.024
RULE TITLE: Rate Filings for Inland Marine Insurance

PURPOSE AND EFFECT: To make the rule comply with statutory changes to Section 627.021, F.A.C.

SUMMARY: The rule, like the statutory change, makes no substantive change.

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) FS.

LAW IMPLEMENTED: 627.607, 627.062, 627.0651 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: July 13, 2010, 9:30 a.m.

PLACE: 142 Larson Building, 200 East Gaines Street, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Richard Koon, Office of Insurance Regulation, E-mail: Richard.Koon@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: Richard Koon, Office of Insurance Regulation, E-mail: Richard.Koon@flor.com

THE FULL TEXT OF THE PROPOSED RULE IS:

690-167.024 Rate Filings for Inland Marine Insurance.

(1) This rule applies to marine insurance that is subject to Chapter 627, Florida Statutes.

(2) Section 627.021(2)(c), Florida Statutes, states that Chapter 627, Florida Statutes, does not apply to ocean marine insurance as distinguished from inland marine insurance.

(a) Section 627.021(2)(d) ~~627.0651(13)(e)~~, Florida Statutes, states that rates and rules are not required to be filed for commercial inland marine risks.

(b) The specific exclusion of commercial inland marine risks indicates that rates and rules for personal inland marine risks must continue to be filed with the Office.

(c) For purposes of this rule, personal inland marine is defined as insurance covering non-business property of a portable or movable nature that would typically be included in or with a homeowner's policy or a separate policy insuring one or more articles of property, including, but not limited to, jewelry, furs, art objects, silverware, glassware, small boats, sports equipment.

(d) For purposes of this rule, commercial inland marine is defined as commercial or industrial property, often but not always of a portable or movable nature or instrumentalities of transportation or communication, that would typically be included in or with a commercial lines policy or written in a separate policy insuring one or more such items of property, including, but not limited to, commercial goods in transit, traffic signals, bridges, tunnels.

Rulemaking Specific Authority 624.308(1) FS. Law Implemented 624.607, 627.021, 627.062, ~~627.0651~~ FS. History–New 1-27-92, Formerly 4-167.024, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Richard Koon, Office of Insurance Regulation, E-mail Richard.Koon@flor.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 9, 2010

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission	69V-40.033	Disciplinary Guidelines for Mortgage Business Schools
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2010	69V-40.0331	Declaration of Intent to Engage Solely in Loan Processing
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 31, 2009	69V-40.036	Application Procedure for a Mortgage Broker Branch Office License
FINANCIAL SERVICES COMMISSION	69V-40.043	Mortgage Broker License Renewal and Reactivation
Financial Institution Regulation		
RULE NOS.: RULE TITLES:	69V-40.051	Application Procedure for Mortgage Brokerage Business License
69V-40.001 Definitions		
69V-40.00112 Effect of Law Enforcement Records on Applications for Loan Originator, Mortgage Broker, and Mortgage Lender Licensure.	69V-40.0511	Effect of Law Enforcement Records on Applications for Mortgage Brokerage Business Licensure
69V-40.002 Adoption of Forms	69V-40.053	Mortgage Brokerage Business License and Branch Office License Renewal and Reactivation
69V-40.003 Electronic Filing of Forms and Fees		
69V-40.008 Fees and Commissions	69V-40.058	Application Procedure for Mortgage Brokerage Business Branch Office License
69V-40.0113 Demonstrating Character, General Fitness, and Financial Responsibility	69V-40.060	Fees Earned Upon Obtaining a Bona Fide Commitment
69V-40.021 Fictitious Name Registration		
69V-40.022 Quarterly Report Filing Requirements	69V-40.0611	Application Procedure for a Mortgage Lender License
69V-40.025 Mortgage Broker Examination	69V-40.0612	Mortgage Lender License Renewal
69V-40.026 Curriculum for Mortgage Broker Pre-licensing Classroom Education	69V-40.066	Application Procedure for a Mortgage Lender Branch Office License
69V-40.027 Mortgage Broker Pre-licensing Education Requirement	69V-40.088	Referrals
69V-40.0271 Professional Continuing Education Requirements for Mortgage Brokers, Loan Originators, and Principal Representatives	69V-40.099	Amendments, Change of Name, Change of Entity and Change in Control or Ownership
69V-40.028 Permit for Mortgage Business School	69V-40.100	Application Procedure for Transfer in Ownership or Control of Saving Clause Mortgage Lender
69V-40.0281 Mortgage Business Schools Prohibited Practices and Advertising/Publicity	69V-40.105	Branch Office License for Transfer in Ownership or Control of Saving Clause Mortgage Lender
69V-40.029 Mortgage Business School Permit Renewal	69V-40.155	Lock-in Statement
69V-40.030 Accreditation Process for a Mortgage Business School	69V-40.156	Third-party Fee Accounts
69V-40.031 Application Procedure for Mortgage Broker License	69V-40.160	Principal Brokers
69V-40.0311 Effect of Law Enforcement Records on Applications for Mortgage Broker Licensure	69V-40.165	Branch Brokers
69V-40.0312 Application Procedure for Loan Originator License	69V-40.170	Books and Records
69V-40.0313 Loan Originator License Renewal	69V-40.175	Mortgage Brokerage Files
69V-40.0321 Application Procedure for a Mortgage Broker License	69V-40.200	Application Procedure for Mortgage Lender License
69V-40.0322 Mortgage Broker License Renewal	69V-40.201	Effect of Law Enforcement Records on Applications for Mortgage Lender and Correspondent Lender Licensure
	69V-40.205	Mortgage Lender License, Mortgage Lender License Pursuant to Saving Clause, and Branch Office License Renewal and Reactivation

- 69V-40.220 Application Procedure for Correspondent Mortgage Lender License
- 69V-40.225 Correspondent Mortgage Lender License and Branch Office License Renewal and Reactivation
- 69V-40.240 Application Procedure for Mortgage Lender or Correspondent Mortgage Lender Branch Office License
- 69V-40.242 Principal Representative
- 69V-40.245 Independent Contractors
- 69V-40.250 Documentation of Net Worth and Surety Bond
- 69V-40.260 Mortgage Lender Files
- 69V-40.265 Mortgage Brokerage and Lending Transaction Journal
- 69V-40.285 Noninstitutional Investor Funds Account
- 69V-40.290 Acts Requiring Licensure as a Mortgage Broker, Mortgage Brokerage Business, Mortgage Lender or Correspondent Mortgage Lender

PURPOSE AND EFFECT: In 2009, the Florida Legislature passed Senate Bill 2226 to bring Florida law into compliance with the federal S.A.F.E. Mortgage Licensure Act of 2008, Title V of P.L. 110-289. (See Chapter 2009-241, Laws of Florida.) In addition, during the 2010 legislation session, the Florida Legislature passed additional changes to Chapter 494, F.S. (See HB 1281, Chapter 2010-67, Laws of Florida.) These changes will take effect on October 1, 2010, which coincides with when the new licensure requirements to implement SB 2226 will take effect. The proposed changes to Rule Chapter 69V-40, F.A.C., reflect and implement the new statutory licensure requirements for mortgage loan originators, mortgage brokers and mortgage lenders; conform terminology to statutory changes; repeal rules that have been superseded by state or federal statutes; and make other changes to clarify and simplify regulations relating to mortgage brokering and lending.

SUMMARY: The proposed rule changes include: 1) requiring license applications for mortgage loan originators, mortgage brokers, and mortgage lenders to be submitted through the National Mortgage Licensure System and Registry on forms approved by the Registry; 2) requiring statutory fees to be submitted through the Registry; 3) requiring loan originator license applicants to meet national pre-licensure testing requirements; 4) requiring loan originator applicants and licensees to meet national education requirements; 5) requiring fingerprints to be submitted via live scan technology; 6) requiring authorization to obtain credit reports; 7) establishing criteria for evaluating the character, general fitness, and financial responsibility of license applicants; 8) conforming licensure disqualification periods to statutory requirements for

persons with criminal events; 9) requiring annual renewal of licenses; and 10) requiring licensees to be re-evaluated upon renewal to ensure they continue to meet initial licensure requirements.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated regulatory cost has been prepared. The Office has determined that the proposed rules will not impact small businesses.

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: 494.0011, 494.0016, 494.00312, 494.00313, 494.00321, 494.00322, 494.00331, 494.0036, 494.0032, 494.004, 494.00612, 494.0066, 494.0677, 494.0069 FS.

LAW IMPLEMENTED: 120.695, 494.0011, 494.00115, 494.0016, 494.0023, 494.00255, 494.00312, 494.00313, 494.00321, 494.00322, 494.00331, 494.0036, 494.0038, 494.0042, 494.0043, 494.00612, 494.0063, 494.0066, 494.0067, 494.0068, 494.0069, 494.007, 494.0073, 494.0075 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 RULES IS: Gregory C. Oaks, Chief, Bureau of Regulatory Review, Finance, Division of Finance, Office of Financial Regulation, 200 East Gaines Street, Tallahassee, FL 32399-0376, phone (850)410-9805, Facsimile (850)410-9914, E-mail: Greg.Oaks@flofr.com

THE FULL TEXT OF THE PROPOSED RULES IS:

69V-40.001 Definitions.

The definitions provided in Section 494.001, F.S., and the following defined terms, shall apply to this rule chapter and shall serve as the Office of Financial Regulation’s interpretation unless the language of the rule indicates to the contrary:

~~(1) “Audited Financial Statements” shall be defined as those financial statements prepared by an independent certified public accountant, and shall include at least the following information:~~

~~(a) Date of report, manual signature, city and state where issued, and identification without detailed enumeration of the financial statements and schedules covered by the report;~~

~~(b) Representations as to whether the audit was made in accordance with generally accepted auditing standards and designation of any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which may have been omitted, and the reason for their omission; nothing in this rule however shall be construed to imply authority for the omission of any procedure which~~

independent accountants would ordinarily employ in the course of an audit for the purpose of expressing the opinions required under this rule;

(c) Statement of the opinion of the accountant in respect to the financial statements and schedules covered by the report, and the accounting principles and practices reflected therein, and as to the consistency of the application of the accounting principles, or as to any changes in such principles which would have a material effect on the financial statements;

(d) Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and to the extent practicable, the effect of each such exception on the related financial statements given.

(2) "Financial Statements and Reports" shall be defined as those reports, schedules and statements, which contain at least a Statement of Financial Condition or Balance Sheet.

(3) "Unaudited Financial Statements" shall be defined as those financial statements not accompanied by the statements and representations as set forth in paragraphs (1)(b), (c) and (d) of this rule.

(4) Net worth shall be defined as total assets minus total liabilities, except that total assets shall not include the following:

(a) Any amount in excess of the lower of the cost or market value of mortgages in foreclosure, construction loans, or foreclosed property acquired through foreclosures;

(b) Any leasehold improvements not being amortized over the lesser of the expected life of the asset or the remaining term of the lease;

(c) Commitment fees paid which are not recoverable through the closing or selling of loans; and

(d) The value of any servicing contracts not determined in accordance with Financial Accounting Standards Board, Statement of Accounting Standards No. 65, dated September 1982.

(5) For the purposes of subsection 494.001(26), F.S., "receive" means obtaining possession of money or a negotiable instrument prior to receipt by the lender or investor.

(1)(6) "Appraiser" as used in Section For the purposes of subsection 494.0043(1)(a), F.S., when providing an opinion of value of security property for brokering or selling a mortgage loan to a noninstitutional investor, "appraiser" means any person who is licensed, registered or certified in the State of Florida pursuant to the provisions of Chapter 475, F.S.

(7) For purposes of licensing and enforcement actions under Chapter 494, F.S., the phrase "Having a license, or the equivalent, to practice any profession or occupation revoked, suspended, or otherwise acted against . . ." as utilized in subsections 494.0041(2)(i) and 494.0072(2)(i), F.S., is deemed to include state or federal enforcement actions for orders of prohibition or removal of an officer, director, or employee of a state or federal financial institution, or any orders of

prohibition or orders of removal, or any combination thereof, entered against or stipulated to by officers, directors, and employees of state or federal financial institutions.

(8) For the purpose of subsection 494.006(2)(a), F.S., "employed" or "employee" means a natural person engaged in the service of another for a salary or wages. Such person is subject to withholding, FICA, and other lawful deductions by the employer as a condition of employment and is subjected to the right of the employer to direct and control the actions of the employee.

(9) "Independent contractor" means a person who contracts with another to perform a service where this person is not directed or controlled by the other person or is required to maintain separate records regarding his contract for services in respect to, but not limited to, accounting and taxes.

(10) "Notice of noncompliance" means a notification by the Office of Financial Regulation that a person has violated an administrative rule which is classified as a minor offense as set forth in Section 120.695, F.S. The mandatory fine that is associated with the administrative rule is waived for the first offense.

(11) For purposes of Rules 69V 40.100, 69V 40.200, 69V 40.220, and 69V 40.242, F.A.C.:

(a) "Operate" shall mean to exercise power or influence over the business operations.

(b) "Exercise" shall mean the discharge of an official duty or function.

(c) "Control" shall mean to have the influence and power to make decisions for the business.

(2) "Hold himself or herself out to the public as being in the mortgage lending business" in Section 494.00115(2)(e) and (f), F.S., means that any individual who does any of the following, but not limited to, is not exempt from regulation under Part III of Chapter 494, F.S.:

(a) Is employed with a business where mortgage lending or mortgage brokering services may be received;

(b) Has placed himself or herself in a position where he or she is likely to come into contact with borrowers or investors or buyers or sellers of mortgage loans;

(c) Advertises, related to mortgage loans, by soliciting for borrowers, lenders or purchasers in any manner;

(d) Advertises in any manner that would lead a person to believe the individual was in the business of buying, making or selling mortgage loans. For example, placing an advertisement which states "I buy and sell mortgages" would lead a person to believe the individual was in the mortgage lending business; or

(e) Solicits in a manner which would lead a person to believe the individual was in the business of buying, making or selling mortgage loans.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2) FS. Law Implemented ~~494.00115(2)(e),(f), 494.0015, 494.001, 494.004(1), 494.0041(2)(a); (i); 494.0043, 494.0061(2), (8), 494.0062(2), (11), 494.0067(5), 494.0072(2)(i) FS. History—Revised 9-23-65, Renumbered from 3-3.01 to 3D-40.01 on 9-8-75, Formerly 3D-40.01, Amended 12-7-89, 6-23-91, 8-24-92, 2-11-93, 11-17-93, 4-14-94, 9-7-94, 5-14-95, 7-25-96, 12-12-99, 12-8-02, Formerly 3D-40.001, Amended 3-23-08, 10-1-10.~~

69V-40.00112 Effect of Law Enforcement Records on Applications for Loan Originator, Mortgage Broker, and Mortgage Lender Licensure.

(1) General Procedure Regarding Law Enforcement Records. For the purposes of this rule each loan originator applicant and each control person of a mortgage broker and mortgage lender license applicant shall be referred to collectively as “relevant persons.” If the mortgage broker or mortgage lender license applicant is a natural person, he or she is a relevant person under this rule. As part of the application review process, the Office is required to consider a relevant person’s law enforcement record when deciding whether to approve an application for licensure as a loan originator, mortgage broker, or mortgage lender. When conducting this review, the Office reviews the relevant person’s Form MU1, MU2 or MU4 responses and criminal history information derived from the fingerprint check. In the event of a question regarding the relevant person’s criminal history, the Office may request additional information from the relevant person to determine the status of a criminal event, the specific facts and circumstances surrounding a criminal event, or to address other issues determined to be relevant to the review of the law enforcement record. The Office will notify the applicant of any specific documents that it requires in order to complete its review. The requested documents must be legible. Documentation that is typically requested includes:

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

(b) A certified copy of the charges.

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

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

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

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

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

(a) The omission of any part of a law enforcement record required to be disclosed on Form MU1, MU2, or MU4 is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 494.00255(1)(s), F.S.

(b) If the Office discovers the relevant person’s failure to disclose any part of a law enforcement record required to be disclosed on the Form MU1, MU2, or MU4 after a license has been granted, the Office will suspend or revoke each license currently held by the applicant as follows:

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

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

(3) Classification of Crimes.

(a) The Office makes a general classification of crimes into four classes: A, B, C and D as listed in subsections (14), (15), (16) and (17) of this rule.

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

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

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

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

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

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

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

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

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

(5) Applicants With Multiple Crimes.

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

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

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

(6) Mitigating Factors.

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

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

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

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

4. One year is deducted if the applicant furnishes proof that the relevant person was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has

examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.

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

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

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

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

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

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

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

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

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

(9) Pre-Trial Intervention. If at the time of application a relevant person is participating in a pre-trial intervention program based upon a charge of criminal conduct that would authorize denial of a license under Chapter 494, F.S., the Office will deny the application for license. The Office considers participation in a pre-trial intervention program to be a pending criminal prosecution under Chapter 494, F.S., and finds it

necessary to the public welfare to wait until final disposition of all charges of criminal conduct that would authorize denial of a license under Chapter 494, F.S., before an application for licensure may be considered.

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

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

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

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

2. However, if the relevant person did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Chapter 494, F.S.

(11) Effect of Varying Terminology.

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

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

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

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

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

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

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

(12) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 494, F.S., while a relevant person is imprisoned, under arrest, or serving a sentence for any crime. Further, the Office shall not license any applicant when a relevant person has been released from imprisonment, based upon a charge of

criminal conduct that would authorize denial of licensure under Chapter 494, F.S., until the later of the period otherwise set out in the rules or five (5) years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least five (5) years on good behavior, before licensure can be granted without undue risk to the public welfare. For the purposes of this section, the term "imprisonment" shall include confinement in a state or federal prison or county jail for a period of more than one year.

(b) Community Supervision. The Office shall not grant licensure when a relevant person who at the time of application or at any time during the pendency of the application is under supervision as the result of the commission or a criminal offense and released to the community under the jurisdiction of the courts, paroling authorities, correctional agencies, or other criminal justice agencies based upon a charge of criminal conduct that would authorize denial of a license under Chapter 494, F.S.

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

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

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

(b) Perjury.

(c) Armed robbery.

(d) Robbery.

(e) Extortion.

(f) Bribery.

(g) Embezzlement.

(h) Grand Theft.

(i) Larceny.

(j) Burglary.

(k) Breaking and entering.

(l) Identity theft.

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

(n) Misuse of public office.

(o) Racketeering.

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

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

(r) Altering public documents.

(s) Witness tampering.

(t) Tax evasion.

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

(v) Money Laundering.

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

(a) Murder in all degrees.

(b) Arson.

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

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

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

(f) Rape.

(g) Sexually molesting any minor.

(h) Sexual battery.

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

(j) Kidnapping.

(k) Video Voyeurism.

(16) Class "C" Crimes include all felonies not Class "A" or Class "B" Crimes.

(17) Class "D" Crimes includes any misdemeanor that involves fraud, dishonesty, or any other act of moral turpitude.

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

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

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

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

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

(20) Uniform Mortgage Lender/Mortgage Broker Form, MU1; Uniform Mortgage Biographical Statement & Consent Form, MU2; and Uniform Individual Mortgage License/Registration & Consent Form, MU4, are incorporated by reference in Rule 69V-40.002, F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2)(c) FS. Law Implemented 494.0011(2)(c), 494.00312, 494.00321, 494.00611 FS. History—New 10-1-10.

69V-40.002 Adoption of Forms.

(1) The forms referred to in this section below are incorporated by reference and readopted by this rule for the purposes of Rules 69V-40.001-.290, F.A.C.:

~~(a) Application for Mortgage Brokerage Business and Lender License, Form OFR 494 01, effective December 25, 2008;~~

~~(b) Application for Branch Office License, Form OFR 494 02, effective March 23, 2008;~~

~~(c) Application for Licensure as a Mortgage Broker, Form OFR 494 03, effective December 25, 2008;~~

~~(d) Application for a Mortgage Business School Permit, Form OFR 494 04, effective March 23, 2008;~~

~~(e) Mortgage Brokerage and Mortgage Lending Act Surety Bond, Form OFR 494 05, effective March 23, 2008;~~

~~(f) Mortgage Lender License Renewal and Reactivation Form, Form OFR 494 06, effective March 23, 2008;~~

~~(g) Mortgage Broker License Renewal and Reactivation Form, Form OFR 494 07, effective March 23, 2008;~~

~~(h) Quarterly Report Form, Form OFR 494 08, effective March 23, 2008;~~

~~(i) Mortgage Brokerage Deposit Account Form, Form OFR 494 09, effective March 23, 2008;~~

~~(j) Mortgage Brokerage Transaction and Lending Journal, Form OFR 494 10, effective March 23, 2008;~~

~~(k) Calculation of Aggregate Value of Mortgage Loans Serviced, Form OFR 494 11, effective March 23, 2008;~~

~~(l) Non-Institutional Investor's Funds Account Form, Form OFR 494 12, effective March 23, 2008.~~

~~(m) FL921050Z, Florida Fingerprint Card, effective March 23, 2008.~~

(a) Registry Forms:

1. Uniform Mortgage Lender/Mortgage Broker Form, MU1, dated 1/25/2010.

2. Uniform Mortgage Biographical Statement & Consent Form, MU2, dated 1/25/2010.

3. Uniform Mortgage Branch Office Form, MU3, dated 1/2/2008.

4. Uniform Individual Mortgage License/Registration & Consent Form, MU4, dated 1/25/2010.

(b) Florida Forms:

1. Mortgage Brokerage Deposit Account Form, Form OFR-494-09, effective March 23, 2008;

2. Mortgage Brokerage Transaction and Lending Journal, Form OFR-494-10, effective March 23, 2008;

3. Calculation of Aggregate Value of Mortgage Loans Serviced, Form OFR-494-11, effective March 23, 2008;

4. Non-Institutional Investor’s Funds Account Form, Form OFR-494-12, effective March 23, 2008.

5. Declaration of Intent to Engage in Loan Processing, Form OFR-494-13, effective _____.

(2) All forms adopted by this rule are available on the Office’s website at www.flofr.com and by mail from the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376.

Proposed Effective Date: October 1, 2010

Rulemaking Authority ~~215.405, 494.0011(2), 494.0016(4), 494.00312(2), 494.00313(1), 494.00321(1), 494.00322(1), 4494.00331(2), 494.0036(2), 494.00611(2), 494.00612(1), 494.0066(2)~~ FS. Law Implemented 494.0016, 494.00312, 494.00313, 494.00321, 494.00322, 494.00331, 494.0036, 494.00611, 494.00612, 494.0066 494.0025, 494.0033, 494.0041, 494.0042, 943.053 FS. History–New 3-23-08, Amended 12-25-08, 10-1-10.

69V-40.003 Electronic Filing of Forms and Fees.

~~(1) For purposes of this rule, “REAL System” means the Office of Financial Regulation’s Regulatory Enforcement and Licensing System, which is accessible through the Office of Financial Regulation’s website at www.flofr.com.~~

~~(2) All forms adopted under paragraphs 69V-40.002(1)(a) through (d) and (f) through (h), F.A.C., must be filed with the Office of Financial Regulation through the REAL system.~~

~~(3) All fees required to be filed with the Office of Financial Regulation under Chapter 69V 40, F.A.C., must be filed through the REAL System.~~

~~(4) Any person may petition for a waiver of the requirement of electronic filing of any form or fee under Chapter 69V 40, F.A.C., by filing a petition under Rule 28.106.301, F.A.C. The petition must demonstrate a technological or financial hardship that entitles the person to file the form or fees in a paper format. The Office of Financial Regulation will provide any person granted a waiver under this subsection a hardcopy version of the applicable form.~~

(1) All forms adopted under paragraph 69V-40.002(1)(a), F.A.C., must be electronically filed through the Registry.

(2) Unless otherwise specifically instructed in this Rule Chapter all fees required in conjunction with an initial application, amendment, and license renewal must be filed electronically through the Registry.

(3) Annual Financial Audit Reports required in Section 494.0063, F.S. must be filed electronically through the Registry.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.00611(2)(f), 494.0063 FS. Law Implemented 494.0011, 494.00611(2)(f), 494.0063 FS. History–New 10-21-08, Amended 10-1-10.

69V-40.008 Fees and Commissions.

(1) A mortgage ~~broker~~ ~~brokerage business~~ shall state in each contract for services the total fee to be received. The total fee shall not exceed the maximum as prescribed in Section subsection 494.0042(2), F.S.

(2)(a) In determining the total loan origination ~~mortgage~~ ~~brokerage~~ fee, all compensation for the following services, by whatever name called, shall be included:

1. Arranging for a conditional mortgage loan commitment between a borrower and a lender;

2. Taking an application, assembling information and preparing all paperwork and documentation necessary for a conditional mortgage loan commitment;

3. Reviewing, analyzing, and evaluating a borrower’s financial statements, income, and credit history; and

4. Incidental services utilized in arranging for and procuring a conditional loan commitment, such as, courier services, express mailings, and long distance telephone charges, except as provided in subparagraph (3)(a)12., below.

5. Premiums and other charges for insurance written in connection with a loan, except as provided in subparagraph (3)(a)5. below.

(b) The total loan origination ~~mortgage~~ ~~brokerage~~ fee shall include all compensation for the services described in paragraph (2)(a), whether or not the compensation is to be received by the licensee, a co-broker, an affiliate, or an independent third party.

(c) A good faith estimate does not supplant or substitute for the agreement required by Section 494.0038(1), F.S.

(3)(a) In addition to stating the total loan origination ~~mortgage~~ ~~brokerage~~ fee, the licensee shall provide a good faith estimate of costs for services or products that may be incurred or expended on behalf of the borrower in arranging for the loan. Services or products for which costs shall be estimated, but which are not required to be included in the loan origination ~~mortgage~~ ~~brokerage~~ fee include the following:

1. Appraisal fee charged to obtain a statement of property value for the lender prior to closing. This subparagraph shall not be construed to prevent a licensee or lender from setting reasonable criteria for the selection of an appraiser;

2. Inspection fees required by the lender, its agents, or a governmental body or agency or quasi-governmental body or agency for the security property;

3. Loan assumption fee and a transfer fee charged to enable the buyer to assume existing loans;

4. Pest inspection fee charged to cover inspections for termites or other pest infestations;

5. Charges for title insurance as defined in Section 624.608, F.S., abstract of title, title search fee, and fees for an attorney’s title opinion. A licensee may not receive or accept any monetary consideration or inducement in connection with the issuance of a title insurance policy in a transaction in which he was involved;

6. Survey or topography fees charged to determine the exact location of any structures and the lot line, as well as easements and rights of way;

7. Mortgage guaranty insurance as defined in Section 635.011, F.S.;

8. Credit report fee;

9. Photograph fees for photographs of the property offered as security, if required by the lender in writing and acceptable photographs of the property have not been otherwise provided to the lender;

10. Flood hazard determination fee charged by an entity to assist lenders in determining whether the security property is in a flood hazard area;

11. Real estate tax service fee charged by an entity engaged in the business of assisting lenders or their agents in assuring that real property taxes are paid on the security property;

12. Incidental fees, such as, courier services and express mailings if pre-authorized in writing by the borrower;

13. Settlement or closing fee charged by a settlement agent for distributing the proceeds of the mortgage loan;

14. Attorney's fees;

15. Charges imposed by federal, state, county or municipal governments or government agencies or quasi-governmental agencies including, but not necessarily limited to, the cost of recording the mortgage, cost of documentary stamps, and intangible taxes for the mortgage;

16. Environmental audit costs required by the lender, or by local ordinances or state or federal law; and

17. Costs incurred in curing title defects affecting the security property.

(b) The costs enumerated in paragraph (3)(a) may be charged and collected provided they are itemized and supported by an actual expenditure.

(4)(a) Premiums or other charges for life, credit life, accident, health, or loss-of-income insurance written in connection with a loan are not included in determining the loan origination mortgage broker fee if:

1. The licensee or registrant discloses to the borrower in writing that such insurance is not required to be purchased through the licensee; and

2. The licensee discloses to the borrower in writing the premiums for the initial term.

(b) Premiums or other charges for insurance that is written in connection with a mortgage loan and protects against loss or damage to property or liability arising out of the ownership or use of property are not included in determining the loan origination brokerage fee if the borrower may choose the insurance agent and the insurance provider.

(5) The loan origination mortgage brokerage fee does not include prepaid finance charges of the lender under the Federal Truth in Lending Act, as amended, and Federal Reserve Board Regulation Z that are disclosed on a Truth in Lending Disclosure form provided to the borrower.

(6) The maximum fees or commissions as provided in Section subsection 494.0042(2), F.S., must be based on the net proceeds of the loan.

(7) In determining the maximum fees or commissions on the gross proceeds of a loan, the following method may be used: On loans in excess of \$1,000 and not over \$5,650, add \$1,500 to the gross proceeds of the loan and divide that sum by 11; and, on loans of \$5,760 and over, divide the gross proceeds by 11 and add \$227.27. On loans that are over \$5,650 but less than \$5,750, the maximum fee is the amount in excess of \$5,000.

~~(8) If a mortgage brokerage business brokers an extension of the maturity date of the unpaid portion of an existing mortgage loan previously brokered by him, the total fees and commissions he may charge or receive on both the original transaction and the extension may not exceed in the aggregate the amount of costs and expenses permitted in subsection 494.0042(2), F.S.~~

~~(8)(9)~~ No person shall charge or exact, directly or indirectly, from the mortgagor or lender a fee or commission in excess of the maximum fees or commissions as set forth herein. All fees paid to or on behalf of the licensee including, but not limited to, bonus plans, advertisement allowances, incentive plans, kick-backs, premiums or discounts whether paid directly or indirectly or to an affiliate firm in which the licensee has an ownership interest, must be included in determining the maximum loan origination brokerage fees.

~~(9)(10)~~ All loan origination brokerage fees to other mortgage brokers brokerage businesses disbursed from the loan proceeds shown on the closing statement shall reflect the name of each mortgage broker brokerage business or co-brokering mortgage broker brokerage business paid.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0016(4), 494.0038(2)(b) ~~494.0011(2)~~ FS. Law Implemented ~~494.0038, 494.0025, 494.0041, 494.0042~~ FS. History—Revised 9-23-65, Amended 9-1-67, 5-8-68, Renumbered from 3-3.08 to 3D-40.08 on 9-8-75, Amended 9-29-75, 4-27-77, Joint Administrative Procedures Committee Objection Filed—See FAW Vol. 2, No. 19, May 7, 1976, Joint Administrative Procedures Committee Objection Withdrawn—See FAW Vol. 3, No. 30, July 29, 1977, Amended 7-6-78, 2-5-80, 8-17-83, Formerly 3D-40.08, Amended 1-5-87, 5-24-89, 8-24-92, Formerly 3D-40.008, Amended 3-23-08, 10-1-10.

69V-40.0113 Demonstrating Character, General Fitness, and Financial Responsibility.

(1) Definitions. As used in this rule, the term:

(a) "Adverse credit history information" means the following:

1. Personal bankruptcy within the previous year.

2. Bankruptcy within the previous year of any organization based on events that occurred while the relevant person was a control person.

3. Outstanding tax lien or other governmental lien.

4. Outstanding judgment based upon grounds of fraud, embezzlement, misrepresentation, or deceit.

5. Open collection account or account that is actively assigned to a collection agency.

6. Any account that has been "charged off" within the previous 5 years and remains unpaid.

7. Foreclosure on personally owned property within the last 5 years.

(b) "Charge off" means an account that has been identified by the creditor as an uncollectable debt. A charged off account is normally reported on the credit report as an R9, I9, or M9.

(c) "Relevant person" means each loan originator applicant and each control person of a mortgage broker and mortgage lender license applicant. If the mortgage broker or mortgage lender license applicant is a natural person, he or she is a relevant person under this rule.

(2) Adverse Credit History Information. If a relevant person's credit report or responses to the license application contains adverse credit history information, the Office will notify the applicant in writing of the specific items constituting adverse credit history information. The notification will also inform the applicant of the:

(a) Opportunity to explain the circumstances surrounding the specific items and provide any other relevant information that the applicant wishes the Office to consider surrounding the specific items;

(b) Documents that the Office requires in order to complete its review of the specific items. The requested documents provided by the applicant must be legible. Documents that are typically requested by the Office include, but are not limited to:

1. Copies of satisfaction of judgment.

2. Copies of satisfaction of outstanding tax liens or other governmental liens.

3. Copies of court documents that reflect the substance of the matter and how the matter was resolved or adjudicated.

4. Copies of recent account statements or letters from the creditors explaining the current status of accounts. The account statement or letter from the creditor must be dated within 30 days after the received date of the application or the Office's request, whichever is later. For security purposes, the relevant person may redact all but the last four (4) digits of the account number prior to submitting the document to the Office.

5. Copies of tax returns, pay stubs, or other documentation of income.

If the documents requested above cannot be obtained, the relevant person shall submit evidence of that fact in order for the license application to be deemed complete. Evidence that

documents cannot be obtained shall consist of a written statement from the agency's or creditor's records custodian that is written on the agency's or creditor's letterhead; indicates that the agency or the creditor does not have any record of such matter or that the record was lost, damaged, or destroyed, or cannot otherwise be produced and provide a statement as to why the record cannot be produced; and is signed by the agency's or creditor's records custodian.

(3) Procedure for Reviewing Adverse Credit History Information.

(a) When deciding whether to approve an application for licensure as a loan originator, mortgage broker, or mortgage lender, the Office must make a determination regarding whether the relevant person has demonstrated that he or she possesses the character, general fitness, and financial responsibility to warrant the Office's determination that the relevant person will operate honestly, fairly, and efficiently. In making this determination, the Office will consider the following information:

1. The relevant person's entire credit history as reflected in the credit report.

2. The information provided by the relevant person under subsection (2).

3. The responses contained in the license application.

4. The previous licensing history with the Office including whether the relevant person was named in any regulatory action by the Office.

5. Other information that reflects upon an applicant's character, general fitness, or financial responsibility.

6. The time and context of the information available and any pattern of behavior the information may demonstrate.

(b) Based on the totality of the circumstances as developed under paragraph (a), the Office will make a determination as to whether the relevant person has demonstrated that he or she possesses the character, general fitness, and financial responsibility to warrant the Office's determination that the relevant person will operate honestly, fairly, and efficiently. In considering the totality of the circumstances, the fact that an applicant has been a debtor in a bankruptcy or been the control person of a bankrupt organization shall not be the sole basis of the Office's determination to deny the issuance of a license.

Proposed Effective Date: October 1, 2010.

Rulemaking Authority 494.0011(2)(b), FS. Law Implemented 494.00312, 494.00313, 494.00321, 494.00322, 494.00611, 494.00612, FS History--New 10-1-10.

69V-40.021 Fictitious Name Registration.

~~No mortgage business school, mortgage brokerage business or lender having a license or permit pursuant to Chapter 494, F.S., will be permitted to use a fictitious name unless they have provided evidence to the Office of Financial Regulation that such fictitious name is duly registered with the Florida Secretary of State, pursuant to Section 865.09, F.S.~~

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0029(2)(e), 494.0041(2)(q), 494.0072(2)(q) FS. History—New 8-7-97, Formerly 3D-40.021, Amended 3-23-08, Repealed 10-1-10.

69V-40.022 Quarterly Report Filing Requirements.

~~(1) Each mortgage brokerage business, correspondent mortgage lender, mortgage lender, and mortgage lender licensed pursuant to the savings clause, that was licensed with the Office of Financial Regulation on or before March 31, 2000, shall file an initial quarterly report on or before April 30, 2000 as required by subsections 494.004(6) and 494.0067(9), F.S. Thereafter, a quarterly report shall be filed as required by subsections 494.004(6) and 494.0067(9), F.S., within 30 days of the end of each calendar quarter.~~

~~(2) Each mortgage brokerage business, correspondent mortgage lender, mortgage lender and mortgage lender licensed pursuant to the savings clause, that becomes licensed with the Office of Financial Regulation after March 31, 2000, shall file an initial quarterly report within 30 days of the end of the calendar quarter in which the original license is issued, and thereafter shall file a quarterly report as required by subsections 494.004(6) and 494.0067(9), F.S.~~

~~(3) The report shall be filed electronically on Form OFR 494-08 by accessing the Office of Financial Regulation's website at www.flofr.com.~~

~~(a) Any person may petition for a waiver of the requirement of electronic filing of quarterly reports by filing a petition pursuant to Rule 28-106.301, F.A.C. Such petition shall demonstrate a technological or financial hardship that entitles the person to file the quarterly report in a paper format. Such petitions are timely filed if received by the office by the quarterly report filing deadline.~~

~~(b) Any person granted a waiver pursuant to paragraph (3)(a) above will be provided a copy of Form OFR 494-08.~~

~~(4) All reports shall be filed with the Office of Financial Regulation within thirty (30) days after the last day of each calendar quarter. If the 30th day falls on a weekend or official holiday such reports will be considered timely filed on the next business day.~~

~~(5) If a correct initial report or correct quarterly report thereafter is not timely received (incidental and isolated clerical errors or omissions shall not be considered a violation) as required by subsection 494.004(6), F.S., or subsection 494.0067(9), F.S., the penalty shall be the issuance of a "notice of noncompliance" for the first offense. Any subsequent finding of a violation of this rule shall be a fine of \$500. The penalty for any intentional violations of this rule shall be a fine of \$500 and suspension of the license.~~

~~(6) Form OFR 494-08 is incorporated by reference in subsection 69V-40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010.

Rulemaking Authority 494.0011(2), 494.004(7), 494.0067(9) FS. Law Implemented 494.0011(2), 494.004(7), 494.0067(9) FS. History—New 11-7-00, Formerly 3D-40.022, Amended 3-23-08, Repealed 10-1-10.

69V-40.025 Mortgage Broker Examination.

~~(1) For purposes of this rule, "REAL System" means the Office of Financial Regulation's Regulatory Enforcement and Licensing System, which is accessible through the Office of Financial Regulation's website at www.flofr.com.~~

~~(2) Upon receipt of an application filed through the REAL System, each test candidate will be responsible for scheduling his or her mortgage broker examination with the Office of Financial Regulation or its designee. In addition to any application fee as prescribed by Chapter 494, F.S., and any other fee required by administrative rule, the candidate shall pay \$43 for the mortgage broker examination and every retake of the examination. The Office of Financial Regulation or its designee shall be responsible for the administration and grade notification of the Mortgage Broker Examination.~~

~~(3) All examinations shall be administered and supervised by proctors who are Office of Financial Regulation employees or its designees. During the examination the examinees shall abide by the instructions of the proctors. Specific instructions for completion of the examination shall be communicated prior to the examination and the examinees shall be permitted to ask reasonable questions relating to the instructions. The Office of Financial Regulation or its designee shall be responsible for determining that the student taking the examination is the actual person authorized to take the examination. Examinees shall not give or receive help from other examinees. There shall be no talking or communication between the examinees while the exam is in progress. Reference materials shall not be permitted in the examination room unless specifically authorized in the instructions.~~

~~(4) Cheating on an examination or violating test center or examination procedures published orally, in writing, or electronically at the test site by Office of Financial Regulation employees or its designees shall be grounds for denial of licensure by the Office of Financial Regulation.~~

~~(5) Candidates failing the examination will be notified of the review procedures and will be responsible for requesting a retake of the mortgage broker examination through the REAL system. Candidates will not be permitted to request an examination that will be conducted on a date beyond the candidate's ninety (90) day application period. Candidates who fail the examination may request a review of their previous examination one time, for a \$30 fee, and must do so through the REAL system. Candidates reviewing shall have the right to have access to the examination questions, their examination responses, and the correct answers. Rules of examinee conduct during the review are the same as those for the examination.~~

(6) Examinations will be written and composed of 110 (100 scored and 10 pretest questions) multiple choice questions. Examination scores will be computed based on the following criteria:

(a) The examination will be scored on the basis of 100 points.

(b) An applicant who receives a grade of 75 points or higher shall be passed. A passing score will be valid for a period of 2 years from the date of passing the examination.

(c) Test scores will be derived from the number of correct responses.

(7) Candidates will be allowed 3 hours to complete the examination. Candidates will be permitted to use a non-programmable hand held or battery type calculator.

(8) Notification of results. The applicant will be notified of the results of the examination by the Office of Financial Regulation or its designee.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0033(2)(b) FS. History—New 10-1-91, Amended 6-8-92, Formerly 3D-40.025, Amended 3-23-08, 10-21-08, 3-4-09, Repealed 10-1-10.

69V-40.026 Curriculum for Mortgage Broker Pre-licensing Classroom Education.

Section 494.0033, F.S., requires any person applying for a mortgage brokerage license after July 1, 1992, to have completed twenty-four (24) hours of classroom education prior to becoming licensed. The curriculum for the education shall cover primary and subordinated financing transactions, the provisions of Chapter 494, F.S., and Chapter 69V-40, F.A.C., federal statutes which apply to the financing of real estate, current and accepted mortgage principles and technical information basic to the mortgage broker profession, and shall include the following:

(1) Demonstrate customer relationship skills as related to a mortgage broker. The student should be able to:

(a) Assist and advise customers in selecting loan programs, including interest rate, discount points and fees.

(b) Provide customer with required disclosures (good faith estimate, Reg Z, ARM rate, lock in, etc.)

(c) Interpret and satisfy commitment contingencies with borrower.

(d) Explain the commitment of a lender.

(e) Demonstrate basic knowledge of the FAR/BAR real estate sale contract as it relates to financing real estate.

(f) Discuss types of real estate ownership with the consumer and determine how title shall be held.

(g) Explain closing documents and the procedure for determining that the borrower fully understands these documents. These documents include the following:

1. The note.
2. Mortgage contract.

3. HUD-1 closing statement.

(h) Demonstrate the ability to explain the need and technical basis for the following:

1. Property inspection.

2. Survey.

3. Title insurance.

4. Restrictive covenants; deed restrictions; encroachments.

(i) Understand the pertinent provisions in a standard mortgage contract. Explain the purpose and use of a contract for deed.

(2) Demonstrate the ability to prepare, explain and execute written and oral communications. The student should be able to:

(a) Prepare, explain, execute and deliver brokerage agreement to the consumer.

(b) Demonstrate the ability to understand and explain FNMA application procedures including required disclosures; knowledge of credit report procedures; verifications of income, deposit and employment.

(c) Demonstrate basic knowledge of the appraisal process and identify FNMA appraisal procedures.

(d) Evaluate appraiser's conclusions for support by accurate, complete and consistent data.

(3) Explain and compute the mathematical skills necessary for success as a mortgage broker. The student should be able to:

(a) Calculate brokerage fees for gross loans and net loans.

(b) Prepare, explain, execute, and deliver a good faith estimate of maximum costs to the consumer.

(c) Calculate and analyze ratios of house payment to income and total obligations to income to determine acceptability according to FNMA standards.

(d) Calculate loan to value ratios, origination fees, and discounts.

(e) Understand and calculate documentary stamp tax on deed and mortgage, intangible tax on mortgage, calculation of daily interest and pro-rata of ad valorem tax.

(f) Calculate rate changes on ARMS (Adjustable Rate Mortgages).

(g) Convert hourly and weekly salaries to monthly income to compare income ratios.

(4) Identify and explain state laws and policies in regards to mortgage brokerage and lending procedures. The student should have a knowledge of the following:

(a) The "Definitions" and all subjects identified in the General Provisions, Part I, of Chapter 494, F.S.

(b) "Prohibited Practices" discussed in the General Provisions, Part I, of Chapter 494, F.S.

(c) Principles necessary to establish and operate a mortgage brokerage business.

(d) The authority of the various licensees in Chapter 494, F.S.

(e) The rules in Chapter 69V-40, F.A.C., which apply to a mortgage brokerage business, including, but not limited to: definition of moral turpitude, restoration of civil rights, and mortgage brokerage file requirements.

(f) The difference in licensing requirements for the two types of lenders; exemptions; lock-in procedures; fines and penalties for lenders; and ability to sell and service a loan for non-institutional investor.

(g) Penalties for failure to comply with Chapter 494, F.S., and the administrative rules in Chapter 69V-40, F.A.C.

(5) Explain federal laws which affect mortgage brokerage and lending transactions in the state of Florida. The student should understand the following federal statutes and/or procedures:

(a) Truth in Lending Act; Real Estate Settlement Procedures Act (RESPA); Fair Credit Reporting Act; Equal Credit Opportunity Act; and National Flood Insurance Act.

(b) Various government agencies which administer the federal statutes named in paragraph (a) above.

(6) Demonstrate knowledge of FNMA underwriting procedures. The student should be able to perform the following based on FNMA Guidelines:

(a) Demonstrate the ability to verify that the property is adequate security for the loan. Assess value of property, area markets and adverse conditions.

(b) Explain the requirements for determining if property meets investor's guidelines. Assess physical aspects such as age, location, drainage and utilities.

(c) Analyze stability of employment and probability of continued employment at verified income level.

(d) Analyze acceptability of credit history. Understand how to read a credit report.

(e) Calculate and analyze status of house payments to income and total obligations to income to determine acceptability.

(f) Analyze income tax returns of self-employed borrowers to confirm monthly average income.

(g) Determine that funds for closing and sources of those funds are acceptable.

(h) Determine and collect necessary exhibits to clear all underwriting contingencies.

(i) Understand the procedures for issuing adverse action notices.

(j) Assemble for submission an entire loan package for underwriting.

(7) Demonstrate basic business operations applicable to mortgage brokerage and banking. The student should be able to:

(a) Arrange rate lock-in. Identify and satisfy any outstanding commitment contingencies.

(b) Investigate and confirm application data including, but not limited to, credit report and property appraisal.

(c) Determine that survey of property has been arranged and guidelines have been met. Ascertain that no encroachments exist.

(d) Arrange for property inspection.

(e) Evaluate and review title insurance policy. Understand owners vs. mortgagee's policy. Define acceptable exceptions on an ALTA policy according to FNMA guidelines.

(f) Demonstrate the ability to arrange for funds in the amount of loan proceeds and disburse to proper parties. Understand the various methods of funding a loan.

(g) Discuss and identify principles and practices of mortgage brokerage and banking.

(h) Understand and explain the function and operation of Private Mortgage Insurance (PMI) and know when it is required.

(i) Explain to the customer the meaning of the terms: novation, assumption of mortgage, subject to the mortgage, and release of liability.

(8) Demonstrate knowledge and understanding of the secondary mortgage market by explaining the following principles:

(a) Terms of a loan commitment.

(b) FNMA eligibility requirements to purchase a single family residential conventional mortgage loan.

(c) Primary and secondary mortgage markets.

(d) Function and method of operation of FNMA, GNMA, and FHLMC.

(e) Method and marketing aspect of a GNMA mortgage backed pass through security consisting of FHA-VA mortgage loans.

(9) Demonstrate an understanding of the basic concepts of mortgage financing. The student should have an understanding of the following:

(a) Fixed and adjustable rate mortgages.

(b) Negative and positive amortization and when they occur.

(c) Various loan products available in the marketplace such as Graduated Payment Mortgages, Reverse Mortgages, and Growing Equity Mortgages.

(d) Buy-down of an interest rate and its benefit to the borrower.

(e) Wraparound Mortgage.

(10) Demonstrate the ability to explain to the borrower the following basic functions of mortgage servicing:

(a) Collection and remittance of monthly payments.

(b) Escrow accounts (taxes and insurance).

(c) Foreclosure and/or deed in lieu of foreclosure.

(d) Payoffs and/or assumptions.

(e) Transfer of servicing rights from one servicer to another and effect on borrower.

(11) Intended Outcome: After successfully completing the program, the student should be able to:

~~(a) Demonstrate customer relationship skills as related to a mortgage broker.~~

~~(b) Demonstrate the ability to prepare, explain and execute written and oral communications which relate to the mortgage origination process.~~

~~(c) Explain and compute the mathematical skills necessary for success as a mortgage broker.~~

~~(d) Identify and explain federal and state laws and policies in regards to mortgage brokerage and lending procedures.~~

~~(e) Utilize effective selling techniques and procedures by explaining to the consumer the various loan products available in the marketplace and advising the consumer of the advantages and disadvantages of each.~~

~~(f) Demonstrate knowledge of FNMA application and underwriting procedures.~~

~~(g) Demonstrate the ability to explain the loan closing process; various funding methods; secondary market procedures; and FNMA purchase requirements.~~

~~(h) Demonstrate basic business operations applicable to mortgage brokerage and banking.~~

~~(i) Demonstrate the ability to satisfy consumer needs by explaining the basic concepts of mortgage financing and mortgage servicing.~~

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2), 494.0033(3) FS. Law Implemented 494.0033 FS. History—New 7-2-92, Amended 5-19-96, 12-9-01, Formerly 3D-40.026, Repealed 10-1-10.

69V-40.027 Mortgage Broker Pre-licensing Education Requirement.

(1) Effective July 5, 1992, persons desiring to become licensed as a mortgage broker pursuant to Section 494.0033, F.S., shall satisfactorily complete twenty-four (24) hours of classroom study on primary and subordinated financing transactions and the provisions of Chapter 494, F.S., and Chapter 69V 40, F.A.C. The course of study shall include the curriculum for mortgage broker classroom education in Rule 69V 40.026, F.A.C.

(2) Qualifying hours may be obtained by attendance at a duly permitted and accredited Mortgage Business School or an accredited college, university, community college, or area vocational technical school in this State which offers the twenty-four (24) hour mortgage brokerage training course. Any school offering qualifying hours must include the curriculum for mortgage broker classroom education, Rule 69V 40.026, F.A.C., and the provisions of Chapter 494, F.S., and Chapter 69V 40, F.A.C., as the basis for course study.

(3) For the purpose of this rule “School” means any duly permitted and accredited Mortgage Business School and any accredited college, university, community college or area vocational technical school in this State, which offers the twenty-four (24) hour mortgage brokerage training course as a

condition precedent to licensure as a mortgage broker. Such course shall include the curriculum described in Rule 69V 40.026, F.A.C.

(4) Within five (5) days of completion of each twenty-four (24) hour mortgage broker course, each school shall submit to the Office of Financial Regulation the full name of the student, the social security number of each student, the school’s name, the school’s license number, if applicable, and the completion date of all students who successfully completed the course. Each school shall submit the required information on the Office of Financial Regulation’s website at www.flofr.com. Each mortgage business school shall maintain student completion records for at least three (3) years from the completion dates.

(5) An instructor of a school who teaches a pre-licensing course may use the course toward the satisfactory completion of the pre-licensing education requirement.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0016 FS. Law Implemented 494.0016, 494.00295, 494.0033 FS. History—New 7-5-92, Amended 11-5-95, 11-24-97, 8-22-99, 12-9-01, Formerly 3D-40.027, Amended 3-23-08, Repealed 10-1-10.

69V-40.0271 Professional Continuing Education Requirements for Mortgage Brokers, Loan Originators, and Principal Representatives.

(1) All persons licensed as a mortgage broker shall satisfactorily complete fourteen (14) hours of professional continuing education covering primary and subordinate financing transactions and appropriate laws and regulations governing such transactions. The course of study shall include at least four (4) hours on the laws in Chapter 494, F.S., and the rules in Chapter 69V 40, F.A.C.

(2) The principal representative and each loan originator of a mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to the savings clause shall satisfactorily complete fourteen (14) hours of professional continuing education covering primary and subordinate financing transactions and appropriate laws and regulations governing such transactions. The course of study shall include at least four (4) hours on the laws in Chapter 494, F.S., and the rules in Chapter 69V 40, F.A.C.

(3) Qualifying hours may be obtained by attendance at a duly permitted and accredited Mortgage Business School or an accredited college, university, community college, or area vocational technical school in this State which offers the fourteen (14) hours professional continuing education course(s). Qualifying hour of at least 4 hours may be obtained by attending training courses covering the provisions of Chapter 494, F.S., and Chapter 69V 40, F.A.C., that are conducted by the Office of Financial Regulation or its Regional Offices.

(4) For the purpose of this rule, the following definitions will apply:

(a) "Hour" shall mean 60 minutes of class time, of which 50 minutes shall be instruction, with a maximum of 10 minutes of break per hour.

(b) "School" shall mean any duly permitted and accredited Mortgage Business School and any accredited college, university, community college, or area vocational technical school in this State, which offers the fourteen (14) hours professional continuing education course.

(c) "Student" shall mean all persons licensed as a mortgage broker, the principal representative, and loan originators of a mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to the savings clause.

(d) "Good Cause" means an incident or occurrence which is beyond the control of the student and which prevents attendance. Examples of good cause include, but are not limited to, disabling accident, illness, call to military duty, or declared national emergency.

(5) The fourteen (14) hours of professional continuing education can be taken in one or more courses at one or more schools.

(6) Schools shall not issue certificates of completion to students who do not attend or complete the scheduled hours for any professional continuing education course.

(a) Schools shall be responsible for determining that the student attending or completing the professional continuing education course is the actual person scheduled to complete the class or session.

(b) At the discretion of the school, students may miss a class or session and attend a make up class or session to complete the attendance requirements upon showing good cause.

(c) The school may hold makeup classes or sessions to accommodate the student.

(7) An instructor of a school who teaches a professional continuing education course may use the course toward the satisfactory completion of the professional continuing education requirement.

(8) Neither students nor instructors may earn professional continuing education credit for attending or instructing at any subsequent offering of the same professional continuing education course during any two (2) year period.

(9) The professional continuing education courses may be offered through classroom instruction, electronic transmission ("Internet"), or distance education ("correspondence course").

(10) The professional continuing education courses taught by using the Internet and correspondence courses shall have:

(a) Course subject matter, assignment work, scholastic standards and other related requirements substantially similar to the course offered by classroom instruction, having due regard however, to the different methods of presentation.

(b) Shall provide students with instructions on how to contact an instructor to answer inquiries. The school shall also disclose to the student when the instructor will be available, however the instructor shall respond within 2 business days to the student's inquiries.

(c) When the course is in the form of a video tape or CD Rom, the presentation must be of a quality that permits the student to view and listen to the presentation without interfering with the learning process.

(11) Within five (5) days of completion of each professional continuing education course, each permitted school shall submit to the student a certificate of completion indicating successful completion of the course, and the number of hours that course consisted of. Within five (5) days of completion of each professional continuing education course, each permitted school shall submit to the Office of Financial Regulation the full name and mortgage broker license number or social security number of each student, the school's name and license number, the number of hours completed by the student, and the completion date for individuals licensed as mortgage brokers. Each permitted school shall submit the required information on the Office of Financial Regulation's website at www.flofr.com. Each mortgage business school shall maintain all student course completion records for at least four (4) years from the completion dates.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.00295(4) FS. Law Implemented 494.0016, 494.0029, 494.00295, 494.0034, 494.0064, 494.0067 FS. History—New 12-9-01, Formerly 3D-40.0271, Amended 3-23-08, Repealed 10-1-10.

69V-40.028 Permit for Mortgage Business School.

(1) Application Process. Each person, school, or institution desiring to obtain a permit for a Mortgage Business School shall apply to the Office of Financial Regulation by submitting the following:

(a) A completed Application for Mortgage Business School Permit, Form OFR 494 04.

(b) A nonrefundable application fee of \$500.

(c) A \$400 nonrefundable accreditation fee.

(d) For schools teaching the 24 hour pre licensing course, all training materials that the applicant plans to distribute to course participants including a copy of all teaching aids, such as flash cards, hand outs, audio/video materials, computer disks/eds, and any computer based training.

(2) Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within thirty (30) days from the date of the request. Failure to respond to the request shall be construed

by the Office of Financial Regulation as grounds for denial for failure to complete the application, and the application shall be denied pursuant to subsection 120.60(1), F.S.

~~(3) Amendments to Pending Applications. If the information contained in any application for a permit for a Mortgage Business School or in any amendment thereto, becomes inaccurate for any reason, the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR 494 04. An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within thirty (30) days from receipt of the application by the Office. Otherwise, the application may be amended only with prior written permission from the Office.~~

~~(4) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.~~

~~(5) Refunds. If the application is withdrawn or denied, all fees are non-refundable.~~

~~(6) Valid Period of Permit. Upon approval of an application, a permit will be issued for the remainder of the annual license period, which ends each September 30th. The permit will be valid for this period unless the Office of Financial Regulation takes administrative action against it or unless the permit is terminated by the holder.~~

~~(7) Form OFR 494 04 is incorporated by reference in subsection 69V 40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0029(1), (3) FS. Law Implemented 120.60(1), 494.0029 FS. History—New 11-5-95, Amended 8-22-99, 12-9-01, Formerly 3D-40.028, Amended 3-23-08, Repealed 10-1-10.

69V-40.0281 Mortgage Business Schools Prohibited Practices and Advertising/Publicity.

~~(1) The following practices are prohibited from being used in any publicity or advertising done by mortgage business schools and will be considered a violation of subsections 494.0029(2)(c) and (d), F.S.:~~

~~(a) Making any reference or comparison to another school (named or unnamed).~~

~~(b) Any type of guarantee of non-measurable outcomes, such as, but not limited to, "satisfaction guaranteed."~~

~~(c) Any claim to being the only, largest, best, less expensive, or other such comparison.~~

~~(d) Any claim or reference as to a school's knowledge of the State of Florida Mortgage Broker Test questions and answers.~~

~~(2) For the purpose of this rule, any publicity or advertising shall include:~~

~~(a) Any written material, including but not limited to, study guides, business cards, flyers, pamphlets, and correspondence.~~

~~(b) Any electronic media, including but not limited to, video and audio tapes, cassettes, or disks.~~

~~(c) Any oral presentation, including but not limited to, speeches and telephone conversations.~~

~~(3) Pass/Fail Ratio as used in subsection 494.0029(2)(f), F.S., shall be defined as any reference to how a student or any group of students performed on the State Mortgage Broker Examination. No reference shall be made to any comparative superlatives such as, but not limited to, "excellent passing ratio" or "better than average results."~~

~~(4) The following additional practices of mortgage business schools are prohibited:~~

~~(a) Misrepresenting any material fact furnished to the Office of Financial Regulation.~~

~~(b) Failing to conduct classes or sessions for the total required hours.~~

~~(c) Allowing a proxy to complete the pre-licensing or continuing education course(s).~~

~~(d) Falsifying any pre-licensing or continuing education course completion record or other document related to the course.~~

~~(e) Offering to teach a pre-licensing or continuing education course without first being permitted as a mortgage business school.~~

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0025, 494.0029, 494.00295 FS. History—New 8-14-97, Amended 12-9-01, Formerly 3D-40.0281, Amended 3-23-08, Repealed 10-1-10.

69V-40.029 Mortgage Business School Permit Renewal.

~~(1) Each active Mortgage Business School permit shall be renewed for the annual period beginning October 1 of each year upon submission of the following:~~

~~(a) A permit renewal fee of \$500.~~

~~(b) A recertification accreditation fee of \$400 for the school; and~~

~~(c) For schools teaching the 24-hour pre-licensing course, all training materials that the applicant plans to distribute to course participants including a copy of all teaching aids, such as flash cards, hand-outs, audio/video materials, computer disks/cds, and any computer based training.~~

~~(2) Renewal fees shall be sent directly to the Office of Financial Regulation or may be paid electronically by following the applicable instructions on the Office of Financial Regulation's website at www.flofr.com. The Office of Financial Regulation shall deem a renewal received upon receipt of the requisite fees and training materials at such time as it has been date stamped by the Cashier's Office of the Department of Financial Services or the date the renewal process has been completed on the Office's website. All~~

renewal fees and training materials must be received by September 30 of the year in which the permit expires. If September 30 falls on a Saturday, Sunday or legal holiday pursuant to Section 110.117, F.S., the renewals received on the next business day will be considered timely received.

(3) Failure to submit the fees and training materials required in subsection (1) prior to October 1 of each renewal year shall automatically result in the permit becoming expired. After the license has expired, there is no provision for reinstatement. A new application for a permit must be submitted as described in Rule 69V-40.028, F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0029(1), (3) FS. Law Implemented 494.0029 FS. History—New 11-5-95, Amended 8-22-99, 12-9-01, Formerly 3D-40.029, Amended 3-23-08, Repealed 10-1-10.

69V-40.030 Accreditation Process for a Mortgage Business School.

(1) ~~Section 494.0029, F.S., authorizes the Office of Financial Regulation to evaluate each school by an accreditation process to determine compliance and competency of mortgage business schools and to recertify each school on an annual basis.~~

(2) ~~The basis for accreditation of mortgage business schools that offer the 24-hour mortgage broker pre-licensing course and the professional education (“continuing education”) will consist of the following evaluation criteria:~~

- ~~(a) Minimum adherence to the required curriculum.~~
- ~~(b) Quality and substance of course outline, workbooks and study guide available to student from school.~~
- ~~(c) Reference material, library and training manuals available for non-classroom study.~~
- ~~(d) Training and visual aids equipment utilized in classroom.~~
- ~~(e) Instructor’s ability to convey subject matter.~~
- ~~(f) Classroom and review procedures.~~
- ~~(g) Student interviews (post-course).~~
- ~~(h) Compliance with Americans with Disabilities Act.~~
- ~~(i) Physical classroom facilities.~~
- ~~(j) Compliance with Florida Statutes and Administrative Rules.~~

(3) ~~The basis for accreditation of mortgage business schools that only offer the 14-hour professional education (“continuing education”) will consist of the following evaluation criteria:~~

- ~~(a) Compliance with Florida Statutes and Administrative Rules.~~
- ~~(b) Compliance with Americans with Disabilities Act.~~
- ~~(4) The accreditation process will be conducted by the Office of Financial Regulation or its designee during the license year by one or more of the following methods:~~

~~(a) Pre-arranged on-site interview with owners and/or management;~~

~~(b) Visitation with no prior notice to observe instructor during classroom session;~~

~~(c) Questionnaires and/or personal interviews with current and former students;~~

~~(d) Questionnaires completed by owners and/or management;~~

~~(e) Written correspondence from prior students/student complaints;~~

~~(f) Compliance with Florida Statutes and Administrative Rules.~~

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2) FS. Law Implemented 494.0029 FS. History—New 11-5-95, Amended 8-22-99, 12-9-01, Formerly 3D-40.030, Repealed 10-1-10.

69V-40.031 Application Procedure for Mortgage Broker License.

(1) Each person desiring to obtain licensure as a mortgage broker shall apply to the Office of Financial Regulation by submitting the following:

(a) A completed Application for Licensure as a Mortgage Broker, Form OFR-494-03;

(b) The statutory nonrefundable application fee required by Section 494.0033, F.S., which shall be the fee for the biennial period beginning September 1 of each odd-numbered year or any part thereof;

(c) A completed fingerprint card (FL921050Z) mailed to the Office of Financial Regulation, 200 East Gaines St., Tallahassee, Florida 32399-0376;

(d) A nonrefundable fingerprint card processing fee of \$43.25;

(e) A nonrefundable mortgage broker examination fee of \$43;

(f) Evidence that the applicant has completed the mortgage broker education requirements of subsection 494.0033(3), F.S.; and

(g) Evidence that the applicant has passed the mortgage broker examination as defined in Rule 69V-40.025, F.A.C.

(2) Request for Additional Information. Any request for additional information, including a passing score on the Mortgage Broker Examination, will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within ninety (90) days from the date of the request. Failure to respond within ninety (90) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to Section 120.60(1), F.S.

~~(3) Amendments to Pending Applications. If the information contained in an Application for Licensure as a Mortgage Broker or any amendment thereto becomes inaccurate for any reason the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR-494-03. An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within thirty (30) days from receipt of the application by the Office. Otherwise, the application may be amended only with prior written permission from the Office of Financial Regulation. The Office will grant permission to amend the application, unless the amendment constitutes a material change to the application. Requests to make changes which are material to the application will be deemed by the Office of Financial Regulation to be grounds for denial, and a new application, accompanied by the appropriate filing fee(s), will be required. A material change means a change to a response to the disclosure questions listed in section 10 on Form OFR-494-03.~~

~~(4) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.~~

~~(5) Refunds. If the application is withdrawn or denied, the application fee and fingerprint processing fee are nonrefundable.~~

~~(6) Upon approval of an application, a license will be issued for the remainder of the biennial licensure period.~~

~~(7) All applications, fees, data and forms required, except the fingerprint card, to be filed under this rule shall be filed electronically at www.flofr.com. An application and fees submitted electronically on the Office's website shall be considered received on the date the Office issues a confirmation of submission and payment to the applicant via the Office's website. A confirmation is issued by the Office upon successful submission of an application and payment of all fees.~~

~~(8) Any person may petition for waiver of the requirement of electronic submission of applications, fees, data and forms by filing a petition pursuant to Rule 28-106.301, Florida Administrative Code. Such petition shall demonstrate a technological or financial hardship that entitles the person to file the application, fees, data or form in a paper format.~~

~~(9) Form OFR-494-03 and Form FL921050Z are incorporated by reference in subsection 69V-40.002(1), F.A.C. Proposed Effective Date: October 1, 2010~~

Rulemaking Authority 215.405, 494.0011(2) FS. Law Implemented 120.60(1), 494.0033 FS. History—New 10-30-86, Amended 1-30-89, 5-23-89, 11-28-89, 10-1-91, 6-8-92, 6-3-93, 6-6-93, 4-25-94, 5-14-95, 9-3-95, 11-24-97, 8-22-99, 12-12-99, 12-11-03, Formerly 3D-40.031, Amended 5-24-05, 3-23-08, 12-25-08, 3-4-09, Repealed 10-1-10.

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

~~(1) General Procedure Regarding Law Enforcement Records. At the time of submitting a mortgage broker application, an applicant for a mortgage broker license shall disclose on the application form any pending criminal charges and all criminal matters in which the applicant has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of any crime. In addition, the applicant shall supply the Office with required documentation, as specified in this rule, relating to: 1) all criminal matters in which the applicant has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a class "A", "B", "C", or "D" crime as described in this rule, 2) any pending criminal charges relating to a class "A", "B", "C", or "D" crime as described in this rule, or 3) shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:~~

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

~~(b) A certified copy of the charges.~~

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

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

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

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

~~(a) The omission of any part of a law enforcement record required to be disclosed pursuant to subsection (1) is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 494.0041(2)(c), F.S.~~

~~(b) Notwithstanding paragraph (a), the Office shall not deny an application for failure to provide documentation listed in subsection (1) when the crime is not a class "A", "B", "C" or "D" crime and the applicant has disclosed the crime on the application form.~~

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

1. Suspension 12 months if, had the license application been accurate, the application would have been granted, based on the statutes and licensing rules applicable to the application at the time the Office issued the license, and the documentation in the applicant's file at the time the Office issued the license.

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

(3) Classification of Crimes.

(a) The Office makes a general classification of crimes into four classes: A, B, C, and D as listed in subsections (15), (16), (17), and (18) of this rule.

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

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

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

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

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

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

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

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

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

(5) Applicants With Multiple Crimes.

(a) The Office construes Section 494.0041, F.S., to require that an applicant whose law enforcement record includes multiple crimes wait longer than those whose law enforcement record includes only a single crime before becoming eligible for licensure in order to assure that such applicant's greater

inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before licensure can safely be granted. Accordingly, where the applicant has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

(c) Classification as "Single Crime" versus "Multiple Crimes." For purposes of this rule, two (2) or more offenses are considered a single crime if they are triable in the same court and are based on the same act or transaction or on two (2) or more connected acts or transactions. (b) The additional periods are added to the basic disqualifying period for the one most serious crime, and the combined total disqualifying period then runs from the trigger date of the most recent crime.

(6) Mitigating Factors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) ~~Effect of Restoration of Civil Rights.~~

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

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

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

(12) ~~Effect of Varying Terminology.~~

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

1. ~~Adjudicated guilty; convicted.~~

2. ~~Found guilty; entered a finding of guilt.~~

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

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

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

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

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

(13) ~~Imprisoned Persons and Community Supervision.~~

(a) ~~Imprisonment.~~ Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 494, F.S., while the applicant is imprisoned, under arrest, or serving a sentence for any crime. Further, the Office shall not license any applicant who has been released from imprisonment until the later of the period otherwise set out in these rules or five (5) years after the date of release. The Office finds it necessary that the person be released from

imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least five (5) years on good behavior, before licensure can be granted without undue risk to the public welfare.

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

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

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

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

(b) ~~Perjury.~~

(c) ~~Armed robbery.~~

(d) ~~Robbery.~~

(e) ~~Extortion.~~

(f) ~~Bribery.~~

(g) ~~Embezzlement.~~

(h) ~~Grand theft.~~

(i) ~~Larceny.~~

(j) ~~Burglary.~~

(k) ~~Breaking and entering.~~

(l) ~~Identity Theft.~~

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

(n) ~~Misuse of public office.~~

(o) ~~Racketeering.~~

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

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

(r) ~~Altering public documents.~~

(s) ~~Witness tampering.~~

(t) ~~Tax evasion.~~

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

(v) ~~Money laundering.~~

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

(a) ~~Murder in all degrees.~~

(b) ~~Arson.~~

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

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

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

(f) ~~Rape.~~

(g) ~~Sexually molesting any minor.~~

(h) ~~Sexual battery.~~

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

(j) ~~Kidnapping.~~

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

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

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

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

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

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

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011 FS. Law Implemented 112.011, 494.0033, 494.0041 FS. History—New 12-2-08, Repealed 10-1-10.

69V-40.0312 Application Procedure for Loan Originator license.

(1) Each individual desiring to obtain licensure as a loan originator shall apply to the Office of Financial Regulation by submitting the following:

(a) A completed Uniform Individual Mortgage License/Registration & Consent Form, MU4, filed through the Registry;

(b) The statutory nonrefundable application fee of \$195 filed through the Registry;

(c) The statutory nonrefundable mortgage guaranty fund assessment fee of \$20 filed through the Registry;

(d) Evidence that the applicant has been awarded a high school diploma or the equivalent;

(e) Confirmation from the Registry that the applicant has satisfied the requirement to complete a 20-hour pre-license class approved by the Registry.

(f) Confirmation from the Registry that the applicant has satisfied the requirement to pass a test developed by the Registry and administered by a provider approved by the Registry. For the purposes of this rule, a test developed by the Registry and administered by a provider approved by the Registry includes both a national component and a state component.

(g) Submit fingerprints to the Registry for submission to the Federal Bureau of Investigation for a federal criminal background check;

(h) Submit fingerprints to a live scan vendor approved by the Florida Department of Law Enforcement and published on the Florida Department of Law Enforcement's website(<http://www.fdle.state.fl.us/Content/getdoc/04833e12-3fc6-4c03-9993-379244e0da50/livescan.aspx>) for submission to the Florida Department of Law Enforcement for a state criminal background check. The cost of fingerprint processing shall be borne by the applicant and paid directly to the live scan vendor;

(i) Authorize the Registry to obtain and make available to the Office an independent credit report on the applicant.

(2) Request for Additional Information. Within 30 days of receipt the Office shall review each loan originator application and inform the applicant of any request for additional information required to complete its review. The additional information must be received by the Office within 120 days from the date of the request. Failure by the applicant to respond within 120 days from the date of the request shall be construed by the Office of Financial Regulation as grounds for denial for failure to provide the requested information.

(3) Amendments to Pending Applications. If the information contained in Form MU4 or any amendment thereto becomes inaccurate for any reason the applicant shall file an amendment through the Registry correcting such information within 15 days of the change. An amendment changing answers to question 9 on Form MU4 shall be considered a material change to the application and grounds for denial of the application.

(4) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office by filing such request through the Registry.

(5) Upon approval of an application, a loan originator license will be issued with an expiration date of December 31 for the year in which the license was issued. Any license granted from October 1, 2010 to December 31, 2010 expires on December 31, 2011.

(6) Uniform Individual Mortgage License/Registration & Consent Form, MU4, is incorporated by reference in Rule 69V-40.002, F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.00312(2) FS. Law Implemented 494.0011(2), 494.00312 FS. History—New 10-1-10.

69V-40.0313 Loan Originator License Renewal.

(1) In order to renew an active loan originator license a licensee must submit the following to the Office no later than December 31 of each calendar year in which the licensee wishes to renew the license:

(a) A completed renewal submission as required by the Registry submitted through the Registry.

(b) Submit a total payment of \$195.25 paid through the Registry which includes the following:

1. \$150 nonrefundable renewal fee;
2. \$20 nonrefundable mortgage broker guaranty fund fee, and
3. \$25.25 to cover further costs of criminal background check.

(c) Authorize the Registry to obtain and make available to the Office an independent credit report on the licensee.

(2) Request for Additional Information. The Office shall review each loan originator renewal request and inform the licensee of any request for additional information required to complete its review. The additional information must be received by the Office within 30 days from the date of the request. Failure by the licensee to respond within 30 days from the date of the request shall be construed by the Office of Financial Regulation as grounds for denial of the renewal request for failure to provide the requested information.

(3) Upon the Office determining that a renewal request has been completed the Office shall determine if the licensee continues to meet the minimum standards for licensure as set forth in Section 494.00312, F.S., and Rules 69V-40.0112 and 69V-40.0113, F.A.C. If a licensee continues to meet the minimum standards for licensure the Office shall renew the loan originator license which shall be valid until December 31 of the year following the expiration date of the loan originator license. If a licensee does not continue to meet the minimum standards for licensure the Office shall deny the renew request pursuant to Section 494.00313(2), F.S.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.00313 FS. Law Implemented 494.0011(2), 494.00313 FS. History—New 10-1-10.

69V-40.0321 Application Procedure for a Mortgage Broker license.

(1) Each person desiring to obtain licensure as a mortgage broker shall apply to the Office of Financial Regulation by submitting the following:

(a) A completed Uniform Mortgage Lender/Mortgage Broker Form, MU1, filed through the Registry;

(b) The statutory nonrefundable application fee of \$425 filed through the Registry;

(c) The statutory nonrefundable mortgage guaranty fund assessment fee of \$100 filed through the Registry;

(d) Designate a qualified principal loan originator who meets the requirements of Section 494.0035, F.S.;

(e) For each of the applicant's control persons, submit fingerprints to a live scan vendor approved by the Florida Department of Law Enforcement and published on the Florida Department of Law Enforcement's website (<http://www.fdle.state.fl.us/Content/getdoc/04833e12-3fc6-4c03-9993-379244e0da50/livescan.aspx>) for submission to the Florida Department of Law Enforcement and the Federal Bureau of Investigation for a state criminal background check and a Federal criminal background check. The cost of fingerprint processing shall be borne by the applicant and paid directly to the live scan vendor;

(f) For each of the applicant's control persons, authorize the Registry to obtain and make available to the Office an independent credit report;

(2) For the purposes of this rule, the requirements in paragraphs (1)(e) and (f) above are not required if the control person is currently licensed as a loan originator.

(3) Request for Additional Information. Within 30 days of receipt the Office shall review each mortgage broker application and inform the application of any request for additional information required to complete its review. The additional information must be received by the Office within 45 days from the date of the request. Failure by the applicant to respond within 45 days from the date of the request shall be construed by the Office of Financial Regulation as grounds for denial for failure to provide the requested information.

(4) Amendments to Pending Applications. If the information contained in the Form MU1 or any amendment thereto becomes inaccurate for any reason, the applicant shall file an amendment through the Registry correcting such information within 15 days of the change. An amendment changing answers to question 9 on the Form MU1 or question 8 on the Uniform Mortgage Biographical Statement & Consent Form, MU2, shall be considered a material change to the application and grounds for denial of the application.

(5) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office by filing such request through the Registry.

(6) Upon approval of an application, a mortgage broker license will be issued with an expiration date of December 31 for the year in which the license was issued. Any license granted from October 1, 2010 to December 31, 2010 expires on December 31, 2011.

(7) Uniform Mortgage Lender/Mortgage Broker Form, MU1, and Uniform Mortgage Biographical Statement & Consent Form, MU2, are incorporated by reference in Rule 69V-40.002, F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.00321(1) FS. Law Implemented 494.0011(2), 494.00321 FS. History—New 10-1-10.

69V-40.0322 Mortgage Broker License Renewal.

(1) In order to renew an active loan originator license a mortgage broker licensee must submit the following to the Office no later than December 31 of each calendar year in which the licensee wishes to renew the license:

(a) A completed renewal submission as required by the Registry submitted through the Registry.

(b) Submit a payment of \$475 through the Registry for the following:

1. \$375 nonrefundable renewal fee; and

2. \$100 nonrefundable mortgage broker guaranty fund fee.

(c) Submit \$25.25 to the Office for each control person listed on the licensee's Form MU1 to cover the further costs of criminal background check.

(d) Authorize the Registry to obtain and make available to the Office an independent credit report on each control person listed on the licensee's Form MU1.

(e) Submit a nonrefundable renewal fee of \$225 for each branch office license through the Registry at the time of renewing the mortgage broker license.

(2) For the purposes of this rule, the requirements in paragraphs (1)(c) and (d) above are not required if the control person is currently licensed as a loan originator and has filed through the Registry a renewal submission of the loan originator license.

(3) Request for additional information. The Office shall review each mortgage broker renewal request and inform the licensee of any request for additional information required to complete its review. The additional information must be received by the Office within 30 days from the date of the request. Failure by the licensee to respond within 30 days from the date of the request shall be construed by the Office as grounds for denial of the renewal request.

(4) Upon the Office determining that a renewal request has been completed the Office shall determine if the licensee continues to meet the minimum standards for licensure as set forth in Section 494.00321, F.S., and Rules 69V-40.0112 and 69V-40.0113, F.A.C. If a licensee continues to meet the minimum standards for licensure the Office shall renew the

mortgage broker license which shall be valid until December 31 of the year following the expiration date of the mortgage broker license. If a licensee does not continue to meet the minimum standards for licensure the Office shall deny the renewal request pursuant to Section 494.0322(2), F.S.

(5) Uniform Mortgage Lender/Mortgage Broker Form, MU1, is incorporated by reference in Rule 69V-40.002, F.A.C. Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.00322 FS. Law Implemented 494.0011(2), 494.00322 FS. History—New 10-1-10.

69V-40.033 Disciplinary Guidelines for Mortgage Business Schools.

Each permitted and accredited mortgage business school which violates any provision of Chapter 494, F.S., or which fails to achieve minimum standards in the accreditation process described in Rule 69V-40.030, F.A.C., shall be subject to the following disciplinary guidelines:

(1) Failure to achieve minimum standards of accreditation shall result in any of the following penalties:

- (a) Reprimand;
- (b) Suspension;
- (c) Revocation, and/or
- (d) Probation.

(2) The probation shall be for such period of time and subject to such conditions as the Office of Financial Regulation may specify.

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2), 494.0029 FS. Law Implemented 494.0029, 494.0041 FS. History—New 11-5-95, Amended 12-9-01, Formerly 3D-40.033, Repealed 10-1-10.

69V-40.0331 Declaration of Intent to Engage Solely in Loan Processing.

(1) A person who seeks to act solely as a loan processor shall:

- (a) Be licensed as a loan originator under Chapter 494, F.S., and must at all times thereafter remain licensed; and
- (b) Submit a completed Form OFR-494-13 (Declaration of Intent to Engage Solely in Loan Processing) to the Office.

(2) Form OFR-494-13 (Declaration of Intent to Engage Solely in Loan Processing) is incorporated by reference in Rule 69V-40.002, F.A.C.

(3) A person who currently has on file with the Office a Declaration of Intent to Engage Solely in Loan Processing may withdraw the declaration by filing Form OFR-494-13 (Declaration of Intent to Engage Solely in Loan Processing) indicating on the form the person's intent to withdraw the declaration.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.00331 FS. Law Implemented 494.00331 FS. History—New 10-1-10.

69V-40.036 Application Procedure for a Mortgage Broker Branch Office License.

(1) Each mortgage broker desiring to obtain a mortgage broker branch office license shall apply to the Office of Financial Regulation by submitting the following:

- (a) A completed Uniform Mortgage Branch Office Form, MU3, filed through the registry;
- (b) The statutory nonrefundable application fee of \$225 filed through the registry;

(2) Request for additional information. The Office shall review each mortgage broker branch office application and inform the licensee of any request for additional information required to complete its review. The additional information must be received by the Office within 45 days from the date of the request. Failure by the licensee to respond within 45 days from the date of the request shall be construed by the Office as grounds for denial of the renewal request.

(3) Uniform Mortgage Branch Office Form, MU3 is incorporated by reference in Rule 69V-40.002, F.A.C. Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0036(2) FS. Law Implemented 494.0011(2), 494.0036, FS. History—New 10-1-10.

69V-40.043 Mortgage Broker License Renewal and Reactivation.

(1) Each active mortgage broker license shall be renewed for the biennial period beginning September 1 of each odd numbered year upon submission of the statutory renewal fee required by Section 494.0034, F.S., certification of compliance with the continuing education requirements of Section 494.00295, F.S., and a completed renewal form, Form OFR 494-07, Mortgage Broker License Renewal and Reactivation Form.

(2) A mortgage broker license that is not renewed as required in subsection (1) prior to September 1 of the renewal year shall revert from active to inactive status. An inactive license may be reactivated within two (2) years after becoming inactive upon payment of the statutory renewal and reactivation fees required by Section 494.0034, F.S., certification of compliance with the continuing education requirements of Section 494.00295, F.S., and submission of a completed reactivation form. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.

(3) A mortgage broker license that is not renewed within two (2) years after becoming inactive shall expire.

(4) The Office of Financial Regulation shall not renew or reactivate a mortgage broker license if the minimum continuing education requirements are not satisfied prior to the renewal or reactivation.

(5) The licensee is responsible for maintaining copies of the certificate of completion for all continuing education courses completed and shall supply them to the Office of Financial Regulation upon request.

(6) All applications, fees, data and forms required to be filed under this rule shall be filed electronically at www.flofr.com.

(7) Any person may petition for waiver of the requirement of electronic submission of applications, fees, data and forms by filing a petition pursuant to Rule 28-106.301, F.A.C. Such petition shall demonstrate a technological or financial hardship that entitles the person to file the application, fees, data or form in a paper format. If the payment is received in a paper format, the received date shall be the date stamped on the payment when received by the Department of Financial Services' Cashier's Office in Tallahassee, Florida.

(8) A renewal fee filed electronically on the Office's website shall be considered received on the date the Office issues a confirmation of payment to the licensee via the Office's website. A confirmation is issued by the Office upon successful submission of your renewal payment.

(9) Form OFR 494 07 is incorporated by reference in subsection 69V 40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0034(2) FS. Law Implemented 494.001(3), 494.00295, 494.00331(1), 494.0034 FS. History—New 11-2-86, Amended 6-23-91, 11-12-91, 9-3-95, 12-12-99, 2-5-01, 12-9-01, Formerly 3D-40.043, Amended 3-23-08, Repealed 10-1-10.

69V-40.051 Application Procedure for Mortgage Brokerage Business License.

(1) Each person desiring to obtain licensure as a mortgage brokerage business shall apply to the Office of Financial Regulation by submitting the following:

(a) A completed Application for Mortgage Brokerage Business and Lender License, Form OFR 494 01;

(b) The statutory, nonrefundable application fee required by Section 494.0031, F.S., which shall be the fee for the biennial period beginning September 1 of each even-numbered year or any part thereof.

(c) Evidence that the applicant's designated principal broker has been actively licensed as a mortgage broker pursuant to Section 494.0033, F.S., for at least one year, or has demonstrated to the satisfaction of the Office of Financial Regulation that the designated principal broker has been actively engaged in a mortgage-related business for at least one year.

(d) For the purpose of this rule, examples of "actively engaged in a mortgage-related business" shall include, but are not limited to, the following positions that are engaged in the origination, underwriting, closing, and servicing of mortgage loans: loan originator, loan underwriter, officer, or director of a

mortgage lender or correspondent mortgage lender; mortgage loan officer of a financial institution; mortgage broker in another state; loan closer for a title insurance company or agency; loan representative, loan underwriter, officer, or director of a private mortgage insurance company; and regulator that is directly responsible for the examination, investigation, or regulation of mortgage companies from this state, another state, or a federal government agency.

(2) Each ultimate equitable owner of 10% or greater interest, each chief executive officer, each chief financial officer, chief operations officer, chief legal officer, chief compliance officer, control person, member, partner, joint venturer, and each director of an entity applying for licensure as a mortgage brokerage business, shall submit a completed fingerprint card (FL921050Z) and Biographical Summary from Form OFR 494 01, to the Office of Financial Regulation along with a \$43.25 nonrefundable processing fee.

(a) If any ultimate equitable owner of 10% or greater interest, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, director, control person, member, partner, joint venturer, of the applicant holds an active mortgage broker's license with the Office of Financial Regulation, they are exempt from the provisions of subsection (2).

(b) If an entity holds an active license under Chapter 494, F.S., with the Office of Financial Regulation, it is exempt from the provisions of subsection (2) when it applies for a different type of license under Chapter 494, F.S., unless there has been a change of control of 25% or more of the ownership interest or in controlling interest since the time its initial license was approved by the Office of Financial Regulation.

(c) Any claim to any of the above exemptions shall be supported by attaching evidence of the exemption with the application for license.

(3) Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within forty five (45) days from the date of the request. Failure to respond to the request within forty five (45) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to Section 120.60(1), F.S.

(4) Amendments to Pending Applications. If the information contained in an Application for Licensure as a Mortgage Brokerage Business or in any amendment thereto becomes inaccurate for any reason, the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR 494 01. An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any

time within thirty (30) days from receipt of the application by the Office. Otherwise, the application may be amended only with prior written permission from the Office of Financial Regulation. The Office will grant permission to amend the application, unless the amendment constitutes a material change to the application. Requests to make changes which are material to the application will be deemed by the Office of Financial Regulation to be grounds for denial, and a new application, accompanied by the appropriate filing fee, will be required. Material changes include:

(a) A change to a response to the disclosure questions listed in section 8 on Form OFR 494 01,

(b) A change to disclosure questions listed in section 3 on the biographical summary on Form OFR 494 01, or

(c) The substitution or addition of an ultimate equitable owner of 10% or greater interest, a chief executive officer, a chief financial officer, a chief operations officer, a chief legal officer, a chief compliance officer, a control person, a member, a partner, a joint venturer, or principal broker.

(5) ~~Withdrawal of Application.~~ An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.

(6) ~~Refunds.~~ If the application is withdrawn or denied, the all fees are nonrefundable.

(7) ~~Upon approval of an application, a license will be issued for the remainder of the biennial licensure period.~~

(8) ~~Form OFR 494 01 and Form FL921050Z are incorporated by reference in subsection 69V 40.002(1), F.A.C. Proposed Effective Date: October 1, 2010~~

Rulemaking Authority 215.405, 494.0011(2), 494.0031(2) FS. Law Implemented 494.0031, 494.0035, 494.004(6), 943.053 FS. History—New 10-30-86, Amended 1-30-89, 11-28-89, 10-1-91, 6-6-93, 5-14-95, 7-14-96, 11-24-97, 8-22-99, 12-12-99, 12-9-01, 12-11-03, Formerly 3D-40.051, Amended 3-23-08, 12-25-08, Repealed 10-1-10.

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

~~(1) General Procedure Regarding Law Enforcement Records. For purposes of this rule each officer, director, control person, member, partner, or joint venturer of a Mortgage Brokerage Business License applicant, and each ultimate equitable owner with a 10 percent or greater interest in the applicant shall be referred to collectively as "relevant persons." If the applicant is a natural person, he or she is a relevant person under this rule. At the time of submitting a Mortgage Brokerage Business Application, the applicant shall disclose on the application form any pending criminal charges and all criminal matters in which a relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of any crime.~~

In addition, the applicant shall supply the Office with required documentation for each relevant person, as specified in this rule, relating to: 1) all criminal matters in which the relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a class "A", "B", or "C" crime as described in this rule, 2) any pending criminal charges for a relevant person relating to a class "A", "B", or "C" crime as described in this rule, or 3) shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:

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

(b) A certified copy of the charges.

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

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

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

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

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

(b) ~~Notwithstanding paragraph (a), the Office shall not deny an application for failure to provide documentation listed in subsection (1) when the crime is not a class "A", "B", or "C" crime and the applicant has disclosed the crime on the application form.~~

(c) ~~If the Office discovers the applicant's failure to disclose after a license has been granted, the Office will suspend or revoke each license currently held by the applicant as follows:~~

1. ~~Suspension 12 months if, had the license application been accurate, the application would have been granted, based on the statutes and licensing rules applicable to the application at the time the Office issued the license, and the documentation in the applicant's file at the time the Office issued the license.~~

2. ~~Revocation if, had the license application been accurate, the application would have been denied, based on the statutes and licensing rules applicable to the application at the time the Office issued the license.~~

~~(3) Classification of Crimes.~~

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

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

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

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

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

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

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

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

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

~~(5) Relevant Persons With Multiple Crimes.~~

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

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

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

~~(6) Mitigating Factors.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Effect of Restoration of Civil Rights.

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

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

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

(12) Effect of Varying Terminology.

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

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

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

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

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

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

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

(13) Imprisoned Persons and Community Supervision.

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

(b) Community Supervision. The Office shall not grant licensure to any person who at the time of application or at any time during the pendency of the application is serving term on community supervision for any felony crime, or any

misdemeanor crime involving fraud, dishonest dealing, or moral turpitude. The Office shall not substantively consider an application until the applicant has successfully completed his or her probationary term.

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

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

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

(b) ~~Perjury.~~

(c) ~~Armed robbery.~~

(d) ~~Robbery.~~

(e) ~~Extortion.~~

(f) ~~Bribery.~~

(g) ~~Embezzlement.~~

(h) ~~Grand theft.~~

(i) ~~Larceny.~~

(j) ~~Burglary.~~

(k) ~~Breaking and entering.~~

(l) ~~Identity Theft.~~

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

(n) ~~Misuse of public office.~~

(o) ~~Racketeering.~~

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

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

(r) ~~Altering public documents.~~

(s) ~~Witness tampering.~~

(t) ~~Tax evasion.~~

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

(v) ~~Money laundering.~~

(w) ~~Murder in all degrees.~~

(x) ~~Arson.~~

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

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

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

(bb) ~~Rape.~~

(cc) ~~Sexually molesting any minor.~~

(dd) ~~Sexual battery.~~

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

(ff) ~~Kidnapping.~~

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

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

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

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

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

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

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011 FS. Law Implemented 112.011, 494.0031, 494.0041 FS. History—New 12-2-08, Repealed 10-1-10.

69V-40.053 Mortgage Brokerage Business License and Branch Office License Renewal and Reactivation.

(1) ~~Each active mortgage brokerage business license shall be renewed for the biennial period beginning September 1 of each even numbered year upon submission of the statutory renewal fee required by Section 494.0032, F.S.~~

(2) ~~A mortgage brokerage business license that is not renewed as required in subsection (1) prior to September 1 of the renewal year shall revert from active to inactive status. An inactive license may be renewed within six (6) months after becoming inactive upon payment of the statutory renewal and reactivation fees required by Section 494.0032, F.S. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.~~

(3) ~~Each active mortgage brokerage business branch office license shall be renewed in conjunction with the mortgage brokerage business license renewal upon submission of the statutory renewal fee required by Section 494.0032, F.S.~~

(4) ~~A mortgage brokerage business branch office license that is not renewed as required in subsection (3) prior to September 1 of the renewal year shall revert from active to inactive status. An inactive branch office license may be~~

renewed within six (6) months after becoming inactive upon payment of the statutory renewal and reactivation fees required by Section 494.0032, F.S. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.

(5) A mortgage brokerage business license and branch office license that is not renewed within six months after the end of the biennial period automatically expires.

(6) A renewal fee filed electronically on the Office's website shall be considered received on the date the Office issues a confirmation of payment to the licensee via the Office's website. A confirmation is issued by the Office upon successful submission of your renewal payment.

(7) All applications, fees, data and forms required to be filed under this rule shall be filed electronically at www.flofr.com.

(8) Any person may petition for waiver of the requirement of electronic submission of applications, fees, data and forms by filing a petition pursuant to Rule 28-106.301, F.A.C. Such petition shall demonstrate a technological or financial hardship that entitles the person to file the application, fees, data or form in a paper format. In the event the renewal payment is received in a paper format, the received date shall be the date stamped on the payment when received by the Department of Financial Services' Cashier's Office in Tallahassee, Florida.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0032(2), 494.0036(2) FS. Law Implemented 494.001(7), 494.0011(2), 494.0031(1), 494.0032, 494.0036 FS. History—New 11-2-86, Amended 2-8-90, 10-1-91, 12-12-99, 11-1-00, 2-5-01, Formerly 3D-40.053, Amended 3-23-08, Repealed 10-1-10.

69V-40.058 Application Procedure for Mortgage Brokerage Business Branch Office License.

(1) Every mortgage brokerage business which conducts mortgage brokerage business in this state from a branch office shall apply to the Office of Financial Regulation for a license to operate a branch office by submitting the following:

(a) A completed Application for Branch Office License, Form OFR 494-02;

(b) The statutory, nonrefundable license fee required by Section 494.0036, F.S., which shall be the fee for the biennial period beginning September 1 of each even-numbered year or any part thereof.

(2) Any office or location shall be deemed to be a branch office if it meets the definition in subsection 494.001(7), F.S.

(3) Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within forty five (45) days from the date

of the request. Failure to respond to the request within forty five (45) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to Section 120.60(1), F.S.

(4) Amendments to Pending Applications. If the information contained in an Application for Mortgage Brokerage Business Branch Office License or in any amendment thereto becomes inaccurate for any reason, the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR 494-02. An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within thirty (30) days from receipt of the application by the Office. Otherwise, the application may be amended only with prior written permission from the Office of Financial Regulation.

(5) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.

(6) Refunds. If the application is withdrawn or denied, all fees are nonrefundable.

(7) Upon approval of an application, a license will be issued for the remainder of the biennial licensure period.

(8) Form OFR 494-02 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0036(2) FS. Law Implemented 494.0036 FS. History—New 10-1-91, Amended 6-6-93, 5-14-95, 8-22-99, 12-12-99, Formerly 3D-40.058, Amended 3-23-08, Repealed 10-1-10.

69V-40.060 Fees Earned Upon Obtaining a Bona Fide Commitment.

Any consumer that would like to file a complaint with the Office of Financial Regulation as a result of any provision of Section 494.00421, F.S., not being met, may contact the Office of Financial Regulation by calling (800)848-3792 or any of the Office of Financial Regulation's regional offices.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.00421(7) FS. Law Implemented 120.695, 494.0031, 494.00421, 494.0073 FS. History—New 7-25-96, Formerly 3D-40.060, Repealed 10-1-10.

69V-40.0611 Application Procedure for a Mortgage Lender License.

(1) Each person desiring to obtain licensure as a mortgage lender shall apply to the Office by submitting the following:

(a) A completed Uniform Mortgage Lender/Mortgage Broker Form, MU1, filed through the Registry;

(b) The statutory nonrefundable application fee of \$500 filed through the Registry;

(c) The statutory nonrefundable mortgage guaranty fund assessment fee of \$100 filed through the Registry;

(d) Designate a qualified principal loan originator who meets the requirements of Section 494.0035, F.S.;

(e) For each of the applicant's control persons, submit fingerprints to a live scan vendor approved by the Florida Department of Law Enforcement and published on the Florida Department of Law Enforcement's website (<http://www.fdle.state.fl.us/Content/getdoc/04833e12-3fc6-4c03-9993-379244e0da50/livescan.aspx>) for submission to the Florida Department of Law Enforcement and the Federal Bureau of Investigation for a state criminal background check and a Federal criminal background check. The cost of fingerprint processing shall be borne by the applicant and paid directly to the live scan vendor;

(f) For each of the applicant's control persons, authorize the Registry to obtain and make available to the Office an independent credit report;

(g) Submit a copy of the applicant's financial audit report in compliance with Section 494.00611(2)(f), F.S.

(2) Request for Additional Information. Within 30 days of receipt the Office shall review each mortgage lender application and inform the application of any request for additional information required to complete its review. The additional information must be received by the Office within 45 days from the date of the request. Failure by the applicant to respond within 45 days from the date of the request shall be construed by the Office of Financial Regulation as grounds for denial for failure to provide the requested information.

(3) Amendments to Pending Applications. If the information contained in Form MU1 or any amendment thereto becomes inaccurate for any reason the applicant shall file an amendment through the Registry correcting such information within 15 days of the change. An amendment changing answers to question 9 on the Form MU1 or question 8 on Uniform Mortgage Biographical Statement & Consent Form, MU2, shall be considered a material change to the application and grounds for denial of the application.

(4) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office by filing such request through the Registry.

(5) Upon approval of an application, a mortgage lender license will be issued with an expiration date of December 31 for the year in which the license was issued. Any license granted from October 1, 2010 to December 31, 2010 expires on December 31, 2011.

(6) Uniform Mortgage Lender/Mortgage Broker Form, MU1, and Uniform Mortgage Biographical Statement & Consent Form, MU2, are incorporated by reference in Rule 69V-40.002, F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011, 494.00611(2) FS. Law Implemented 494.0011(2), 494.00611 FS. History--New 10-1-10.

69V-40.0612 Mortgage Lender License Renewal.

(1) In order to renew an active mortgage lender license a mortgage lender licensee must submit the following to the Office no later than December 31 of each calendar year in which the licensee wishes to renew the license:

(a) A completed renewal submission as required by the Registry submitted through the Registry.

(b) Submit a payment of \$575 through the Registry for the following:

1. \$475 nonrefundable renewal fee; and

2. \$100 nonrefundable mortgage broker guaranty fund fee.

(c) Submit \$25.25 to the Office for each control person listed on the licensee's Form MU1 to cover the further costs of a criminal background check.

(d) Authorize the Registry to obtain and make available to the Office an independent credit report on each control person listed on the licensee's Form MU1.

(e) Submit a nonrefundable renewal fee of \$225 for each branch office license through the Registry at the time of renewing the mortgage lender license.

(2) For the purposes of this rule, the requirements in paragraphs (1)(c) and (d) above are not required if the control person is currently licensed as a loan originator and has filed through the Registry a renewal submission of the loan originator license.

(3) Request for additional information. The Office shall review each mortgage lender renewal request and inform the licensee of any request for additional information required to complete its review. The additional information must be received by the Office within 30 days from the date of the request. Failure by the licensee to respond 30 days from the date of the request shall be construed by the Office as grounds for denial of the renewal request.

(4) Upon the Office determining that a renewal request has been completed the Office shall determine if the licensee continues to meet the minimum standards for licensure as set forth in Section 494.00611, F.S., and Rules 69V-40.0112 and 69V-40.0113, F.A.C. If a licensee continues to meet the minimum standards for licensure the Office shall renew the mortgage broker license which shall be valid until December 31 of the year following the expiration date of the mortgage broker license. If a licensee does not continue to meet the minimum standards for licensure the Office shall deny the renewal request pursuant to Section 494.0612(2), F.S.

(5) Uniform Mortgage Lender/Mortgage Broker Form, MU1, is incorporated by reference in Rule 69V-40.002, F.A.C. Proposed Effective Date: October 1, 2010.

Rulemaking Authority 494.0011(2), 494.00612 FS. Law Implemented 494.0011(2), 494.00612 FS. History--New 10-1-10.

69V-40.066 Application procedure for a Mortgage Lender Branch Office License.

(1) Each mortgage lender desiring to obtain a mortgage lender branch office license shall apply to the Office of Financial Regulation by submitting the following:

(a) A completed Uniform Mortgage Branch Office Form, MU3, filed through the Registry;

(b) The statutory nonrefundable application fee of \$225 filed through the Registry;

(2) Request for additional information. The Office shall review each mortgage lender branch office application and inform the licensee of any request for additional information required to complete its review. The additional information must be received by the Office within 45 days from the date of the request. Failure by the licensee to respond within 45 days from the date of the request shall be construed by the Office as grounds for denial of the renewal request.

(3) Uniform Mortgage Branch Office Form, MU3, is incorporated by reference in Rule 69V-40.002, F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0066 FS. Law Implemented 494.0011(2), 494.0066 FS. History--New 10-1-10.

69V-40.088 Referrals.

(1) Any person who, for compensation or gain or in the expectation of compensation or gain, refers a borrower to a mortgage brokerage business, mortgage lender or correspondent mortgage lender is deemed to be acting as a mortgage broker requiring licensure pursuant to Chapter 494, Florida Statutes. The referring person shall enter into a written mortgage brokerage business agreement with the borrower as required by Section 494.0038, F.S. If the fee to be paid to the referring person is solely for making the referral, the mortgage brokerage business agreement shall clearly and explicitly state that the fee is being earned solely for making the referral.

(2)(a) A person acting as a mortgage brokerage business shall not assign a written mortgage brokerage business agreement to another person acting as a mortgage brokerage business, mortgage lender acting as a mortgage brokerage business or correspondent mortgage lender acting as a mortgage brokerage business unless the assignment is agreed to in writing by the borrower. The agreement to accept the assignment shall be segregated from other provisions of the written mortgage brokerage business agreement and shall include the name of the assignee. This agreement shall require the signature of the borrower apart from the borrower's original signature for entering into the mortgage brokerage business agreement.

(b) As an alternative to paragraph (2)(a) herein, the borrower may enter into a separate mortgage brokerage business agreement with the successor mortgage brokerage business, mortgage lender or correspondent mortgage lender. The separate mortgage brokerage business agreement shall

identify the amount of fees to be earned by each mortgage brokerage business as compensation for acting as a mortgage broker in the mortgage brokerage transaction involved.

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2) FS. Law Implemented 494.001(2), 494.0038, 494.0041(2)(b) FS. History--New 1-10-93, Formerly 3D-40.088, Repealed 10-1-10.

69V-40.099 Amendments, Change of Name, Change of Entity and Change in Control or Ownership.

(1) Each person licensed as a loan originator, mortgage broker, or mortgage lender mortgage broker, mortgage brokerage business, mortgage lender, correspondent mortgage lender, or permitted mortgage business school which proposes to change its name, form of business organization, or any other information contained in any initial application form or any amendment thereto, must file an amendment through the Registry pursuant to Sections 494.004 494.004(6) and 494.0067 494.0067(4), F.S., not later than 30 thirty-days (30) after the effective date of the change, on Form OFR 494-01 for Mortgage Brokerage Businesses and Lenders, Form OFR 494-02 for Branch Offices, Form OFR 494-03 for Mortgage Brokers, and Form OFR 494-04 for Mortgage Business Schools. Any licensee pursuant to Section 494.0061 or 494.0062, F.S., shall additionally provide a completed surety bond, on Form OFR 494-05, Mortgage Brokerage and Mortgage Lending Act Surety Bond, executed in the new name of the licensee as documented by the requirements of this subsection. Name changes pursuant to this subsection shall not involve any change in controlling interest of the licensed entity.

(2) Each licensed mortgage broker mortgage brokerage business, or mortgage lender, or correspondent mortgage lender which proposes to change any of the control persons listed on the initial application or amendment thereto personnel described in Sections 494.004 and 494.0067, F.S., listed in any initial application form or any amendment thereto must file an amendment through the Registry not later than 30 thirty-days (30) prior to the effective date of the change or within 2 two (2) business days after the date the licensee first received notice of the change, on Form OFR 494-01 for Mortgage Brokerage Businesses and Lenders. In the event an amendment filed pursuant to this rule the change in personnel in Sections 494.004 and 494.0067, F.S., listed in any initial application or any amendment thereto results in the addition of new control person not previously disclosed on the license anyone referenced in this subsection, such persons must comply with Sections 494.0031(2)(e) and (d), 494.0061(2)(g) and (h), 494.0062(2)(g) and (h), or 494.0065(5)(e) and (f), F.S. unless such person is subject to the fingerprinting and credit report requirements required in Sections 494.00321 and 494.00611, F.S., unless the new control person is currently licensed as a loan originator at the time the amendment is filed through the

Registry, has previously complied with an entity currently licensed under this chapter and the person is currently affiliated with such entity.

(3) Applications for licensure as a mortgage brokerage business, mortgage lender or correspondent mortgage lender required as a result of an acquisition of a controlling interest in a licensee pursuant to Section 494.004(6) and 494.0067(4), F.S., must be filed in a timely manner as to allow the Office to complete its review of the application prior to the effective date of the acquisition, but no later than thirty (30) days prior to the date of such acquisition. Such applications must be filed in accordance with Section 494.0031, 494.0061, or 494.0062, F.S.

(4) Any person who is subjected to the requirements of subsection (2) or (3) herein, and who seeks to own, control, or hold power to vote of a mortgage lender licensed pursuant to the Saving Clause, Section 494.0065, F.S., is subjected to the net worth requirements as specified in subsection 494.0065(1)(a)2., F.S., when reapplying for licensure as required in subsections (2) and (3) above. An application for licensure under this subsection shall be submitted in accordance with Rule 69V-40.100, F.A.C.

(5) The office shall waive the requirement for a licensee to file a new application pursuant to Sections 494.004(6) and 494.0067(4), F.S.:

(a) When a person or group of persons proposing to purchase or acquire a controlling interest in a licensee has previously filed the information with the Office required in Sections 494.0031(2)(c) and (d), 494.0061(2)(g) and (h), 494.0062(2)(g) and (h), or 494.0065(5)(e) and (f), F.S., with a mortgage brokerage business or lender currently licensed to the office, provided that such person is currently affiliated with the mortgage brokerage business or lender licensee; or

(b) When the acquirer is currently licensed with the office as a mortgage broker, mortgage brokerage business or lender.

(6) If the requirement to file a new application for a change in controlling interest is waived pursuant to subsection (5) of this rule, the licensee must file an amendment as prescribed in subsection (2) of this rule to report the change in controlling interest.

(7) ~~Form OFR 494 01, Form OFR 494 02, Form OFR 494 03, Form OFR 494 04, and Form OFR 494 05 are incorporated by reference in subsection 69V 40.002(1), F.A.C.~~ Amendments required to be filed pursuant to this rule must be accomplished by filing an amendment through the Registry and on same uniform forms required for initial licensure. Only those amendments filed through the Registry will be considered compliant with this rule. Upon filing an amendment pursuant to this rule the Office shall evaluate the licensee to determine if it continues to meet the minimum standards for licensure. The Office may take administrative action in

accordance with Section 494.00255, F.S., if the Office determines the licensee no longer meets the minimum standards for licensure.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), ~~494.004(1), 494.0067~~ FS. Law Implemented ~~494.0011(2), 494.00312, 494.00313, 494.00321, 494.00322, 44.0036, 494.00611, 494.00612, 494.0066, 494.0067 494.0029(1)(d), 494.0031, 494.0061, 494.0062, 494.0065~~ FS. History—New 1-10-93, Amended 5-14-95, 9-3-95, 12-12-99, 11-1-00, Formerly 3D-40.099, Amended 3-23-08, 10-1-10.

69V-40.100 Application Procedure for Transfer in Ownership or Control of Saving Clause Mortgage Lender.

(1) Each person who seeks to obtain a controlling ownership or voting interest in a mortgage lender licensed pursuant to the saving clause shall apply to the Office of Financial Regulation by submitting the following:

(a) A completed Application for Mortgage Brokerage Business and Lender License, Form OFR 494 01;

(b) A nonrefundable application fee of \$500, which shall be the fee for the biennial period beginning September 1 of each even-numbered year or any part thereof;

(c) A nonrefundable mortgage broker examination fee of \$43 for the designated principal representative if required to take the mortgage broker examination pursuant to Section 494.0065(4)(e)2., F.S.;

(d) Audited financial statements documenting a minimum net worth of \$25,000 as of the applicant's most recent fiscal year end. If the application is submitted within three (3) months of the most recent fiscal year end and an audited statement from the most recent fiscal year is not available, then an audited statement from the previous fiscal year end is acceptable.

(e) Designate a principal representative who shall operate and exercise control over the licensee's business. Each mortgage lender applicant pursuant to the saving clause transfer shall include as part of the application a statement that the principal representative will operate and exercise control over the business as defined in subsection 69V 40.001(11), F.A.C.

(2) Each ultimate equitable owner of 10% or greater interest, principal representative, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, director, control person, member, partner, or joint venturer of an entity applying for licensure as a mortgage lender licensed pursuant to the savings clause, shall submit a completed fingerprint card (FL921050Z) and Biographical Summary from Form OFR 494 01, to the Office of Financial Regulation along with a \$43.25 nonrefundable processing fee.

(a) If the individual owner, director, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, principal representative, control person, member, partner, or joint venturer holds an

active mortgage broker's license with the Office of Financial Regulation, he or she is exempt from the provisions of subsection (2).

(b) If an entity holds an active license under Chapter 494, F.S., with the Office of Financial Regulation, it is exempt from the provisions of subsection (2) when it applies for a different type of license under Chapter 494, F.S., unless there has been a change of control of 25% or more of the ownership or in controlling interest since the time its initial license was approved by the Office of Financial Regulation.

(c) Any claim to any of the above exemptions shall be supported by attaching evidence of the exemption with the application for license.

~~(3) Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within ninety (90) days from the date of the request. Failure to respond to the request within ninety (90) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to subsection 120.60(1), F.S.~~

~~(4) Amendments to Pending Applications. If the information contained in any application for a license for a Saving Clause Mortgage Lender or in any amendment thereto, becomes inaccurate for any reason, the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR 494 01. An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within thirty (30) days from receipt of the application by the Office. Otherwise, the application may be amended only with prior written permission from the Office. The Office will grant permission to amend the application, unless the amendment constitutes a material change to the application. Requests to make changes which are material to the application will be deemed by the Office to be grounds for denial and a new application, accompanied by the appropriate filing fees, will be required. Material changes include:~~

~~(a) A change to a response to the disclosure questions listed in section 8 on Form OFR 494 01.~~

~~(b) A change to disclosure questions listed in section 3 on the biographical summary on Form OFR 494 01.~~

~~(c) The substitution or addition of an ultimate equitable owner of 10% or greater interest, a chief executive officer, a chief financial officer, a chief operations officer, a chief legal officer, a chief compliance officer, a control person, a member, a partner, a joint venturer, or principal representative.~~

~~(d) A change to the applicant's net worth.~~

(5) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.

(6) Refunds. If the application is withdrawn or denied, all fees are nonrefundable.

~~(7) Form OFR 494 01 and Form FL921050Z are incorporated by reference in subsection 69V-40.002(1), F.A.C. Proposed Effective Date: October 1, 2010~~

Rulemaking Authority 494.0011(2), 494.0065(3) FS. Law Implemented 120.60, 494.001(30), 494.0061(1), (3), (8), 494.0065, 494.0067(3), (4) FS. History—New 8-24-93, Amended 9-3-95, 8-22-99, 12-12-99, 12-9-01, 12-8-02, 12-11-03, Formerly 3D-40.100, Amended 3-23-08, 12-25-08, 3-4-09, Repealed 10-1-10.

69V-40.105 Branch Office License for Transfer in Ownership or Control of Saving Clause Mortgage Lender.

(1) Each person applying for a transfer in ownership or control of a saving clause mortgage lender, who also wishes to operate branch offices of that saving clause mortgage lender shall apply to the Office of Financial Regulation for a license to operate each branch office by submitting the following:

(a) A completed Application for Branch Office License. Form OFR 494 02.

(b) The statutory, nonrefundable license fee required by Section 494.0066, F.S., which shall be the fee for the biennial period beginning September 1 of each even-numbered year or any part thereof.

(2) Any office or location shall be deemed to be a branch office if it meets the definition in subsection 494.001(7), F.S.

~~(3) Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within forty five (45) days from the date of the request. Failure to respond to the request within forty five (45) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to Section 120.60(1), F.S.~~

~~(4) Amendments to Pending Applications. If the information contained in any application for a license for a branch office of a Savings Clause Mortgage Lender or any amendment thereto, becomes inaccurate for any reason, the application shall file an amendment correcting such information within thirty (30) days of the change on Form OFR 494 02. An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within (30)~~

days from receipt of the application by the Office. Otherwise the application may be amended only with prior written permission from the Office of Financial Regulation.

~~(5) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.~~

~~(6) Refunds. If the application is withdrawn or denied, the application fee is nonrefundable.~~

~~(7) Upon approval of an application, a license will be issued for the remainder of the biennial period.~~

~~(8) Form OFR 494 02 is incorporated by reference in subsection 69V 40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0065, 494.0066 FS. History—New 8-24-93, Amended 9-3-95, 8-22-99, 12-12-99, Formerly 3D-40.105, Amended 3-23-08, Repealed 10-1-10.

69V-40.155 Lock-in Statement.

A lock-in agreement which includes applicable information as required by Section ~~subsections~~ 494.0069(1)(a)-(e), F.S., and the following statement meets the requirement of Section ~~subsection~~ 494.0069(1)(f), F.S.

(1) Florida law requires that the lender shall make a good faith effort to process the mortgage loan application and stand ready to fulfill the terms of its lock-in agreement before the expiration date of the lock-in agreement or any extension thereof.

(2) Any lock-in agreement received by the lender by mail or through a mortgage broker must be signed by the lender in order to become effective. The borrower may rescind any lock-in agreement until a written confirmation of the agreement has been signed by the lender and mailed to the borrower or to the mortgage broker ~~brokerage business~~ pursuant to its contractual relationship with the borrower. If a borrower elects to so rescind, the lender shall promptly refund any lock-in fee paid.

(3) If the loan does not close before the expiration date of the lock-in agreement through no substantial fault of the borrower, the borrower may withdraw the application, whereupon the lender shall promptly refund to the borrower any lock-in fee paid by the borrower.

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2), 494.0069(6) FS. Law Implemented 494.0069(1)(f) FS. History—New 12-3-91, Formerly 3D-40.155, Amended 10-1-10.

69V-40.156 Third-party Fee Accounts.

(1) All third-party fees and refundable application fees received by a mortgage broker ~~brokerage business~~ shall immediately be deposited in a segregated account in a federally

insured financial institution located in Florida. The account shall be in the name of the mortgage broker ~~brokerage business~~ and shall provide for withdrawal of funds without notice. The account shall be used exclusively for third-party fees and refundable application fees. The licensee shall maintain an updated and accurate record of account activity on Form OFR-494-09, Mortgage Brokerage Deposit Account Form or on a format which is substantially similar to Form OFR-494-09.

(2) For the purposes of this rule “immediately” means within 7 ~~seven (7)~~ business days of receipt of the funds.

(3) The administrative penalty for the failure to comply with this rule shall be \$500. Incidental and isolated clerical errors or omissions shall not be considered a violation of this rule. For the purposes of this rule “isolated clerical errors or omissions” shall mean less than three (3), or a percentage less than 20% of the deposit entries examined or reviewed. The penalty for intentional or repeat violations of this rule shall be a \$500 fine and suspension or revocation.

(4) For the purposes of this rule, failure to maintain an escrow account is a violation of this rule. Failure to maintain a record of account activity in a current manner is a violation of this rule. Failure to make immediate deposits as required is a violation of this rule. Each of the above shall be considered separate violations with each subject to the penalties provided therein.

(5) For the purposes of Section 120.695, F.S., a violation of the above rule shall not be considered a minor violation.

(6) Form OFR-494-09 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority ~~494.0011(2)~~, 494.0016(4) FS. Law Implemented 120.695, ~~494.00255(1)(a)~~, 494.0038, 494.0068 ~~494.0038(5)~~, ~~494.0041(2)(e)~~, 494.0068(3), ~~494.0072(2)(e)~~ FS. History—New 12-3-91, Amended 7-25-96, 12-12-99, Formerly 3D-40.156, Amended 3-23-08, 10-1-10.

69V-40.160 Principal Brokers.

~~(1) Each mortgage brokerage business shall designate a licensed mortgage broker as the principal broker and the individual designated shall accept responsibility by completing the Principal Broker/Representative Designation section of Form OFR 494 01.~~

~~(2) Upon any change of principal broker, the licensee and the newly designated principal broker shall amend the Principal Broker/Representative Designation section of Form OFR 494 01 pursuant to subsection 69V 40.099(1), F.A.C. Form OFR 494 01 shall be maintained at the principal office of the mortgage brokerage business. Anyone being designated as a principal broker, must have been actively licensed as a mortgage broker pursuant to Section 494.0033, F.S., for at least one year, or has demonstrated to the satisfaction of the Office~~

of Financial Regulation that the designated principal broker has been actively engaged in a mortgage-related business for at least one year, as defined in Rule 69V-40.051, F.A.C.

~~(3) The penalty for failure to maintain the Principal Broker/Representative Designation section of Form OFR 494-01 shall be the issuance of a "notice of noncompliance" for a first offense. Any subsequent finding of a violation of this rule during an examination or investigation shall be a fine of \$500. In cases where the failure to maintain the Principal Broker/Representative Designation section of Form OFR 494-01 is intentional, the penalty shall be a fine of \$5,000.~~

~~(4) Each licensee shall notify the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376 in writing, within thirty (30) days, of the termination or resignation of a principal broker.~~

~~(5) Form OFR 494-01 is incorporated by reference in subsection 69V-40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0035 FS. Law Implemented 120.695, 494.0011(2), 494.0016, 494.0035, 494.0041(1)(e) FS. History—New 10-7-91, Amended 7-25-96, 12-12-99, 12-9-01, Formerly 3D-40.160, Amended 3-23-08, Repealed 10-1-10.

69V-40.165 Branch Brokers.

~~(1) Each mortgage brokerage business shall designate a licensed mortgage broker as the branch broker of the branch office, and the individual shall accept such responsibility by completing the Branch Broker/Employee in Charge section of Form OFR 494-02.~~

~~(2) Upon any change of Branch Broker, the licensee and the newly designated branch broker shall complete the Branch Broker/Employee in Charge section of Form OFR 494-02 pursuant to subsection 69V-40.099(1), F.A.C. Form OFR 494-02 shall be maintained at the applicable branch office of the mortgage brokerage business.~~

~~(3) The penalty for failure to maintain Form OFR 494-02 shall be the issuance of a "notice of noncompliance" for a first offense. Any subsequent finding of a violation OFR 494-02 is intentional, the penalty shall be a fine of \$5,000.~~

~~(4) Each licensee shall notify the Office of Financial Regulation in writing, within thirty (30) days, of termination or resignation of a branch broker.~~

~~(5) Form OFR 494-02 is incorporated by reference in subsection 69V-40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0035(2) FS. Law Implemented 120.695, 494.0011(2), 494.0016, 494.0035(2), 494.0041(1)(e) FS. History—New 10-7-91, Amended 7-25-96, 12-12-99, 12-9-01, Formerly 3D-40.165, Amended 3-23-08, Repealed 10-1-10.

69V-40.170 Books and Records.

(1) Books, accounts, and records that are required to be maintained at the principal place of business shall be made available to the Office of Financial Regulation for review, upon the Office of Financial Regulation's request.

~~(2)(a) A licensee may maintain required books, accounts, and records at a location other than the principal place of business. The licensee must notify the Office of Financial Regulation in writing prior to said books, accounts, and records being maintained in any place other than the designated principal place of business. Such notification shall be submitted to the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376. Each licensed mortgage broker or mortgage lender which proposes to change the location of books, accounts, and records must file an amendment to Form MU1 through the Registry not later than 30 days prior to the effective date of the change.~~

~~(b) The books, accounts, and records must be stored in notification shall include confirmation by the licensee that the proposed storage facilities are a building of stationary construction wherein the books, accounts, and records will be kept in a secured location under conditions, which will not lead to the damage or destruction of the records.~~

(3) If the Office of Financial Regulation is notified by a licensee that it will maintain the books, accounts, and records at a location other than the principal place of business, such books, accounts, and records shall be made available to the Office of Financial Regulation for review within 3 ~~three (3)~~ business days from the date of a written request by the Office of Financial Regulation and at a reasonable and convenient location in this State designated by the Office of Financial Regulation.

~~(4) The licensee shall maintain at the principal place of business a copy of the confirmation letter from the Office of Financial Regulation to maintain its records at a location other than the principal place of business.~~

~~(4)(5) All books, accounts, and records must be maintained for 3 ~~three (3)~~ years from the date of "original entry". For the purpose of this rule, "original entry" means the date the documentation was originated by the licensee or received by the licensee.~~

~~(5)(6)(a) The penalty for maintaining books, accounts, and records at a location other than the principal place of business, without written notification to the Office of Financial Regulation, shall be the issuance of a "notice of noncompliance" for a first offense. Any subsequent finding of a violation of this rule during an examination or investigation shall be a \$500 fine.~~

(b) The penalty for refusal to permit an investigation or examination of books, accounts, and records, after a reasonable request by the Office of Financial Regulation, shall be

revocation of the license. This paragraph shall not apply to a proceeding governed by the rules of civil procedure of any state or federal court.

(6) Uniform Mortgage Lender/Mortgage Broker Form, MU1, is incorporated by reference in Rule 69V-40.002, F.A.C. Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0016(4) FS. Law Implemented 120.595, 494.0016, 494.00255 ~~494.0041(2)~~ FS. History—New 2-16-92, Amended 7-25-96, 12-12-99, 1-16-03, Formerly 3D-40.170, Amended 3-23-08, 10-1-10.

69V-40.175 Mortgage Brokerage Files.

(1) Each mortgage ~~broker brokerage business~~ shall maintain a file for each mortgage ~~broker brokerage~~ transaction. The files shall be maintained in a central location and in an alphabetical or numerical sequence.

(2) Each file shall contain at least the following:

(a) Mortgage ~~broker brokerage~~ agreement pursuant to Section 494.0038, F.S.;

(b) Copy of signed closing statement or documentation of denial or cancellation of the mortgage loan application; and

(c) A copy of the good faith estimate of costs pursuant to Section subsection 494.0038(2)(c), F.S.

(3) Supporting documentation shall be maintained for all expenses or fees paid by the licensee on behalf of the client indicating the amount and the date paid. A canceled check maintained in a separate file shall be considered proof of payment of fees and expenses.

(4) If the mortgage ~~broker brokerage business~~ issues to the client a written commitment for the loan on behalf of the lender then the following must be maintained in the file:

(a) A copy of the written commitment issued by the mortgage ~~broker brokerage business~~; and

(b) A copy of the written commitment provided by the lender.

(5) If the mortgage ~~broker brokerage business~~ issues to the client a written lock-in for the loan on behalf of the lender then the following must be maintained in the file:

(a) A copy of the written lock-in issued by the mortgage ~~broker brokerage business~~; and

(b) A copy of the written lock-in provided by the lender.

(6) If the mortgage ~~broker brokerage business~~ receives a mortgage loan application, then the mortgage ~~broker brokerage business~~ shall maintain a copy in the file.

(7) If the loan is funded by a non-institutional investor then the file must also include the following:

(a)1. A copy of the appraisal or opinion of value of the mortgage property and a signed and dated acknowledgment by the non-institutional investor of receipt of the appraisal or opinion of value, or

2. A copy of a waiver of the appraisal dated and executed by the non-institutional investor.

(b)1. A receipt acknowledging that the non-institutional investor has been furnished with title insurance or a legal opinion of title, or

2. A written waiver thereof.

(c) On a junior mortgage, documentation that the non-institutional lender has been furnished with a statement showing the balance owed and status of the liens that will be superior to the lien being funded by the non-institutional investor.

(d) A signed and dated acknowledgment by the noninstitutional investor of receipt of the recorded mortgage or other instrument securing a note or assignment.

(e) If applicable, documentation that said licensee has disclosed that it is acting (directly or indirectly) as a borrower or principal in that transaction.

(8) In addition to the foregoing specific documentation, all documentation originated, received, or related to the mortgage loan from the application through the final disposition must be maintained for three (3) years from the date of the original entry. "Original entry" means the date the documentation was originated by the mortgage ~~broker brokerage business~~ or received by the mortgage ~~broker brokerage business~~. For each ~~broker brokerage~~ transaction, files and documentation shall be maintained and remain complete for three (3) years from the date of "original entry" of the last document in the file.

(9)(a) The penalty for failure to maintain files and required documentation (incidental and isolated clerical errors or omissions shall not be considered a violation) shall be:

1. If the licensee has numerous instances of incomplete files and missing documentation, the fine shall be \$300. For the purpose of this rule, "numerous" shall mean at least three (3), and a percentage equal or greater to 20% of the files examined.

2. If the licensee fails to maintain files and documentation such that an audit trail of all mortgage transactions is provided, the penalty shall be a fine of \$1,000 and a six-month suspension of the licensee.

(b)1. The failure to provide a good faith estimate of costs shall be a fine of \$250 per file.

2. Providing a commitment to a client without first obtaining a written commitment by the lender shall be a fine of \$250 per file.

3. Providing a lock-in for a loan without first obtaining a written lock-in by the lender shall be a fine of \$250 per file.

4. The total fine under paragraph (9)(b) shall not exceed \$2,500.00 per administrative complaint in addition to other penalties.

(c)1. The penalty for failure to provide a disclosure required in subsection (7) above shall be a fine of \$250 per file.

2. The penalty for gross negligence in maintaining documentation required in subsection (7) shall be revocation.

3. The penalty for failure to provide a non-institutional investor with the documentation required in subsection (4) herein shall be a fine of \$250 per file up to an aggregate of \$2,500 per administrative complaint in addition to other penalties.

(10) For purposes of Section 120.695, F.S., a violation of the above rule, other than subsection (7) and subparagraph (9)(a)2. above shall be considered a minor violation. Any portion of this section that is deemed to be a minor violation for a first offense shall be a notice of noncompliance.

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2), 494.0016(4) FS. Law Implemented 494.0016, 494.00255, 494.0038, 494.0041, 494.0043 FS. History—New 2-16-92, Amended 7-25-96, 8-7-97, 1-16-03, Formerly 3D-40.175, Amended 10-1-10.

69V-40.200 Application Procedure for Mortgage Lender License.

(1) Each corporation, general partnership, limited partnership, limited liability company, or other lawful entity desiring to obtain licensure as a mortgage lender shall apply to the Office of Financial Regulation by submitting the following:

(a) A completed Application for Mortgage Brokerage Business and Lender License, Form OFR 494-01;

(b) The statutory, nonrefundable fee required by Section 494.0061, F.S., which shall be the fee for the biennial period beginning September 1 of each even numbered year or any part thereof;

(c) A nonrefundable mortgage broker examination fee of \$43 for the designated principal representative if required to take the mortgage broker examination pursuant to Section 494.0061(8), F.S.;

(d) Audited financial statements documenting a minimum net worth of \$250,000 as of the applicant's most recent fiscal year end. If the application is submitted within three (3) months of the most recent fiscal year end and an audited statement from the most recent fiscal year is not available, an audited statement from the previous fiscal year end is acceptable;

(e) A surety bond, issued by a bonding company or insurance company authorized to do business in this State, in the amount of \$10,000; and submitted on Form OFR 494-05, Mortgage Brokerage and Mortgage Lending Act Surety Bond.

(f) Designate a principal representative who shall operate and exercise control over the licensee's business. Each mortgage lender applicant shall include as part of the application a statement that the principal representative will operate and exercise control over the business as defined in subsection 69V-40.001(11), F.A.C.

(2) Each ultimate equitable owner of 10% or greater interest, principal representative, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, control person, member, partner, joint

venturer, and each director of an entity applying for licensure as a mortgage lender, shall submit a completed fingerprint card (FL921050Z) and Biographical Summary from Form OFR 494-01, to the Office of Financial Regulation along with a \$43.25 nonrefundable processing fee.

(a) If any ultimate equitable owner of 10% or greater interest, principal representative, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, control person, member, partner, joint venturer, or director of the applicant holds an active mortgage broker's license with the Office of Financial Regulation, they are exempt from the provisions of subsection (2).

(b) If an entity holds an active license under Chapter 494, F.S., with the Office of Financial Regulation, it is exempt from the provisions of subsection (2) when it applies for a different type of license under Chapter 494, F.S., unless there has been a change of control of 25% or more of the ownership or in controlling interest since the time its initial license was approved by the Office of Financial Regulation.

(c) Any claim to any of the above exemptions shall be supported by attaching evidence of the exemption with the application for license.

(3) Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within ninety (90) days from the date of the request. Failure to respond to the request within ninety (90) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to subsection 120.60(1), F.S.

(4) Amendments to Pending Applications. If the information contained in an Application for Licensure as a Mortgage Lender or in any amendment thereto becomes inaccurate for any reason, the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR 494-01. An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within thirty (30) days from receipt of the application by the Office. Otherwise, the application may be amended only with prior written permission from the Office of Financial Regulation. The Office will grant permission to amend the application, unless the amendment constitutes a material change to the application. Requests to make changes which are material to the application will be deemed by the Office of Financial Regulation to be grounds for denial, and a new application, accompanied by the appropriate filing fee, will be required. Material changes include:

(a) A change to a response to the disclosure questions listed in section 8 on Form OFR 494-01.

(b) A change to disclosure questions listed in section 3 on the biographical summary on Form OFR 494-01.

(c) The substitution or addition of an ultimate equitable owner of 10% or greater interest, a chief executive officer, a chief financial officer, a chief operations officer, a chief legal officer, a chief compliance officer, a control person, a member, a partner, a joint venturer, or principal representative.

(d) A change to the applicant's net worth.

(e) Any change relating to the surety bond.

(5) ~~Withdrawal of Application.~~ An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.

(6) ~~Refunds.~~ If the application is withdrawn or denied, all fees are nonrefundable.

(7) Upon approval of an application, a license will be issued for the remainder of the biennial licensure period.

(8) ~~Form OFR 494-01, Form OFR 494-05, and Form FL921050Z are incorporated by reference in subsection 69V-40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

Rulemaking Authority 215.405, 494.0011(2), 494.0061(3) FS. Law Implemented 494.0061, 494.0067(4) FS. History—New 10-1-91, Amended 6-6-93, 5-14-95, 9-3-95, 11-5-95, 7-14-96, 11-24-97, 8-22-99, 12-12-99, 12-9-01, 12-8-02, 12-11-03, Formerly 3D-40.200, Amended 3-23-08, 12-25-08, 3-4-09, Repealed 10-1-10.

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

~~(1) General Procedure Regarding Law Enforcement Records.~~ For purposes of this rule each designated principal representative and each officer, director, control person, member, partner, or joint venturer of a Mortgage Lender or Correspondent Lender License applicant, and each ultimate equitable owner with a 10 percent or greater interest in the applicant shall be referred to collectively as "relevant persons." At the time of submitting a Mortgage Lender or Correspondent Lender Application, the applicant shall disclose on the application form any pending criminal charges and all criminal matters in which a relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of any crime. In addition, the applicant shall supply the Office with required documentation for each relevant person, as specified in this rule, relating to: 1) all criminal matters in which the relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a class "A", "B", or "C" crime as described in this rule, 2) any pending criminal charges for a relevant person relating to a class "A", "B", or "C" crime as described in this

rule, or 3) shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:

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

(b) A certified copy of the charges.

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

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

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

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

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

~~(b) Notwithstanding paragraph (a), the Office shall not deny an application for failure to provide documentation listed in subsection (1) when the crime is not a class "A", "B", or "C" crime and the applicant has disclosed the crime on the application form.~~

~~(c) If the Office discovers the applicant's failure to disclose after a license has been granted, the Office will suspend or revoke each license currently held by the applicant as follows:~~

1. Suspension 12 months if, had the license application been accurate, the application would have been granted, based on the statutes and licensing rules applicable to the application at the time the Office issued the license, and the documentation in the applicant's file at the time the Office issued the license.

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

~~(3) Classification of Crimes.~~

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

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

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

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

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

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

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

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

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

(5) ~~Relevant Persons With Multiple Crimes:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) ~~Collateral Attack on Criminal Proceedings.~~ The Office will not allow or give any weight to an attempt to re litigate, impeach, or collaterally attack judicial criminal proceedings or their results in which the applicant was found guilty or pled

guilty or nolo contendere. Thus the Office will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

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

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

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

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

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

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

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

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

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

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

~~(11) Effect of Restoration of Civil Rights.~~

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

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

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

~~(12) Effect of Varying Terminology.~~

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

~~2. Found guilty; entered a finding of guilt.1. Adjudicated guilty; convicted.~~

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

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

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

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

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

~~(13) Imprisoned Persons and Community Supervision.~~

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

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

~~(14) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give an applicant a right to licensure after any set period of time. Regardless of the~~

expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to licensure remains on the applicant.

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

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

(b) Perjury.

(c) Armed robbery.

(d) Robbery.

(e) Extortion.

(f) Bribery.

(g) Embezzlement.

(h) Grand theft.

(i) Larceny.

(j) Burglary.

(k) Breaking and entering.

(l) Identity Theft.

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

(n) Misuse of public office.

(o) Racketeering.

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

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

(r) Altering public documents.

(s) Witness tampering.

(t) Tax evasion.

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

(v) Money laundering.

(w) Murder in all degrees.

(x) Arson.

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

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

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

(bb) Rape.

(cc) Sexually molesting any minor.

(dd) Sexual battery.

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

(ff) Kidnapping.

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

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

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

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

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

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

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011 FS. Law Implemented 112.011, 494.0061, 494.0062, 494.0072 FS. History—New 12-2-08, Repealed 10-1-10.

69V-40.205 Mortgage Lender License, Mortgage Lender License Pursuant to Saving Clause, and Branch Office License Renewal and Reactivation.

(1)(a) Each active mortgage lender license and mortgage lender license pursuant to the saving clause shall be renewed for the biennial period beginning September 1 of each even-numbered year upon submission of the statutory renewal fee required by Section 494.0064, F.S., and a completed renewal form. Form OFR-494-06, Mortgage Lender License Renewal and Reactivation Form.

(b) In lieu of submitting audited financial statements, the licensee shall certify that it has continuously maintained the net worth requirements of:

1. \$25,000 or more imposed by Section 494.0065, F.S.; or

2. \$250,000 or more imposed by Section 494.0061, F.S.

Upon request of the Office, the licensee shall provide a copy of its most recent audited financial statements that substantiate its net worth.

(2) A license that is not renewed as required in subsection (1) prior to September 1 of the renewal year shall revert to inactive status. An inactive license may be reactivated within six (6) months after becoming inactive upon payment of the statutory renewal and reactivation fees required by Section 494.0064, F.S., and submission of a completed reactivation form. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.

(3) Each active mortgage lender branch office license shall be renewed in conjunction with the mortgage lender license renewal upon submission of the statutory renewal fee required by Section 494.0064, F.S.

(4) A mortgage lender branch office license that is not renewed as required in subsection (3) prior to September 1 of the renewal year shall revert to inactive status. An inactive license may be reactivated within six (6) months after becoming inactive upon payment of the statutory renewal and reactivation fees required by Section 494.0064, F.S. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.

(5) A mortgage lender license and branch office license that is not renewed within six months after the end of the biennial period automatically expires.

(6) All applications, fees, data and forms required to be filed under this rule shall be filed electronically at www.flofr.com.

(7) Any person may petition for waiver of the requirement of electronic submission of applications, fees, data and forms by filing a petition pursuant to Rule 28-106.301, F.A.C. Such petition shall demonstrate a technological or financial hardship that entitles the person to file the applications, fees, data and form in paper format. In the event the payment is received in a paper format, the received date shall be the date stamped on the payment when received by the Department of Financial Services' Cashier's Office in Tallahassee, Florida.

(8) A renewal fee filed electronically on the Office's website shall be considered received on the date the Office issues a confirmation of payment to the licensee via the Office's website. A confirmation is issued by the Office upon successful submission of your renewal payment.

(9) Form OFR 494-06 is incorporated by reference in subsection 69V 40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0064(2), 494.0065(3) FS. Law Implemented 494.001(4), 494.0011(2), 494.0061(1), 494.0064, 494.0065 FS. History—New 10-1-91, Amended 9-3-95, 8-5-96, 12-12-99, 11-1-00, 2-5-01, Formerly 3D-40.205, Amended 11-9-04, 3-23-08, Repealed 10-1-10.

69V-40.220 Application Procedure for Correspondent Mortgage Lender License.

(1) ~~Each corporation, general partnership, limited partnership, limited liability company, or other lawful entity desiring to obtain licensure as a correspondent mortgage lender shall apply to the Office of Financial Regulation by submitting the following:~~

(a) ~~A completed Application for Mortgage Brokerage Business and Lender License, Form OFR 494-01;~~

(b) ~~The statutory, nonrefundable fee required by Section 494.0062, F.S., which shall be the fee for the biennial period beginning September 1 of each even numbered year or any part thereof;~~

(c) ~~A nonrefundable mortgage broker examination fee of \$43 for the designated principal representative if required to take the mortgage broker examination pursuant to Section 494.0062(11), F.S.;~~

(d) ~~Audited financial statements documenting a minimum net worth of \$25,000 as of the applicant's most recent fiscal year end. If the application is submitted within three (3) months of the most recent fiscal year end and an audited statement from the most recent fiscal year is not available, an audited statement from the previous fiscal year end is acceptable;~~

(e) ~~A surety bond, issued by a bonding company or insurance company authorized to do business in this State, in the amount of \$10,000; and submitted on Form OFR 494-05, Mortgage Brokerage and Mortgage Lending Act Surety Bond.~~

(f) ~~Designate a principal representative who shall operate and exercise control over the licensee's business. Each correspondent mortgage lender applicant shall include as part of the application a statement that the principal representative will operate and exercise control over the business as defined in subsection 69V 40.001(11), F.A.C.~~

(2) ~~Each ultimate equitable owner of 10% or greater interest, principal representative, each chief executive officer, each chief financial officer, chief operations officer, chief legal officer, chief compliance officer, control person, member, partner, joint venturer, and each director of an entity applying for licensure as a correspondent mortgage lender, shall submit a completed fingerprint card (FL921050Z) and Biographical Summary from Form OFR 494-01, to the Office of Financial Regulation along with a \$43.25 nonrefundable processing fee.~~

(a) ~~If the individual principal representative, owner, director, or chief executive officer holds an active mortgage broker's license with the Office of Financial Regulation, they are exempt from the provisions of subsection (2).~~

(b) ~~If an entity holds an active license under Chapter 494, F.S., with the Office of Financial Regulation, it is exempt from the provisions of subsection (2) when it applies for a different type of license under Chapter 494, F.S., unless there has been a change of control of 25% or more of the ownership or in controlling interest since the time its initial license was approved by the Office of Financial Regulation.~~

(c) ~~Any claim to any of the above exemptions shall be supported by attaching evidence of the exemption with the application for license.~~

(3) ~~Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of~~

Financial Regulation within ninety (90) days from the date of the request. Failure to respond within ninety (90) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to subsection 120.60(1), F.S.

~~(4) Amendments to Pending Applications. If the information contained in an Application for Licensure as a Correspondent Mortgage Lender or in any amendment thereto, becomes inaccurate for any reason, the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR 494 01. An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within thirty (30) days from receipt of the application by the Office. Otherwise, the application may be amended only with prior written permission from the Office of Financial Regulation. The Office will grant permission to amend the application, unless the amendment constitutes a material change to the application. Requests to make changes which are material to the application will be deemed by the Office of Financial Regulation to be grounds for denial, and a new application, accompanied by the appropriate filing fee, will be required. Material changes include:~~

~~(a) A change to a response to the disclosure questions listed in section 8 on Form OFR 494 01.~~

~~(b) A change to disclosure questions listed in section 3 on the biographical summary on Form OFR 494 01.~~

~~(c) The substitution or addition of an ultimate equitable owner of 10% or greater interest, a chief executive officer, a chief financial officer, a chief operations officer, a chief legal officer, a chief compliance officer, a control person, a member, a partner, a joint venturer, or principal representative.~~

~~(d) A change to the applicant's net worth.~~

~~(e) Any change relating to the surety bond.~~

~~(5) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.~~

~~(6) Refunds. If the application is withdrawn or denied, all fees are nonrefundable.~~

~~(7) Upon approval of an application, a license will be issued for the remainder of the biennial licensure period.~~

~~(8) Form OFR 494 01, Form OFR 494 05, Form FL921050Z are incorporated by reference in subsection 69V 40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

Rulemaking Authority 215.405, 494.0011(2), 494.0062(3), (8), (11), (13) FS. Law Implemented 494.0062, 494.0067(4) FS. History—New 10-1-91, Amended 6-6-93, 5-14-95, 9-3-95, 11-5-95, 7-14-96, 11-24-97, 8-22-99, 12-12-99, 12-9-01, 12-8-02, 12-11-03, Formerly 3D-40.220, Amended 3-23-08, 12-25-08, 3-4-09, Repealed 10-1-10.

69V-40.225 Correspondent Mortgage Lender License and Branch Office License Renewal and Reactivation.

~~(1)(a) Each active correspondent mortgage lender license shall be renewed for the biennial period beginning September 1 of each even numbered year upon submission of the statutory renewal fee required by Section 494.0064, F.S., and a completed renewal form. Form OFR 494 06, Mortgage Lender License Renewal and Reactivation Form.~~

~~(b) In lieu of submitting audited financial statements, the licensee shall certify that it has continuously maintained the net worth requirements of \$25,000 or more imposed by Section 494.0062, F.S. Upon request of the Office, the licensee shall provide a copy of its most recent audited financial statements that substantiate its net worth.~~

~~(2) A correspondent mortgage lender license that is not renewed as required in subsection (1) prior to September 1 of the renewal year shall revert to inactive status. An inactive license may be reactivated within six (6) months after becoming inactive upon payment of the statutory renewal and reactivation fees required by Section 494.0064, F.S., and submission of a completed reactivation form. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.~~

~~(3) Each active correspondent mortgage lender branch office license shall be renewed in conjunction with the correspondent mortgage lender license renewal upon submission of the statutory renewal fee required by Section 494.0064, F.S.~~

~~(4) A correspondent mortgage lender branch office license that is not renewed as required in subsection (3) prior to September 1 of the renewal year shall revert to inactive status. An inactive license may be renewed within six (6) months after becoming inactive upon payment of the statutory renewal and reactivation late fees required by Section 494.0064, F.S. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.~~

~~(5) A correspondent mortgage lender license and branch office license that is not renewed within six (6) months after the end of the biennial period automatically expires.~~

~~(6) All applications, fees, data and forms required to be filed under this rule shall be filed electronically at www.flofr.com.~~

~~(7) Any person may petition for waiver of the requirement of electronic submission of applications, fees, data and forms by filing a petition pursuant to Rule 28-106.301, F.A.C. Such petition shall demonstrate a technological or financial hardship~~

that entitles the person to file the applications, fees, data and form in paper format. In the event the payment is received in a paper format, the received date shall be the date stamped on the payment when received by the Department of Financial Services' Cashier's Office in Tallahassee, Florida.

(8) A renewal fee filed electronically on the Office's website shall be considered received on the date the Office issues a confirmation of payment to the licensee via the Office's website. A confirmation is issued by the Office upon successful submission of your renewal payment.

(9) Form OFR 494-06 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0064(2) FS. Law Implemented 494.001(7), 494.0011(2), 494.0062(1), 494.0064 FS. History--New 10-1-91, Amended 9-3-95, 7-25-96, 12-12-99, 11-1-00, 2-5-01, Formerly 3D-40.225, Amended 11-9-04, 3-23-08, Repealed 10-1-10.

69V-40.240 Application Procedure for Mortgage Lender or Correspondent Mortgage Lender Branch Office License.

(1) Every mortgage lender or correspondent mortgage lender which conducts mortgage lending business in this state from a branch office shall apply to the Office of Financial Regulation for a license to operate a branch office by submitting the following:

(a) A completed Application for Branch Office License, Form OFR 494-02;

(b) The statutory, nonrefundable license fee required by Section 494.0066, F.S., which shall be the fee for the biennial period beginning September 1 of each even-numbered year or any part thereof.

(2) Any office or location shall be deemed to be a branch office if it meets the definition in subsection 494.001(7), F.S.

(3) Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within forty five (45) days from the date of the request. Failure to respond to the request within forty five (45) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to Section 120.60(1), F.S.

(5) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office. (4) Amendments to Pending Applications. If the information contained in an Application for Mortgage Lender Branch Office or Correspondent Mortgage Lender Branch

Office License or in any amendment thereto, becomes inaccurate for any reason, the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR 494-02.

(6) Refunds. If the application is withdrawn or denied, the license fee is nonrefundable.

(7) Upon approval of an application, a license will be issued for the remainder of the biennial period.

(8) Form OFR 494-02 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0066 FS. History--New 10-1-91, Amended 6-6-93, 5-14-95, 9-3-95, 8-22-99, 12-12-99, Formerly 3D-40.240, Amended 3-23-08, Repealed 10-1-10.

69V-40.242 Principal Representative.

(1) Each mortgage lender, correspondent mortgage lender, and mortgage lender pursuant to the saving clause shall designate a principal representative who operates and exercises control over the business and the individual so designated shall accept responsibility by completing the Principal Broker/Representative Designation section of Form OFR 494-01.

(2) Each mortgage lender, correspondent mortgage lender, and mortgage lender pursuant to the saving clause shall maintain the Principal Broker/Representative Designation section of Form OFR 494-01, which includes a statement notifying the licensee that the principal representative is required by statute to operate and exercise control over the business as defined in subsection 69V-40.001(11), F.A.C.

(3) Upon any change of principal representative, the licensee and the newly designated principal representative shall amend the Principal Broker/Representative Designation section of Form OFR 494-01 pursuant to subsection 69V-40.099(1), F.A.C. Form OFR 494-01, shall be maintained at the principal office of the mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to the saving clause.

(4) The penalty for failure to maintain the Principal Broker/Representative Designation section of Form OFR 494-01 shall be the issuance of a "notice of noncompliance" for a first offense. Any subsequent finding of a violation of this rule during an examination or investigation shall be a fine of \$500. In cases where the failure to maintain the Principal Broker/Representative Designation section of Form OFR 494-01 is intentional, the penalty shall be a fine of \$5,000.

(5) Each licensee shall notify the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376 in writing, within thirty (30) days, of the termination or resignation of its principal representative.

(6) Form OFR 494-01 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

(7) At the time of filing an amendment to designate a new principal representative, the licensee shall file a nonrefundable mortgage broker examination fee of \$43 for the designated principal representative if required to take the mortgage broker examination pursuant to Sections 494.0061(8), 494.0062(11) and 494.0065(4)(c)2., F.S.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0016(4), 494.0061(1), (3), (8), 494.0062(3), (11) FS. Law Implemented 120.60, 120.695, 494.001(31), 494.0016(1), 494.0061, 494.0062, 494.0067, 494.0072 FS. History–New 1-27-02, Amended 12-8-02, Formerly 3D-40.242, Amended 3-23-08, 3-4-09, Repealed 10-1-10.

69V-40.245 Independent Contractors.

~~A natural person is not exempt from the licensure requirements of Section 494.0033, F.S., when acting as an independent contractor as defined in subsection 69V-40.001(9), F.A.C., for licensees pursuant to Sections 494.006-.0077, F.S.~~

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2) FS. Law Implemented 120.695, 494.001, 494.0025, 494.0041 FS. History–New 7-25-96, Amended 12-12-99, Formerly 3D-40.245, Repealed 10-1-10.

69V-40.250 Documentation of Net Worth and Surety Bond.

~~(1) Each licensee under Sections 494.0061, 494.0062, and 494.0065, F.S., shall document and verify the required net worth with audited financial statements, prepared in accordance with Generally Accepted Accounting Principles, by an independent licensed certified public accountant.~~

~~(a) Each mortgage lender shall continuously maintain a net worth of \$250,000, or more.~~

~~(b) Each mortgage lender licensed pursuant to the saving clause, Section 494.0065, F.S., shall continuously maintain a net worth of \$25,000, or more.~~

~~(c) Each correspondent mortgage lender shall continuously maintain a net worth of \$25,000, or more.~~

~~(2) Each licensee identified in subsection (1) above shall have completed, annually, the required audited financial statement within 120 days of the fiscal year end date of said licensee. All audited financial statements shall be maintained in the licensee's principal place of business in this state and made available to Office of Financial Regulation examiners upon request.~~

~~(3) Failure to maintain net worth. Each licensee who fails to maintain net worth as prescribed in paragraphs (1)(a), (b), and (c) of this rule shall immediately cease taking any new mortgage loan applications and notify the Office of Financial Regulation in writing by U.S. certified mail within 48 hours. A licensee shall not resume business without written Office of Financial Regulation authorization.~~

~~(4) Surety Bond. Surety bonds required as a condition of licensure under Sections 494.0061 and 494.0062, F.S., shall be continuously maintained. A copy of the surety bond shall be maintained in the principal place of business in this state and made available to Office of Financial Regulation examiners upon request.~~

~~(a) In the event a licensee changes the issuer of the surety bond, or the issuer of the surety bond cancels the bond, a licensee shall inform the Office of Financial Regulation of such change in writing by U.S. certified mail and provide a new surety bond to the Office of Financial Regulation.~~

~~(b) Each surety bond shall be issued by a company authorized to do business in this state by the Office of Financial Regulation.~~

~~(c) Each surety bond shall be in the amount of \$10,000 and on the form prescribed by the Office of Financial Regulation.~~

~~(d) A mortgage lender licensed pursuant to the saving clause, Section 494.0065, F.S., is not required to have or maintain a \$10,000 surety bond.~~

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2) FS. Law Implemented 120.695, 494.0061(1)(c),(d), 494.0062(1)(c), 494.0063, 494.0065 FS. History–New 10-1-91, Amended 8-24-92, 7-25-96, Formerly 3D-40.250, Repealed 10-1-10.

69V-40.260 Mortgage Lender Files.

~~(1) Each mortgage lender or correspondent mortgage lender shall maintain a file for each mortgage loan application received. The files shall be maintained in a central location and in an alphabetical or numerical sequence.~~

~~(2) Each file shall contain the following:~~

~~(a) A copy of the good faith estimate.~~

~~(b) The original mortgage loan application, or copy thereof, containing the disclosures set forth in subsection 494.0068(1), F.S.~~

~~(c) Copy of the closing statement as required by subsection 494.0016(3), F.S., or documentation demonstrating that the mortgage loan application was cancelled or denied.~~

~~(d) Copy of any written lock-in agreement, if issued, containing the requirements set forth in Section 494.0069, F.S.~~

~~(e) Copy of any written commitment, if issued, containing the disclosures set forth in Section 494.007, F.S.~~

~~(f) Copy of written disclosures of any conflict of interest as required by Section 494.0023, F.S.~~

~~(3) Each mortgage lender or correspondent mortgage lender shall maintain supporting documentation of all expenses or fees paid by the mortgage lender or correspondent mortgage lender. The supporting documentation shall indicate the name and address of the person paid, the amount and date of the payment, and a description of the products or services purchased. Invoices from third parties involving multiple loans, maintained in a central file, need not be copied and~~

placed in each individual loan file. A canceled check maintained in a separate file shall be considered proof of payment of fees and expenses.

(4) If the mortgage lender sells a mortgage loan to a non-institutional investor then each file must contain the following:

(a)1. A copy of the appraisal or opinion of value of the mortgage property and a signed and dated acknowledgement of receipt of same by the noninstitutional investor; or

2. A copy of a waiver of the appraisal or opinion of value dated and executed by the noninstitutional investor.

(b)1. A receipt acknowledging that the noninstitutional investor has been furnished with mortgagee's title insurance, or a legal opinion of title by an attorney licensed in Florida, pursuant to subsection 494.0075(1)(b), F.S.; or

2. A written waiver thereof with the wording required by subsection 494.0075(1)(b)3., F.S.

(c) On a junior mortgage, a copy of the statement furnished to the noninstitutional investor showing the balance owed and the status of the liens that will be superior to the liens being recorded in the favor of the noninstitutional investor in this loan transaction.

(d) A copy of the written disclosure to the noninstitutional investor if the mortgage lender ~~or correspondent mortgage lender~~ is directly or indirectly acting as a borrower or principal in the transaction.

(e) A signed and dated acknowledgement by the noninstitutional investor of receipt of the recorded mortgage or other instrument securing a note or assignment, or a signed acknowledgement by the licensee attesting that the aforementioned documentation was delivered to the noninstitutional investor. However, the mortgage lender may hold such documents in its possession for the use and benefit of the noninstitutional investor if:

1. The noninstitutional investor shall request same in writing; and

2. Said written request acknowledges the right of the noninstitutional investor to the possession of the original documents at any time; and

3. Said written request confirms the right of the noninstitutional investor to at any time terminate the agreement with the mortgage lender and request that the mortgage lender deliver all such documents to the noninstitutional investor forthwith. The written request, which includes subparagraphs 1. through 3. above, may be maintained in one location separate from the mortgage loan file.

(f) A copy of the original note evidencing proper endorsement of the note by the lender to the noninstitutional investor.

(g) A copy of the written servicing agreement if the loan is to be serviced by the mortgage lender.

(5) If the mortgage lender ~~or correspondent mortgage lender~~ acts as a mortgage broker ~~brokerage business~~ it must comply with the file requirement set forth in Rule 69V-40.175, F.A.C.

(6) A mortgage lender which services a mortgage loan for a noninstitutional investor shall enter into a written servicing agreement with the noninstitutional investor prior to servicing the mortgage loan. The mortgage lender may enter into a master servicing agreement with the noninstitutional investor, and such master agreement may be maintained in one central location. A master servicing agreement is not required to be copied and placed in each individual loan file.

(7) All documentation originated or received by a mortgage lender ~~or correspondent mortgage lender~~ must be maintained for three years from the date of original entry. "Original entry" means the date the documentation was originated or received by the licensee. For each lending transaction, files and documentation shall be maintained and remain complete for three years from the original entry date of the last document.

(8)(a) The penalty for failure to maintain files and required documentation (incidental and isolated clerical errors or omissions shall not be considered a violation) shall be:

1. If the mortgage lender ~~or correspondent mortgage lender~~ has numerous instances of incomplete files and missing documentation the fine shall be \$300 for a first offense. For the purpose of this rule "numerous" shall mean at least three incomplete files and a percentage equal or greater than 20% of the files examined.

2. If the mortgage lender ~~or correspondent mortgage lender~~ fails to maintain an audit trail of all mortgage transactions, the penalty shall be a fine of \$1,000 and a six month suspension of the license of the mortgage lender ~~or correspondent mortgage lender~~.

(b) The penalty for failure to provide or maintain a copy of the good faith estimate of costs shall be a fine of \$250 per file up to an aggregate of \$2,500 per administrative complaint in addition to other penalties.

(c)1. The penalty for failure to provide a non-institutional investor with the documentation required in subsection (4) herein shall be a fine of \$250 per file up to an aggregate of \$2,500 per administrative complaint in addition to other penalties.

2. The penalty for gross negligence in maintaining documentation required in subsection (4) shall be revocation of the license.

(d) Repeat violations of the requirements of this rule shall subject the licensee to the maximum penalties under the provisions of Sections 494.001-.0074, F.S.

(9) For purposes of Section 120.695, F.S., a violation of the above rule, other than subsection (4) and subparagraph (8)(a)2. above, shall be considered a minor violation. Any portion of this section that is deemed to be a minor violation for a first offense shall be a notice of noncompliance.

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority ~~494.0011(2)~~, 494.0016(2), (4) FS. Law Implemented 120.695, 494.0016, ~~494.00255~~, ~~494.0072~~, 494.0023, 494.0067(8), 494.0068, 494.0069, 494.007, 494.0075 FS. History—New 1-10-93, Amended 7-25-96, 8-7-97, Formerly 3D-40.260, Amended 10-1-10.

69V-40.265 Mortgage Brokerage and Lending Transaction Journal.

(1) Each mortgage lender ~~or correspondent mortgage lender~~ shall maintain a Mortgage Brokerage and Lending Transaction Journal, which shall include, at least, the following information:

- (a) Name of applicant;
- (b) Date applicant applied for the mortgage loan;
- (c) Disposition of the mortgage loan application. The journal shall indicate the result of the lending transaction. The disposition of the transaction shall be categorized as one of the following: loan funded, loan denied, or application withdrawn.
- (d) Name of lender, if applicable.

(2) The journal shall be maintained on Form OFR-494-10, Mortgage Brokerage and Lending Transaction Journal, or a form substantially similar.

(3) In lieu of maintaining Form OFR-494-10, each mortgage lender ~~or correspondent mortgage lender~~ may maintain the Home Mortgage Disclosure Act loan/application register, Form FR HMDA-LAR, found at 12 C.F.R., part 203, Appendix A; (2010) if all lending transactions are recorded on this form. The form is hereby incorporated by reference and may be accessed through the Government Printing Office website: <http://www.gpoaccess.gov/cfr/>. ~~The effective date of the form is 1-10-93.~~

(4) The Mortgage Brokerage and Lending Transaction Journal shall be maintained in the principal office or in each branch office where mortgage lender transactions are originated. The Mortgage Brokerage and Lending Journal shall be kept current. The failure to initiate an entry to the Mortgage Brokerage and Lending Transaction Journal within 7 seven business days from the date the transaction was entered into, shall be deemed to be a failure to keep the Mortgage Brokerage and Lending Transaction Journal current.

(5) The penalty for failure to maintain the Mortgage Brokerage and Lending Transaction Journal or to keep the same current (incidental or isolated clerical errors or omissions shall not be considered a violation) shall be the issuance of a “notice of noncompliance” for a first offense. Any subsequent finding of a violation of this rule during an examination or

investigation shall be a fine of \$500. The penalty for intentional or continued violations of this rule shall be a fine of \$500 and suspension of the license.

(6) Form OFR-494-10 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority ~~494.0011(2)~~, 494.0016(4) FS. Law Implemented 120.695, 494.0016, ~~494.00255~~ ~~494.0072(2)~~ FS. History—New 1-10-93, Amended 7-25-96, 12-12-99, Formerly 3D-40.265, Amended 3-23-08, 10-1-10.

69V-40.285 Noninstitutional Investor Funds Account.

(1) All money received by a mortgage lender ~~or correspondent mortgage lender~~ from a noninstitutional investor for disbursement at a mortgage loan closing shall be deposited in a trust account in a federally insured financial institution within 7 seven business days of receipt of the funds unless otherwise directed, in writing, by the noninstitutional investor. Such trust account may be used for more than one noninstitutional investor’s funds. Noninstitutional funds may not be commingled with the licensee’s operating account or funds. The account shall be in the name of the mortgage lender ~~or correspondent mortgage lender~~ and shall provide for withdrawal of funds without notice. The licensee shall maintain an updated and accurate record of account activity on Form OFR-494-12 or on a format which is substantially similar to Form OFR-494-12 ~~OFR-MX-555~~.

(2) In lieu of depositing noninstitutional investor money into a trust account the mortgage lender ~~or correspondent mortgage lender~~ may have noninstitutional investor money intended for mortgage loan closings deposited with and disbursed by an attorney licensed in this state or by a title company duly licensed in this state if such title company is not owned, controlled or affiliated with the licensee.

(3) The administrative penalty for failure to comply with this rule shall be \$500. Incidental and isolated clerical errors or omissions shall not be considered a violation of this rule. The penalty for intentional or repeat violations of this rule shall be a \$500 fine and suspension or revocation.

(4) For the purposes of Section 120.695, F.S., a violation of the above rule shall not be considered a minor violation.

(5) Form OFR-494-12 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority ~~494.0011(2)~~, 494.0016(4) FS. Law Implemented 120.695, 494.0043, 494.0073 FS. History—New 8-24-92, Amended 7-25-96, 12-12-99, Formerly 3D-40.285, Amended 3-23-08, 10-1-10.

69V-40.290 Acts Requiring Licensure as a Mortgage Broker, Mortgage Brokerage Business, Mortgage Lender or Correspondent Mortgage Lender.

~~(1) A person shall not be deemed to be acting as a mortgage broker pursuant to subsection 494.001(3), F.S., to be acting as a correspondent mortgage lender pursuant to subsection 494.001(1), F.S., or a mortgage lender pursuant to subsection 494.001(4), F.S., for:~~

~~(a) Purchasing or offering to purchase a mortgage loan from a member of the general public.~~

~~(b) Selling or offering to sell a mortgage loan to an institutional investor.~~

~~(c) Negotiating or offering to negotiate the purchase or sale of a mortgage loan to an institutional investor.~~

~~(2) The phrase "holds himself out to the public in any manner" in subsection 494.006(1)(i) and (j), F.S., means that any person who does any of the following, but not limited to, is not exempt from mortgage lender or correspondent mortgage lender license requirements:~~

~~(a) Is a business entity which makes, sells, or offers to sell, mortgage loans to noninstitutional investors;~~

~~(b) Is employed or associated with a business where mortgage lending or mortgage brokering services may be received;~~

~~(c) Has placed himself in a position where he is likely to come into contact with borrowers or investors or buyers or sellers of mortgage loans;~~

~~(e) Advertises in newspapers, magazines, or the like in a manner which would lead the reader to believe the person was in the business of buying, making or selling mortgage loans. For example, placing an advertisement which states "I buy and sell mortgages" would lead the public to believe the person was in the mortgage lending business; or (d) Advertises, related to mortgage loans, by soliciting for borrowers, lenders or purchasers in a telephone directory;~~

~~(f) Solicits in a manner which would lead the reader to believe the person was in the business of buying, making or selling mortgage loans.~~

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2) FS. Law Implemented 494.001, 494.006(1) FS. History--New 1-10-93, Amended 12-12-99, Formerly 3D-40.290, Repealed 10-1-10.

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Gregory C. Oaks, Chief, Bureau of Regulatory Review, Finance, Division of Finance, Office of Financial Regulation, 200 East Gaines Street, Tallahassee, FL 32399-0376, phone (850)410-9805, Facsimile (850)410-9914, E-mail: Greg.Oaks@flofr.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 21, 2010

FINANCIAL SERVICES COMMISSION

Office of Financial Regulations

RULE NO.: 69W-100.007 RULE TITLE: Advertising and Sales Literature

PURPOSE AND EFFECT: The rule is clarified to provide that if an advertisement or sales literature is in compliance with the requirements of NASD Rule 2210, relating to communications with the public, the material does not need to be approved by or filed with the Office of Financial Regulation.

SUMMARY: The rule is clarified to provide that if an advertisement or sales literature is in compliance with the requirements of NASD Rule 2210, relating to communications with the public, the material does not need to be approved by or filed with the Office of Financial Regulation.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Office determined the proposed rule will not have an adverse 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: 517.03 FS.

LAW IMPLEMENTED: 517.081 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: Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69W-100.007 Advertising and Sales Literature.

(1) No change.

(2) Every advertisement used in connection with an offering of securities registered pursuant to Section 517.081, F.S., must be authorized in writing by the Office of Financial Regulation before being published or circulated unless it is within the requirements of NASD Rule 2210 ~~and rules promulgated by the National Association of Securities Dealers concerning advertisements for use in newspapers or any other means of public communication or satisfies the requirements of the Securities Act of 1933 and any statement of policy by~~

~~the Securities and Exchange Commission concerning advertisements and sales literature, or contains no more than the following:~~

- (a) Date of issuance or release;
- (b) Name and address of issuer;
- (c) Identity or title of securities;
- (d) Per unit offering price;
- (e) Amount of offering;
- (f) Brief statement of general character of the business;
- (g) Address where prospectus or offering circular may be obtained.

~~(3) Any advertisement, except an offering circular or prospectus, intended to be used by a registered Florida dealer in connection with the public sale or offer for sale of any securities within the State of Florida shall be filed with the Office of Financial Regulation at least ten (10) days prior to publication or circulation if such advertisement contains more than the disclosure items listed in subsection (2), or does not meet the requirements of NASD Rule 2210 and ~~rules promulgated by the National Association of Securities Dealers concerning advertisements for use in newspapers or any other means of public communication or does not satisfy the requirements of the Securities Act of 1933 and statement of policy by the Securities and Exchange Commission concerning advertisements and sales literature.~~~~

~~(4) NASD Rule 2210 (Feb. 5, 2009) is hereby incorporated by reference. Copies of the rule may be obtained through the Financial Industry Regulatory Authority's website (http://finra.complinet.com/en/display/display_viewall.html?rbid=2403&element_id=3617&record_id=10467) or by contacting the Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399, (850)410-9500.~~

~~Rulemaking Specific Authority 517.03 FS. Law Implemented 517.081 FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-100.07, 3E-100.007, Amended _____.~~

NAME OF PERSON ORIGINATING PROPOSED RULE:
Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 25, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009

FINANCIAL SERVICES COMMISSION

Office of Financial Regulation

RULE NO.: 69W-200.001
RULE TITLE: Definitions

PURPOSE AND EFFECT: The rule is amended to reflect the most current version of federal regulations and federal statutes referenced in the rule. The rule is also amended to replace references to the National Association of Securities Dealers with the Financial Industry Regulatory Authority (FINRA). FINRA was created in July 2007 through the consolidation of National Association of Securities Dealers and the member regulation, enforcement and arbitration functions of the New York Stock Exchange. The rule corrects cross-references.

SUMMARY: The rule is amended to reflect the most current version of federal regulations and federal statutes referenced in the rule. The rule is also amended to replace references to the National Association of Securities Dealers with the Financial Industry Regulatory Authority (FINRA). FINRA was created in July 2007 through the consolidation of National Association of Securities Dealers and the member regulation, enforcement and arbitration functions of the New York Stock Exchange. The rule corrects cross-references.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Office determined the proposed rule will not have an adverse 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: 517.03(1) FS.

LAW IMPLEMENTED: 517.07, 517.12, 517.021, 517.061, 517.051, 517.081, 517.161 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: Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69W-200.001 Definitions.

As used in the Rules and Regulations of the Financial Services Commission and Office of Financial Regulation, pursuant to Chapter 517, F.S., unless the context otherwise specifically requires:

(1) “Accredited Investor” shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(a) Any bank as defined in section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. § 77c-(a)(2) (2006 & Supp. II)), or any savings and loan association or other institution as defined in section 3(a)(5)(A) of that Act (15 U.S.C. § 77c-(a)(5)(A) (2006 & Supp. II)) whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78o (2006 & Supp. II)); any insurance company as defined in section 2(13) of the Securities Act of 1933 (15 U.S.C. § 77b (2006 & Supp. II)); any investment company registered under the Investment Company Act of 1940 (15 U.S.C. §§ 80a-1 through 80a-64 (2006 & Supp. II)) or a business development company as defined in section 2(a)(48) of that Act (15 U.S.C. § 80a-2(a)(48) (2006 & Supp. II)); Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) ~~or (d)~~ of the Small Business Investment Act of 1958 (15 U.S.C. § 681(c) (2006 & Supp. II)); any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002(3) (2006 & Supp. II)) if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act (29 U.S.C. § 1002(21) (2006 & Supp. II)), which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(b) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-2(a)(22) (2006 & Supp. II));

(c) Any organization described in section 501(c)(3) of the Internal Revenue Code (26 I.R.C. § 501(c)(3) (2006 & Supp. III)), corporation, Massachusetts or similar business trust or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;

(d) through (f) No change.

(g) Any trust, with total assets in excess of \$5,000,000, not formed for the purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Securities and Exchange Commission Regulation 230.506(b)(2) (ii) (17 C.F.R. § 230.506(b)(2)(ii) (2009)); and

(h) No change.

(2) No change.

(3) “Aggregate Indebtedness” is defined pursuant to S.E.C. Rule 15c3-1 (17 C.F.R. CFR § 240.15c3-1 (2009)).

(4) “Allowable Assets” is defined pursuant to S.E.C. Rule 15c3-1 (17 C.F.R. CFR § 240.15c3-1 (2009)).

(5) through (6) No change.

(7)(a) “Associated person” as defined in Section 517.021(2), F.S., shall include any person who for compensation refers, solicits, offers, or negotiates for the purchase or sale of securities and/or of investment advisory services. A person whose activities fall within this definition is required to register with the Office of Financial Regulation as an associated person pursuant to Sections 517.12(1) or (4), F.S.

(b) Notwithstanding the provisions of paragraph (a), an associated person registered with the Office of Financial Regulation and operating in compliance with subsection 69W-600.003(3) 69W-600.003(2), F.A.C., shall not be deemed an associated person of any investment adviser other than the investment adviser or dually registered dealer/investment adviser with which such associated person is registered.

(c) Any person acting in compliance with S.E.C. Rule 206(4)-3 (17 C.F.R. CFR § 275.206(4)-3 (2009)), ~~as it existed on July 1, 2003~~, shall not be deemed an associated person of an investment adviser.

(8) through (16) No change.

(17) “Independent Director” shall be defined as a member of the Issuer’s Board of Directors who:

(a) Is not an officer or employee of the Issuer, its subsidiaries, or their affiliates or associates and has not been an officer or employee of the Issuer, its subsidiaries or their affiliates or associates within the last two years; and

(b) Is not a promoter as defined in Section 517.021(18)(b) 517.021(15)(b), F.S.; and

(c) Does not have a material business or professional relationship with the issuer or any of its affiliates or associates. For purposes of determining whether or not a business or professional relationship is material, the gross revenue derived by the Independent Director from the Issuer, its affiliates and associates shall be deemed material if it exceeds 5% of the Independent Director’s;

1. Annual gross revenue, derived from all sources, during either of the last two years; or

2. Net worth, on a fair market value basis.

(18) through (19) No change.

(20) “Issuers” Within the Meaning of Section 517.021(14) 517.021(11), F.S.

(a) For the purposes of determining whether a person is an issuer within the meaning of Section 517.021(14) 517.021(11), F.S., the term “promoter” shall be deemed to include:

1. Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly initiates the founding or organizing of the business or enterprise of an issuer; or

2. Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services, or a combination of services and property, 10% or more of any class of securities of the issuer or 10% or more of the proceeds from the sale of any class of securities of the issuer; provided

that any person who receives securities or proceeds from the sale of securities either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter if such person does not otherwise take part in founding and organizing the enterprise of the issuer.

(b) Notwithstanding the provisions of subsection (1) of this rule, no person shall be deemed to be a promoter with respect to any issuer which is duly qualified to transact business under the laws of the jurisdiction in which it is organized and which has actively been engaged in business for a continuous period of one year.

(21) through (24) No change.

(25) "Qualified Institutional Buyer" for purposes of Section 517.061(7), F.S., shall be defined as provided in Securities and Exchange Commission rule 144A(a) (~~i.e.~~, 17 C.F.R. § ~~§~~ 230.144A(a) (2009)), ~~as such rule existed on November 1, 1992.~~

(26) through (27) No change.

(28) "Reportable Act" shall mean:

(a) Having exercised management or policy control over or owned 10 percent or more of the securities of any dealer or investment adviser for which a Securities Investor Protection Corporation ("SIPC") trustee was appointed pursuant to the Securities Investor Protection Act or which is insolvent;

(b) Conviction of or entry of a plea of guilty or no contest to any criminal act, excluding traffic violations or other minor offenses;

(c) Having been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or order by any court of competent jurisdiction, administrative law judge, or by any state or federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association, involving a violation of any federal or state securities or commodities law or any rule or regulation promulgated thereunder, or any rule or regulation of any national securities, commodities or options exchange or national securities, commodities, or options association, or having been the subject of any injunction or adverse order by a state or federal agency or court of competent jurisdiction regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers, or other related or similar industries;

(d) Being charged, in a pending enforcement action or pending criminal prosecution, with any conduct that if proven and not subsequently reversed, suspended, or vacated, would be deemed a reportable act under paragraphs (a) through (c) of this rule.

1. For purposes of this rule, "enforcement action" means any judicial proceeding or any administrative proceeding where such judicial or administrative proceeding is brought by an agency of the United States or of any state to enforce or restrain violation of any state or federal law, or any disciplinary proceeding maintained by the Financial Industry Regulatory

Authority (formerly known as the National Association of Securities Dealers), the National Futures Association, the New York Stock Exchange, or any other similar self-regulatory organization.

2. An enforcement action is pending at any time after notice to the respondent of such action and is terminated at any time after entry of final judgment or decree in the case of judicial proceedings, final agency action in the case of administrative proceedings, and final disposition by a self-regulatory organization in the case of disciplinary proceedings.

3. A criminal prosecution is pending at any time after criminal charges are filed and is terminated at any time after conviction, acquittal, or dismissal.

(29) "Renewal Applicant" shall mean an applicant who is a registrant who seeks a timely renewal of the license.

(30) "Securities Act of 1933", 15 U.S.C. §§ 77a through 77mm (2006 & Supp. II), "Securities Exchange Act of 1934", 15 U.S.C. §§ 78a through 78oo (2006 & Supp. II), "Investment Company Act of 1940", 15 U.S.C. §§ 80a-1 through 80a-64 (2006 & Supp. II), "Investment Advisers Act of 1940", 15 U.S.C. §§ 80b-1 through 80b-21 (2006 & Supp. II), and "Internal Revenue Code", 26 U.S.C. Subtitles A through K (2006 & Supp. III), mean the federal statutes of those names ~~as amended.~~

(31) "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

(32) "Total Equity Investment" for purposes of subsection 69W-700.005(1), F.A.C., shall mean the total of (1) par or stated values of all equity securities offered or proposed to be offered; and (2) the amount of surplus of any kind, regardless of description and whether or not restricted.

(33) "Wholesaler" is defined as any dealer conducting business exclusively with other dealers in this State, and such dealer need not be registered as a dealer under Section 517.12, F.S.

(34) The federal statutes and regulations referenced in this rule are hereby incorporated by reference. Copies of the United States Code are available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/retrieve.html>.

Rulemaking Specific Authority 517.03(1) FS. Law Implemented 517.07, 517.12, 517.021, 517.061, 517.051, 517.081, 517.161 FS. History--New 12-5-79, Amended 9-20-82, Formerly 3E-200.01, Amended 12-8-87, 10-14-90, 7-31-91, 6-16-92, 1-10-93, 5-5-94, 10-20-97, 8-9-98, 8-19-99, 10-30-03, Formerly 3E-200.001, Amended 5-15-07,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 25, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009

FINANCIAL SERVICES COMMISSION

Office of Financial Regulation

RULE NOS.:	RULE TITLES:
69W-300.002	Financial Statements and Reports
69W-300.003	Refunds of Fees, Files Denied or Withdrawn

PURPOSE AND EFFECT: Rule 69W-300.002, F.A.C., is amended to reflect the most current version of federal regulations and federal statutes referenced in the rule. The rule is also amended to replace references to the National Association of Securities Dealers with the Financial Industry Regulatory Authority (FINRA). FINRA was created in July 2007 through the consolidation of National Association of Securities Dealers and the member regulation, enforcement and arbitration functions of the New York Stock Exchange. Rule 69W-300.003, F.A.C., is repealed. This rule is not needed because the statutes under Chapter 517, F.S., specify the accounts where fees are to be deposited and also specify that fees are non-refundable.

SUMMARY: Rule 69W-300.002, F.A.C., is amended to reflect the most current version of federal regulations and federal statutes referenced in the rule. The rule is also amended to replace references to the National Association of Securities Dealers with the Financial Industry Regulatory Authority (FINRA). FINRA was created in July 2007 through the consolidation of National Association of Securities Dealers and the member regulation, enforcement and arbitration functions of the New York Stock Exchange. Rule 69W-300.003, F.A.C., is repealed. This rule is not needed because the statutes under Chapter 517, F.S., specify the accounts where fees are to be deposited and also specify that fees are non-refundable.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Office determined the proposed rule will not have an adverse 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: 517.03 FS.
LAW IMPLEMENTED: 517.081, 517.082, 517.12, 517.131, 517.315 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 RULES IS: Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

THE FULL TEXT OF THE PROPOSED RULES IS:

69W-300.002 Financial Statements and Reports.

(1) All financial statements required for registration of securities, or registration of dealers and investment advisers, shall be prepared in accordance with United States generally accepted accounting principles. Financial statements required to be prepared in accordance with Regulation S-X (17 C.F.R. Part 210 (2009)) ~~together with the Accounting Series Releases, pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934,~~ will be acceptable to the Office of Financial Regulation unless otherwise required by these rules.

(2) No change.

(3) Requirements for Dealers.

(a) Every dealer applicant, unless exempted under paragraph (3)(b) or (3)(e) of this rule, shall file financial statements as of a date within ninety (90) days prior to the date of filing for registration. These financial statements need not be audited provided that there shall also be filed audited financial statements as of said applicant's most recent fiscal year end.

(b) Those dealer applicants which have been in operation for a period of time less than twelve (12) months, and for whom an audited financial statement has not been prepared or is not available, shall be permitted to file unaudited financial statements provided the following conditions are met:

1. Such financial statements are as of a date within thirty (30) days prior to the date of filing for registration, and are prepared in accordance with the provisions of paragraphs (2)(b), (2)(d) and (3)(c) of this rule; and

2. Such applicant is effectively registered with the Securities Exchange Commission or Financial Industry Regulatory Authority (formerly known as the National Association of Securities Dealers, Inc.)

(c) Every dealer applicant and registrant shall file, in addition to the information specified in paragraph (2)(b) of this rule, the following:

1. Computations of net capital and customer reserve requirements prepared in accordance with the provisions of Rules 69W-600.016 and 69W-600.017, F.A.C.;

2. Written notice of designation of an independent certified public accountant, which notice shall include name, address, and telephone number of the accountant so designated;

3. Written notice of fiscal year end or audit date of such dealer;

4. Disclosure of any contingent, civil or criminal liabilities of such dealer.

(d) The Office of Financial Regulation shall deem those financial statements and reports, prepared and filed in accordance with the provisions of SEC Rule 17a-5 (17 C.F.R. CFR § 240.17a-5 (2009)) and SEC Rule 17a-10 (17 C.F.R. CFR § 240.17a-10 (2009)) (as such provisions existed on July 1, 2003), to be in compliance with, and fulfill the requirements of, this rule as applicable to a dealer.

(e) The financial statements and reports required by paragraphs (a) through (d) are not required to be filed with the Office of Financial Regulation, unless specifically requested by the Office of Financial Regulation, by a dealer applicant or registrant if the dealer registrant is a current member of a securities association registered pursuant to section 15A of the Securities Exchange Act of 1934 (15 U.S.C. §78o-3 (2006 & Supp. II)) and such association requires financial reports to be filed with it.

(4) Requirements for Investment Advisers.

(a) Investment adviser applicants shall file financial statements as of a date within ninety (90) days prior to the date of filing for registration, which statements may be unaudited financial statements defined in paragraph (2)(d) of this rule. However, each investment adviser who has custody or possession of client's funds or securities; requires prepayment of advisory fees six months or more in advance and in excess of \$500 per client; or computes net capital pursuant to SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1 (2009)) for purposes of compliance with subsection 69W-600.016(3), F.A.C., shall file financial statements as required by paragraphs (3)(a) and (3)(b) of this rule.

(b) Investment adviser registrants shall provide the Office of Financial Regulation with written notification of such investment adviser's fiscal year end or annual audit date, and thereafter file annually financial statements as of said date in accordance with the provisions of subsection 69W-600.015(3), F.A.C. Such financial statements may be unaudited as defined in paragraph (2)(d) of this rule. However, each investment adviser who has custody or possession of client's funds or securities; requires prepayment of advisory fees six months or more in advance and in excess of \$500 per client; or computes net capital pursuant to SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1 (2009)) for purposes of compliance with subsection 69W-600.016(3), F.A.C., shall file audited financial statements as defined by paragraph (2)(a) of this rule. Accompanying all audited financial statements shall be a

written statement from the independent certified public accountant verifying compliance with subsection 69W-600.016(3), F.A.C.

(c) Every investment adviser applicant and registrant, in addition to the information specified in paragraphs (2)(b) and (2)(d) of this rule, shall provide to the Office of Financial Regulation:

1. Computations of net capital requirements prepared in accordance with the provision of Rule 69W-600.016, F.A.C.;

2. Written disclosure of any contingent, civil or criminal liabilities of such investment adviser.

(5) through (7) No change.

(8) The federal statutes and regulations referenced in this rule are hereby incorporated by reference. Copies of the United States Code are available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/retrieve.html>

Rulemaking Specific Authority 517.03 FS. Law Implemented 517.081, 517.12 FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-300.02, Amended 6-28-93, 11-22-93, 12-24-95, 9-19-00, 10-30-03, Formerly 3E-300.002, Amended 5-15-07, _____.

69W-300.003 Refunds of Fees, Files Denied or Withdrawn.

~~(1) Fees paid to the Office of Financial Regulation in connection with the filing of applications for registration become a part of the general revenue of the State when paid in accordance with Sections 517.12(10) and (11), F.S., and are not refundable when files are denied or withdrawn, after a preliminary evaluation of the file has been initiated.~~

~~(2) Fees paid to the Office of Financial Regulation in connection with the filing of applications of Registrations under Section 517.081 or 517.082, F.S., become a part of the general revenue of the State and are not refundable when files are denied or withdrawn, after a preliminary evaluation of the file has been initiated.~~

~~(3) Pursuant to Section 517.315, F.S., all fees and charges collected under Chapter 517, F.S., except those collected under Section 517.131, F.S., are paid into the General Revenue Fund. The fees collected under Section 517.131, F.S., are paid into the Security Guaranty Fund. No refund of monies referred to in these sections shall be refunded for amounts less than one (1) dollar, unless such is requested by the registrant or applicant.~~

Rulemaking Specific Authority 517.03(1) FS. Law Implemented 517.081, 517.082, 517.12, 517.131, 517.315 FS. History—New 12-5-79, Formerly 3E-300.03, Amended 7-31-91, 10-1-96, 10-20-97, 10-30-03, Formerly 3E-300.003, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 25, 2010
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009

FINANCIAL SERVICES COMMISSION

Office of Financial Regulation

RULE NO.: 69W-301.003
 RULE TITLE: Right to Hearing
 PURPOSE AND EFFECT: Rule 69W-301.003, F.A.C., is amended to clarify the references to the administrative rules that govern the process of requesting a hearing.

SUMMARY: Rule 69W-301.003, F.A.C., is amended to clarify the references to the administrative rules that govern the process of requesting a hearing.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Office determined the proposed rule will not have an adverse 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: 517.03(1), 517.12, 517.1201 FS.

LAW IMPLEMENTED: 120.60(1), 120.57, 517.051, 517.081, 517.082, 517.12, 517.161(5), 517.241(1) 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: Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69W-301.003 Right to Hearing.

Should the Office of Financial Regulation refuse to grant the license, the Office of Financial Regulation shall notify the applicant of this decision stating the grounds for denial. The applicant aggrieved by such a refusal shall be entitled to an administrative hearing upon filing a written request for such a

hearing. Procedures for requesting such hearing appear in Rules 28-106.201 and 28-106.301, F.A.C. Chapters 28-106 and 28-107, F.A.C.

Rulemaking Specific Authority 517.03(1) FS. Law Implemented 120.60, 120.57, 517.081, 517.082, 517.12, 517.241(1) FS. History—New 9-20-82, Formerly 3E-301.03, Amended 7-31-91, 6-22-98, Formerly 3E-301.003, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 25, 2010
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009

FINANCIAL SERVICES COMMISSION

Office of Financial Regulation

RULE NOS.:	RULE TITLES:
69W-500.008	Unsolicited Purchase or Sale of Securities Pursuant to Section 517.061(13), F.S
69W-500.013	Exemption/Mobile Home Parks/Limited Purpose Stock Offering
69W-500.015	Exemption for Offers and Sales of Securities of Foreign Issuers to Non-U.S. Persons in Offshore Transactions
69W-500.016	Exemption for Issuers of Section 4(2) Offerings
69W-500.017	Compensatory Benefit Plan Exemption

PURPOSE AND EFFECT: Rules 69W-500.008, .015, .016, and .017, F.A.C., are amended to reflect the most current versions of federal regulations and federal statutes referenced in the rules. Rule 69W-500.013, F.A.C., is amended to correct a cross reference.

SUMMARY: Rules 69W-500.008, .015, .016, and .017, F.A.C., are amended to reflect the most current versions of federal regulations and federal statutes referenced in the rules. Rule 69W-500.013, F.A.C., is amended to correct a cross reference.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Office determined that the proposed amendments will not have an adverse 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: 517.03, 517.061(19) FS.

LAW IMPLEMENTED: 517.061(13), 517.061(18), 517.061(19) 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 RULES IS: Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69W-500.008 Unsolicited Purchase or Sale of Securities Pursuant to Section 517.061(13), F.S.

(1) For purposes of Section 517.061(13), F.S., the offer or sale of securities in a transaction meeting the requirements of SEC Rule 144 (17 C.F.R. § 230.144 (2009)), which is hereby incorporated by reference, promulgated pursuant to section 4(1) of the Securities Act of 1933, as in effect on November 1, 1978, shall be deemed an unsolicited purchase or sale of securities on order of and as agent for another. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/retrieve.html>.

(2) through (3) No change.

Rulemaking Specific Authority 517.03(1) FS. Law Implemented 517.061(13) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-500.08, Amended 10-14-90, Formerly 3E-500.008, Amended _____.

69W-500.013 Exemption/Mobile Home Parks/Limited Purpose Stock Offering.

Transactions which involve the offer or sale of stock, bonds, or other instruments deemed to be securities as defined in Section 517.021(21) 517.021(17), F.S., offered or sold by or on behalf of a non-profit corporation consisting solely of property owners of a singular mobile home park, where the securities evidence shares of the corporation, are hereby exempted from the registration requirements of Section 517.07, F.S., provided that such securities meet and comply with all of the following criteria:

(1) That proceeds from the sale of securities are used exclusively for the maintenance, improvement or acquisition of common areas within the mobile home park.

(2) That the solicitation and subsequent sale of securities is made exclusively by the non-profit corporation to persons retaining a property interest in the mobile home park and no form of general solicitation or general advertisement is instituted.

(3) That no individual, either directly or indirectly, receives any compensation or commission for or as a result of the sale of such securities.

(4) That prior to the sale of said securities, each property owner within the mobile home park is provided with or given reasonable access to full and fair disclosure concerning all relevant information relating to the securities themselves.

(5) That the Office of Financial Regulation is provided with reasonable notice of the issuance of said securities prior to or contemporaneous with their offer and sale.

Rulemaking Specific Authority 517.03 FS. Law Implemented 517.061(18) FS. History—New 1-8-86, Amended 7-31-91, Formerly 3E-500.013, Amended _____.

69W-500.015 Exemption for Offers and Sales of Securities of Foreign Issuers to Non-U.S. Persons in Offshore Transactions.

(1) Any offer or sale of securities of a foreign issuer made to a person, other than a U.S. person, in an offshore transaction that is exempt from registration under section 5 of the Securities Act of 1933 pursuant to Regulation S (17 C.F.R. §§ 230.901 through 230.905 (2009)) promulgated by the Securities and Exchange Commission, is hereby exempted from the registration requirements of Section 517.07, F.S.

(2) For purposes of this rule, the terms “foreign issuer,” “offshore transaction,” and “U.S. person” shall have the meanings prescribed in rule 902 of Regulation S (17 C.F.R. § 230.902 (2009)) as it existed on April 29, 1998.

(3) The federal regulations referenced in this rule are hereby incorporated by reference. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/retrieve.html>.

Rulemaking Specific Authority 517.03(1), 517.061(19) FS. Law Implemented 517.061(19) FS. History—New 7-30-98, Formerly 3E-500.015, Amended _____.

69W-500.016 Exemption for Issuers of Section 4(2) Offerings.

Securities offered or sold in a transaction exempt under a rule or regulation issued by the Securities and Exchange Commission under Section 4(2) of the Securities Act of 1933 (15 U.S.C. § 77d(2) (2006 & Supp. II)), as it existed on January 1, 2001, are hereby exempted from the filing requirements of Section 517.07, F.S. An issuer of such securities and each of its bona fide employees who satisfy the criteria set forth in Section 517.021(6)(b)6., F.S., and through whom the issuer elects to sell such securities, shall be

exempted from the registration requirements of Section 517.12(1), F.S. The federal statute cited in this rule is hereby incorporated by reference. Copies of the United States Code are available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>.

Rulemaking Specific Authority 517.03(1), 517.061(19) FS. Law Implemented 517.061(19) FS. History—New 1-1-02, Formerly 3E-500.016, Amended _____.

69W-500.017 Compensatory Benefit Plan Exemption.

(1) Transactions involving the offer or sale of a security pursuant to a written compensatory benefit plan (or a written compensation contract) or similar plan established by the issuer, its parent, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer’s parent, for the participation of their employees, directors, general partners, trustees, officers, or consultants and advisors, and their family members who acquire such securities from such persons through gifts or domestic relations orders, are exempt from the registration provisions of Section 517.07, F.S., if:

(a) The sale of the security meets all of the requirements of SEC Rule 701 (17 C.F.R. § 230.701 (2009)) ~~as it existed on November 1, 2000;~~

(b) The security is sold pursuant to a plan of a type exempt under section 3(a) of the Securities Act of 1933; or

(c) The security is effectively registered under sections 6 to 8 of the Securities Act of 1933, 15 U.S.C. §§ 77f through h (2006 & Supp. II), and is offered and sold in compliance with the provisions of section 5 of the Securities Act of 1933, 15 U.S.C. § 77e (2006 & Supp. II).

(2) For the purposes of this rule, the terms “compensatory benefit plan” and “family member,” shall have the same meanings as defined in SEC Rule 701 (17 C.F.R. § 230.701 (2009)) ~~as it existed on November 1, 2000.~~

(3) through (4) No change.

(5) The federal statutes and regulations referenced in this rule are hereby incorporated by reference. Copies of the United States Code are available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/retrieve.html>.

Rulemaking Specific Authority 517.03(1), 517.061(19) FS. Law Implemented 517.061(19) FS. History—New 11-25-01, Formerly 3E-500.017, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 25, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009

AGENCY FOR ENTERPRISE INFORMATION TECHNOLOGY

Office of Information Security

RULE NOS.:	RULE TITLES:
71A-1.001	Purpose and Scope
71A-1.002	Definitions
71A-1.003	Agency Information Security Program
71A-1.004	Agency Information Technology Workers
71A-1.005	Agency Contracts, Providers, and Partners
71A-1.006	Confidential and Exempt Information Access Control
71A-1.007	Awareness and Training
71A-1.008	Audit and Accountability
71A-1.009	Certification, Accreditation, and Security Assessments
71A-1.010	Configuration Management
71A-1.011	Contingency Planning
71A-1.012	Identification and Authentication
71A-1.013	Incident Response
71A-1.014	Maintenance
71A-1.015	Media Protection
71A-1.016	Physical and Environmental Protection
71A-1.017	System and Application Security Planning
71A-1.018	Personnel Security and Acceptable Use
71A-1.019	Risk Assessment
71A-1.020	Systems, Applications and Services Acquisition and Development
71A-1.021	Systems and Communications Protection
71A-1.022	Systems and Information Integrity
71A-1.023	

PURPOSE AND EFFECT: Section 282.318, F.S., authorizes the Agency for Enterprise Information Technology to establish rules for ensuring an appropriate level of security for all data and information technology resources for executive branch agencies. The purpose of proposed Rule Chapter 71A-1, F.A.C., is to define minimum management, operational and technical security controls to be used by state agencies to secure information and information technology resources. These rules will replace the policies and standards in Rule Chapter 60DD-2, F.A.C., which are being noticed for repeal. A

Notice of Proposed Rule to repeal Rule Chapter 60DD-2, F.A.C., is contained in this edition of the Florida Administrative Weekly.

SUMMARY: The proposed rules document a framework of information security best practices for state agencies in order to safeguard the confidentiality, integrity, and availability of Florida government data and information technology resources.

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: 14.204(7), 282.318(3),(6) FS.

LAW IMPLEMENTED: 282.318 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 RULES IS: Renee Harkins, Project Analyst, Agency for Enterprise Information Technology, 4030 Esplanade Way, Suite 135, Tallahassee, Florida 32399, telephone (850)414-6771

THE FULL TEXT OF THE PROPOSED RULES IS:

71A-1.001 Purpose and scope.

(1) Rule 71A-1, F.A.C., shall be known as the Florida Information Technology Resource Security Policies and Standards.

(2) The information security standards of this rule chapter apply to executive branch agencies as provided in Title IV, Florida Statutes.

(3) The information security policies and standards of this rule chapter apply equally to all levels of management and to all members of the workforce.

(4) The State of Florida government information technology resources, data, and information are valuable assets to its citizens. The confidentiality, integrity, and availability of those resources must be protected. Data and resources must be reliable, and must be available to those who are authorized to use them.

(5) The purposes of the Florida Information Technology Resource Security Standards are to:

(a) Document a framework of information security best practices for state agencies in order to safeguard the confidentiality, integrity, and availability of Florida government data and information technology resources.

(b) Define minimum standards to be used by state agencies to categorize information and information technology resources based on the objectives of providing appropriate levels of information security according to risk levels.

(c) Define minimum management, operational and technical security controls to be used by state agencies to secure information and information technology resources.

(6) State agencies shall use these standards as the minimum security requirements for information and information technology resources.

(7) Nothing in this rule chapter shall be construed as limiting the access of the Auditor General to agency records, systems, or networks in the performance of a properly authorized audit or examination pursuant to Chapters 11 and 119, Florida Statutes.

(8) Nothing in this rule chapter shall be construed to impair the public's access rights under Article I, Section 24 of the Florida Constitution, and Chapter 119, Florida Statutes.

(9) For guidance the State of Florida will follow Federal Information Processing Standards (FIPS) and National Institute of Standards and Technology (NIST) standards and guidelines implemented as a result of the Federal Information Security Management Act of 2002 (FISMA, 44 U.S.C. § 3541, et seq.). The Agency for Enterprise Information Technology (AEIT) Office of Information Security (OIS) will assist agencies by publishing guidelines and templates to be used by agencies when implementing these rules.

(10) Heads of executive agencies may find it necessary to employ compensating security controls when the agency is unable to implement a security standard or the standard is not cost-effective due to the specific nature of a system or its environment. After the agency analyzes the issue, a compensating control may be employed if the agency documents the analysis results and senior management documents the acceptance of the risk associated with employing the compensating control. All related documentation shall be retained by the agency Information Security Manager. This documentation is confidential, pursuant to Section 282.318, Florida Statutes, except that such information shall be available to the Auditor General and the Agency for Enterprise Information Technology.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History--New _____.

71A-1.002 Definitions.

(1) Access – the ability to acquire, read, write, or delete data or information; make use of an information technology resource; enter a room or facility.

(2) Access control – the enforcement of specified authorization rules based on user or system authentication.

(3) Access point – a station that transmits and receives data (for example, a wireless access point).

(4) Accountability – the principle stating that a specific action is traceable to a unique individual.

(5) Agency worker – see Worker.

(6) Agency-approved software – software that has been reviewed and deemed acceptable by the agency for use with agency information technology resources.

(7) Agency-managed device – a device that is not owned by the agency, but that is declared by the device owner and accepted by the agency to be compliant with agency standard configurations.

(8) Anti-malware software – software that detects and removes malicious software from a computer or network stream.

(9) Application – information resources designed to satisfy a specific set of user requirements.

(10) Application development life cycle (ADLC) – a set of procedures to guide the development and modification of production application software and data items. A typical ADLC includes design, development, quality assurance, acceptance testing, maintenance, and disposal (also known as System Development Life Cycle – SDLC).

(11) Application development team – the entire set of people responsible for planning, designing, developing, installing, and maintaining applications. The roles represented include project managers, analysts, computer programmers, database administrators, data administrators, system administrators, network administrators, etc.

(12) Application owner – the business unit that requested the application be developed and/or purchased; the individual (usually a manager) from the business unit(s) for which an application is acquired who has responsibility and authority to make decisions related to the application, such as requirements, deliverable approvals, access, etc.

(13) Application security review – an evaluation of an application's security requirements and associated controls (planned or implemented) with the goal of determining if controls are sufficient to minimize risks to the confidentiality, integrity, and availability of the application, its data, or other information technology resources.

(14) Audit logs – documentation of activity within a system incorporating, at a minimum, date, time, action, and user account associated with the action.

(15) Authentication – the process of verifying that a user, process, or device is who or what it purports to be. Techniques for authentication fall into categories as follows:

(a) Something the user knows, such as a password or PIN;

(b) Something the user has, such as a smartcard or ATM card; and

(c) Something that is part of the user, such as a fingerprint, voice pattern or retinal scan.

(16) Authorization – official or legal permission or approval.

(17) Availability – the principle that authorized users have timely and reliable access to information and information technology resources.

(18) Breach – unlawful and/or unauthorized access of computerized data that materially compromises the security, confidentiality, or integrity of personal information.

(19) Chief Information Officer – the person appointed by the agency head that coordinates and manages the agency information technology functions and responsibilities.

(20) Compensating Control – a management, operational, or technical control (i.e., safeguard or countermeasure) employed by an organization in lieu of a recommended security control that provides an equivalent or greater level of protection for an information system and the information processed, stored, or transmitted by that system.

(21) Complex password – a password that is at least eight characters and is comprised of at least three of the following categories: uppercase English letters; lowercase English letters, numbers 0-9, and non-alphanumeric characters.

(22) Comprehensive risk assessment – the risk analysis required to be conducted by agencies every three years, in accordance with Section 282.318, Florida Statutes.

(23) Computer user – any authorized entity who uses information technology resources (interchangeable with User).

(24) Confidential information and/or confidential data – information not subject to inspection by the public that may be released only to those persons and entities designated in Florida statute; information designated as confidential under provisions of federal law or rule.

(25) Confidentiality – the principle that information is accessible only to those authorized.

(26) Continuity of Operations Plan (COOP) – the documented plan detailing how the agency will respond to incidents that could jeopardize the organization's core mission pursuant to Section 252.365, Florida Statutes.

(27) Critical information resources – the resources determined by agency management to be essential to the agency's critical mission and functions, the loss of which would have severe or catastrophic adverse effect.

(28) Cryptography – the discipline that embodies the principles and methods for the transformation of data in order to hide semantic content, prevent unauthorized use, or prevent undetected modification. Cryptography is a method to protect data and includes both encryption (which is reversible) and hashing (which is not reversible, or "one way").

(29) Data store – a collection of information organized so it can be accessed, managed, and updated.

(30) Degaussing – a method of bulk erasing data from magnetic media. Degaussing demagnetizes the disk such that all data stored on the disk is permanently destroyed.

(31) Demilitarized Zone (DMZ) – physical or logical sub-network or computer host that provides an additional layer between the Internet and an organization’s internal network so that external parties only have access to devices in the DMZ rather than the internal network.

(32) Development infrastructure – a technical environment that is used for design, development, and/or piloting of new technical capabilities or applications. The development infrastructure is separated logically or physically from the production and test infrastructures.

(33) Directly connect [to the agency internal network] – a device that is joined to and becomes an extension of the agency’s internal network. Dial-up and Virtual Private Network (VPN) connections to the agency are considered to be directly connected.

(34) Disaster recovery plan – see Information Technology Disaster Recovery Plan.

(35) Encryption – the reversible process of transforming readable text into unreadable text (cipher text).

(36) Exempt Information – information an agency is not required to disclose under Section 119.07(1), Florida Statutes, but which the agency is not necessarily prohibited from disclosing in all circumstances.

(37) Information owner – the manager of the business unit ultimately responsible for the collection, maintenance, and dissemination of a specific collection of information.

(38) Information security – protecting information and information technology resources from unauthorized access, use, disclosure, disruption, modification, or destruction.

(39) Information Security Manager (ISM) – the person designated to administer the agency’s information security program in accordance with Section 282.318, Florida Statutes.

(40) Information security program – a coherent assembly of plans, project activities, and supporting resources contained within an administrative framework, to assure adequate security for agency information and information technology resources.

(41) Information Technology Disaster Recovery Plan (ITDRP) – information technology resources and procedures to ensure the availability of critical resources needed to support the agency mission in the event of a disaster and to return to normal operations within an accepted timeframe. The ITDRP takes into account availability requirements, recovery time frames, recovery procedures, back-up/mirroring details, systematic and regular testing and training.

(42) Information technology infrastructure – network devices, server hardware, and host operating systems, database management systems, utilities, and other assets required to deliver or support IT services.

(43) Information technology resources – a broad term that describes a set of technology related assets. While in some cases the term includes items such as people and maintenance,

as used in this rule, this term means computer hardware, software, networks, devices, connections, applications, and data.

(44) Information technology worker – an agency user whose job duties and responsibilities specify development, maintenance, or support of information technology resources (see User; Worker; Workforce).

(45) Integrity – the principle that assures information remains intact, correct, authentic, accurate and complete. Integrity involves preventing unauthorized and improper creation, modification, or destruction of information.

(46) Interactive session – a work session where there is an exchange of communication between a user and a computer.

(47) Least privilege – the principle that grants the minimum possible privileges to permit a legitimate action in order to enhance protection of data and functionality from faults and malicious behavior.

(48) Malware – malicious software; a general term used by computer professionals to mean a variety of forms of hostile, intrusive, or annoying software or program code.

(49) Management Controls – The security controls (i.e., safeguards or countermeasures) for an information system that focus on the management of risk and the management of information system security.

(50) Media – physical devices or writing surfaces including but not limited to magnetic tapes, optical disks, magnetic disks, memory chips, printouts (but not including display media) onto which information is recorded, stored, or printed within an information system.

(51) Mobile computing device – a portable device that can process data (e.g., laptop, personal digital assistant, certain media players and cell phones).

(52) Mobile device – a general term describing both mobile computing and mobile storage devices.

(53) Mobile storage device – portable data storage media including external hard drives, thumb drives, floppy disks, recordable compact discs (CD-R/RW), recordable digital videodiscs (DVD-R/RW), or tape drives that may be easily attached to and detached from computing devices.

(54) National Institute of Standards and Technology (NIST) – a non-regulatory Federal agency within the U.S. Commerce Department’s Technology Administration.

(55) Need to know – the principle that individuals are authorized to access only specific information needed to accomplish their individual job duties.

(56) Network – an interconnected group of information technology devices; a system that transmits any combination of voice, video and/or data between devices.

(57) Network perimeter – the boundary of an agency’s information technology infrastructure.

(58) Operational Controls – security controls (i.e., safeguards or countermeasures) for an information system that primarily are implemented and executed by people (as opposed to systems).

(59) Operational information security plan – the agency plan governing the information security program. In addition to detailing the activities, timelines and deliverables for the security objectives that, subject to current resources, the agency will implement during the current fiscal year, the plan includes a progress report for the prior fiscal year, related costs that cannot be funded from current resources, and a summary of agency compensating controls.

(60) Owner – the manager of the business unit ultimately responsible for an information technology resource.

(61) Patch management – the process for identifying, acquiring, testing, installing, and verifying software updates, also known as patches.

(62) Peer to peer – a communications model that allows the direct sharing of files (audio, video, data, and software) among computers.

(63) Personal firewall – software installed on a computer or device which helps protect that system against unauthorized incoming or outgoing network traffic.

(64) Personal information – an individual’s first name, first initial and last name, or any middle name and last name, in combination with any one or more of the following data elements:

(a) Social Security Number.

(b) Driver’s license number or Florida Identification Card number.

(c) Account number, credit card number, or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account. Note: as provided in Section 817.5681, Florida Statutes, the term personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or widely distributed media.

(65) Privately-owned device – a device not purchased with agency funds; a device owned by a person or other non-agency entity and not configured, maintained, or tracked by the agency.

(66) Production infrastructure – network devices, server hardware, and host operating systems that comprise an agency’s operational or real-time environment.

(67) Public records act – refers to Chapter 119, Florida Statutes.

(68) Remote access – any access to an agency’s internal network through a network, device, or medium that is not controlled by the agency (such as the Internet, public phone line, wireless carriers, or other external connectivity). A virtual private network client connection is an example of remote access.

(69) Review – a formal or official examination of system records and activities that may be a separate agency prerogative or a part of a security audit.

(70) Risk – the likelihood that a threat will occur and the potential impact of the threat.

(71) Risk analysis – a process that systematically identifies valuable data, information, and information technology system resources and threats to those resources, quantifies loss exposures (i.e., loss potential) based on estimated frequencies and costs of occurrence, and recommends how to allocate resources to countermeasures so as to minimize total exposure. The analysis lists risks in order of cost and criticality, thereby determining where countermeasures should be applied first. (Used interchangeably with risk assessment).

(72) Risk management – the ongoing process of risk analysis and subsequent decisions and actions to accept risk or to reduce vulnerabilities by either mitigating the risks or applying cost effective controls.

(73) Security controls – the management, operational, and technical controls (i.e., safeguards or countermeasures) prescribed to protect the confidentiality, integrity, and availability of information technology resources.

(74) Security incident – any action or activity, whether accidental or deliberate, that compromises the confidentiality, integrity, or availability of agency data or information technology resources.

(75) Security review – an examination of system records and activities to determine the adequacy of system controls, ensure compliance with established security policy and operational procedures, detect breaches in security, and recommend any indicated changes in any of the foregoing.

(76) Separation of duties – the concept of having more than one person required to complete a task. This is a way to ensure that no one individual has the ability to control all critical stages of a process.

(77) Service account – an account used by a computer process and not by a human, (e.g., an account used by the backup process for file access). Normally service accounts may not log on to a system.

(78) Session – the time during which two devices maintain a connection and are usually engaged in transferring data or information.

(79) Smart card – a pocket-sized card with embedded circuits that can process data. Often smart cards are used as a form of authentication for single sign-on systems (also known as integrated circuit card).

(80) Sniffing – capturing network data.

(81) Special trust or position of trust – positions that, because of the special trust or responsibility or sensitive location of those positions, require that persons occupying those positions be subject to a security background check, including fingerprinting, as a condition of employment, pursuant to Section 110.1127, Florida Statutes.

(82) Standards – a specific set of practices or procedures to regulate how a system or organization provides services; required practices, controls, components, or configurations established by a recognized authority.

(83) Standard configuration – documentation of the specific rules or settings used in setting up agency hardware, software, and operating systems.

(84) Standard hardware – agency-approved hardware.

(85) Standard software – agency-approved software.

(86) State Chief Information Security Officer – the State of Florida executive responsible for the state government information security posture and direction. This position is appointed by the state Chief Information Officer and oversees the state Office of Information Security.

(87) State Office of Information Security (OIS) – the State of Florida information security office, which guides, coordinates and assists state agencies in identifying threats to their information assets and mitigating their risks so effective security controls can be implemented. The OIS is part of the Agency for Enterprise Information Technology, pursuant to Section 282.318(3), Florida Statutes.

(88) Strategic information security plan – the agency three-year plan that defines security goals, intermediate objectives, and projected agency costs for the strategic issues of information security policy, risk management, security training, security incident response, and survivability.

(89) Strong cryptography – cryptography based on industry-tested and accepted algorithms, along with strong key lengths and proper key-management practices. Secure Hash Algorithm revision 1 (SHA-1) is an example of an industry-tested and accepted hashing algorithm. Examples of industry-tested and accepted standards and algorithms for encryption include Advanced Encryption Standard (AES) 128 bits, Triple Data Encryption Standard (TDES), minimum double-length keys, Rivest, Shamir and Adleman (RSA), 1024 bits and higher, Elliptic Curve Cryptography (ECC), 160 bits and higher, and ElGamal (1024 bits and higher).

(90) Survivability – the capability of an organization to maintain or quickly recover critical business functions after a disaster or adverse event, minimize the effect of an event, reduce financial loss, and expedite the return to normalcy.

(91) System – a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, storing, reporting, printing, dissemination, or disposition of information.

(92) System administrator – a person in charge of managing and maintaining computer or telecommunication systems.

(93) System hardening – the process of securing a system. Hardening typically includes ensuring proper configurations based on intended function, removing non-essential programs and utilities, disabling certain accounts, and installing patches.

(94) System security plan – the plan for an application or information technology resource that describes the security requirements, the controls in place or planned, and roles/responsibilities of all authorized individuals who use the system. A system security plan may also contain critical data policies, backup, disaster recovery, and user policies.

(95) Technical controls – security controls (i.e., safeguards or countermeasures) for an information system that are primarily implemented and executed by the information system through mechanisms contained in the hardware, software, or firmware components of the system.

(96) Test infrastructure – a technical environment that mirrors part or all of the production environment and is used for final testing of a technology or an application prior to production implementation. The test infrastructure is separated logically or physically from the production and development infrastructure.

(97) Track – the documented assignment of an asset to a user and/or location.

(98) User – any authorized entity that uses information technology resources (see Worker; Workforce; Information Technology Worker).

(99) Virtual Private Network (VPN) – a communications network tunneled through another communications network.

(100) Warning banner – a message displayed prior to or upon connection to a resource informing the user that activities may be monitored or access is restricted.

(101) Worker – a member of the workforce; a worker may or may not use information technology resources (see User; Workforce; Information Technology Worker).

(102) Workforce – employees, contractors, volunteers, trainees, and other persons whose conduct, in the performance of work for the agency, is under the direct control of the agency, whether or not they are paid by the agency (see User; Worker; Information Technology Worker).

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History–New _____.

71A-1.003 Agency Information Security Program.

(1) Each agency shall develop, document, implement, and maintain an agency-wide information security program. The goal of the information security program is to ensure administrative, operational and technical controls are sufficient to reduce to an acceptable level risks to the confidentiality, availability, and integrity of agency information and information technology resources.

(2) Each agency head shall appoint an Information Security Manager (ISM) to administer the agency information security program. Within one week of the effective date of appointment, and annually thereafter by January 1, the agency head shall send notification of the Information Security Manager appointment to the State Chief Information Security Officer.

(3) The agency Information Security Manager is responsible for the following duties, which shall also be specified in the agency position description:

(a) Development of a strategic information security plan and associated operational information security plan;

(b) Development and implementation of agency information security policies, procedures, standards, and guidelines;

(c) Development and implementation of the agency information security awareness program;

(d) Coordination of the agency information security risk management process;

(e) Coordination of the agency Computer Security Incident Response Team;

(f) Coordination of Information Technology Disaster Recovery planning in support of the agency Continuity of Operations Plan;

(g) Taking an active role in the agency information technology monitoring and reporting activities;

(4) The agency Information Security Manager shall maintain all agency information security program documents including, the Strategic Information Security Plan, the Operational Information Security Plan, and Security Policies and Procedures.

(5) The agency strategic information security plan must cover a three-year period and define security goals, intermediate objectives, and projected agency costs for the strategic issues of agency information security policy, risk management, security training, security incident response, and survivability.

(6) The agency operational information security plan must include the following items: a progress report for the prior operational information security plan; a project plan that includes activities, timelines, and deliverables for the current fiscal year; related costs that cannot be funded from current resources, and a summary of compensating controls employed by the agency including for each compensating control employed, the implementation date, the target system, and the compensating control description.

(7) The agency Information Security Manager shall review and update the agency Strategic Information Security Plan and the Information Security Operational Plan annually.

(8) By July 31 each year, the agency Information Security Manager shall submit a copy of the agency Strategic Information Security Plan and the Information Security Operational Plan to the State Chief Information Security Officer.

(9) The agency Information Security Manager shall develop, distribute, and periodically update agency information security policies and procedures consistent with this rule.

(10) The agency Information Security Manager, in fulfilling these responsibilities, shall follow the guidelines published by the Agency for Enterprise Information Technology Office of Information Security.

(11) With the approval of the agency head, the agency Information Security Manager may appoint or recommend appointments of individuals from agency offices, divisions, regional agency offices, etc. to be security representatives for their business units. The Information Security Manager shall assign the security responsibilities of the security representatives which shall include serving as security liaison between the unit and the Information Security Manager, promoting security awareness, and ensuring security incident reporting to the Information Security Manager.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History—New _____.

71A-1.004 Agency Information Technology Workers.

(1) Agency heads are responsible to ensure information technology workers are managed appropriately and effectively.

(2) Information technology positions with access to information processing facilities, or positions that have system, database, developer, network, or other administrative capabilities for systems, applications, or servers with risk categorization of moderate or high are positions of special trust.

(3) Each agency shall conduct background investigations using, at a minimum, Level 2 screening standards and disqualification criteria for personnel in positions of special trust as set forth in Section 110.1127, and Chapter 435, Florida Statutes.

(4) Each agency shall provide training for information technology workers to ensure competency in both technical and security aspects of their positions.

(5) Each agency shall establish procedures to ensure administrative rights for information technology resources are restricted to information technology workers who have received appropriate technical training and who are authorized based on job duties and responsibilities.

(6) Information technology workers shall be granted access to agency information technology resources based on the principles of “least privilege” and “need to know.”

(7) Agency Information Security Managers shall give written consent to workers based on job duties and responsibilities before allowing the workers to perform monitoring, sniffing, and related security activities.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History—New _____.

71A-1.005 Agency Contracts, Providers, and Partners.

(1) Contractors, providers, and partners employed by agencies or acting on behalf of agencies shall comply with this rule, agency security policies, and employ adequate security measures to protect agency information, applications, data, resources, and services.

(2) The agency shall develop procedures to ensure that security requirements are specified throughout the procurement process for information technology services.

(3) Each agency shall ensure contracts and agreements include language whereby the contractor/partner agrees to comply with agency information technology security policies.

(4) Each agency shall ensure that non-agency entities execute a network connection agreement that will ensure compliance with agency security policies prior to allowing non-agency entities to connect to the agency internal network.

(5) Each agency shall maintain a centralized file of network connection agreements.

(6) Each agency shall ensure background investigations using, at a minimum, Level 2 screening standards and disqualification criteria are performed for contractors hired as Information Technology workers with access to information processing facilities, or who have system, database, developer, network, or other administrative capabilities for systems, applications, or servers with risk categorization of moderate or high.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History--New _____.

71A-1.006 Confidential and Exempt Information.

(1) Agencies shall exercise due diligence to protect exempt, and confidential and exempt information by using appropriate administrative, technical, and physical controls.

(2) Each agency shall maintain a reference list of exempt, and confidential and exempt agency information or software and the associated applicable state and federal statutes and rules.

(3) Each agency shall identify agency information and software that is exempt, or confidential and exempt, under provisions of applicable Florida law or federal law and rules.

(4) Agency information owners are responsible for identifying exempt, and confidential and exempt information.

(5) Exempt, and confidential and exempt information, regardless of format, shall be labeled as such to the extent possible.

(6) Procedures for handling and protecting exempt, and confidential and exempt information shall be referenced in the agency operational information security plan and documented in a policy that is reviewed and acknowledged by all agency staff.

(7) Each agency shall encrypt exempt, and confidential and exempt information sent by e-mail.

(8) Each agency shall encrypt electronic transmission of exempt, and confidential and exempt information when the transport medium is not owned or managed by the agency.

(9) Each agency shall ensure the following:

(a) All passwords are unreadable during transmission and storage using appropriate encryption technology.

(b) Mobile computing devices used with exempt, or confidential and exempt information are encrypted.

(c) Mobile storage devices with exempt, or confidential and exempt agency data have encryption technology enabled such that all content resides encrypted.

(10) For systems containing exempt, or confidential and exempt data, each agency shall ensure written agreements and procedures are in place to ensure proper security for sharing, handling or storing confidential data with entities outside the agency.

(11) Each agency shall destroy exempt, and confidential and exempt information when authorized by the applicable retention schedule, regardless of media type.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History--New _____.

71A-1.007 Access Control.

(1) Agency information owners shall be responsible for authorizing access to information.

(2) Agency information owners shall review access rights periodically based on risk, access account change activity, and error rate.

(3) Workers shall be authorized access to agency information technology resources based on the principles of "least privilege" and "need to know."

(4) Each agency shall limit access to information media to authorized workers.

(5) For functions susceptible to fraudulent or other unauthorized activity, the agency shall ensure separation of duties so no individual has the ability to control the entire process.

(6) Access authorization shall be promptly removed when the user's employment is terminated or access to the information resource is no longer required.

(7) Wireless access into the agency internal network shall require user-authentication.

(8) Only agency-approved wireless devices, services, and technologies may be connected to the agency internal network.

(9) Procedures for granting remote access shall be documented.

(10) Users may remotely connect computing devices to the agency internal network only through agency-approved, secured remote access methods.

(11) Remote access client connections shall not be shared; they are to be used only by the authorized user.

(12) Only agency-owned or agency-managed information technology resources may connect to the agency internal network.

(13) Only agency-owned or agency-managed mobile storage devices are authorized to store agency data.

(14) No privately-owned devices (e.g., MP3 players, thumb drives, printers) shall be connected to agency information technology resources without documented agency authorization.

(15) Mobile computing devices shall be issued to and used only by agency-authorized users.

(16) Mobile computing devices shall require user authentication.

(17) Agency workstations and mobile computing devices shall have enabled a screensaver secured with a complex password and with the automatic activation feature set at no more than 15 minutes.

(18) The agency shall monitor for unauthorized information technology resources connected to the agency internal network.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History–New _____.

71A-1.008 Awareness and Training.

(1) The agency Information Security Manager shall implement and maintain the agency information security awareness program.

(2) At a minimum, agency workers shall receive annual security awareness training.

(3) Agency workers shall receive initial security awareness training within 30 days of employment start date.

(4) Specialized agency workers (e.g., law enforcement officers) who are required to receive extended off-site training prior to reporting to their permanent duty stations shall receive initial security awareness training within 30 days of the date they report.

(5) Initial training shall include acceptable use restrictions, procedures for handling exempt, and confidential and exempt information, and computer security incident reporting procedures.

(6) The agency shall maintain records of individuals who have completed security awareness training in accordance with the applicable retention schedule.

(7) The agency shall provide specialized training for workers whose duties bring them into contact with exempt, or confidential and exempt information resources.

(8) The security awareness program shall include on-going education and reinforcement of security practices.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History–New _____.

71A-1.009 Audit and Accountability.

(1) Where possible, audit records will allow actions of users to be uniquely traced to those users so they can be held accountable for their actions.

(2) The agency shall implement procedures to establish accountability for accessing exempt, or confidential and exempt data stores.

(3) The agency shall implement procedures to establish accountability for modifying exempt, or confidential and exempt data.

(4) The agency shall implement procedures to protect the integrity and confidentiality of audit logs.

(5) The agency shall retain audit records as required by the appropriate State, Federal, or other (e.g., Payment Card Industry) schedule.

(6) The agency Information Security Manager, Inspector General, or other specifically authorized personnel shall be granted access to review audit logs containing accountability details.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History–New _____.

71A-1.010 Certification, Accreditation, and Security Assessments.

(1) The agency shall implement documented procedures to analyze systems and applications to ensure security controls are effective and appropriate.

(2) Information technology resources shall be validated as conforming to agency standard configurations prior to production implementation.

(3) An application security review shall be approved by the application owner, agency Information Security Manager, and Chief Information Officer (or respective documented designee) before a new application or technology is placed into production.

(4) For applications and technologies housed in a primary data center, the application security review shall also be approved by the data center Information Security Manager (or their respective designee) before the new application or technology is placed into production.

(5) An application security review shall be approved by the application owner, agency Information Security Manager, and Chief Information Officer (or designee) before modifications to an application or technology are placed into production.

(6) For applications and technologies housed in a primary data center, the application security review also shall be approved by the data center Information Security Manager (or their respective designee) before modifications to an application or technology are placed into production.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History–New _____.

71A-1.011 Configuration Management.

(1) The agency shall identify and document information technology resources and associated owners and custodians.

(2) The agency shall specify standard software and hardware.

(3) The agency shall specify and document standard configurations used to harden software and hardware and assure the configurations address known security vulnerabilities and are consistent with industry-accepted system hardening standards.

(4) The agency shall implement a change management process for modifications to production information technology resources.

(5) Agencies shall track agency mobile computing devices.

(6) Mobile computing devices and mobile storage devices shall conform to the following configurations:

(a) Mobile computing devices used with exempt, or confidential and exempt information require encryption.

(b) Mobile storage devices with exempt, or confidential and exempt agency data shall have encryption technology enabled such that all content resides encrypted.

(c) Mobile computing devices connecting to the agency internal network shall use current and up-to-date anti-malware software (where technology permits).

(d) Agency mobile computing devices shall activate an agency-approved personal firewall (where technology permits) when connected to a non-agency internal network.

(e) Only agency-approved software shall be installed on state mobile computing devices.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History–New _____.

71A-1.012 Contingency Planning.

(1) Data and software essential to the continued operation of critical agency functions shall be mirrored to an off-site location or backed up regularly with a current copy stored at an off-site location.

(2) To prevent loss of data, each agency shall develop procedures to ensure agency data, including unique copies of agency data stored on workstations or mobile devices, is backed up.

(3) The agency shall ensure security controls over backup resources are appropriate to the criticality, confidentiality, and cost of the primary resources.

(4) Information technology resources identified as critical to the continuity of governmental operations shall have documented disaster recovery plans to provide for the continuation of critical agency functions in the event of a disaster.

(5) Information Technology Disaster Recovery Plans shall be tested at least annually; results of the annual exercise shall document those plan procedures that were successful and modifications required to correct the plan.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History–New _____.

71A-1.013 Identification and Authentication.

(1) Agency computer users shall have unique user accounts.

(2) Where technology permits, user accounts shall be authenticated at a minimum by a complex password.

(3) The agency shall ensure accounts with administrative rights are created, maintained, monitored and removed in a manner that protects information technology resources.

(4) The agency shall not use vendor-supplied default passwords.

(5) Administrative account activities shall be traceable to an individual.

(6) The agency shall ensure service accounts are maintained in a manner that protects information technology resources.

(7) Service accounts may be exempted from agency password expiration requirements.

(8) Service accounts shall not be used for interactive sessions.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History–New _____.

71A-1.014 Incident Response.

(1) Each agency shall establish a Computer Security Incident Response Team (CSIRT) to respond to suspected computer security incidents by identifying and controlling the incidents, notifying designated CSIRT responders, and reporting findings to agency management.

(2) The CSIRT membership shall include at a minimum the Information Security Manager, the Chief Information Officer, and a member from the Inspector General's Office.

(3) The CSIRT shall develop, document, and implement the agency computer security incident reporting process.

(4) The CSIRT shall develop, document, and implement the agency computer security incident response process.

(5) The agency computer security incident response process will include notification procedures to be followed for incidents where investigation determines non-encrypted personal information was, or is reasonably believed to have been, accessed by an unauthorized person, as required by Section 817.5681, Florida Statutes.

(6) The CSIRT under the direction of the Chief Information Officer or Information Security Manager shall determine the appropriate response required for each suspected computer security incident.

(7) The agency shall notify the Office of Information Security of computer security incidents including suspected or confirmed breaches within 24 hours of discovery.

(8) Each suspected computer security incident, including findings and corrective actions, shall be documented and maintained as specified in the agency computer security incident procedures.

(9) The CSIRT shall convene at least once a quarter.

(10) The CSIRT shall provide regular reports to the agency Chief Information Officer.

(11) Suspected computer security incidents shall be reported according to agency reporting procedures.

(12) Agency workers shall report loss of mobile devices immediately according to agency reporting procedures.

(13) Agency workers shall immediately report lost security tokens, smart cards, identification badges, or other devices used for identification and authentication purposes according to agency reporting procedures.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History—New _____.

71A-1.015 Maintenance.

(1) The agency shall ensure information technology resources are correctly maintained to ensure continued confidentiality, availability and integrity.

(2) Agencies shall perform preventative maintenance according to manufacturer specifications for information technology equipment.

(3) Administration of hardware, software, or applications performed over a network shall be encrypted where technology permits.

(4) The application maintenance process shall include reviews of application security requirements and controls to ascertain effectiveness and appropriateness relative to new technologies and applicable state and federal regulations.

(5) The agency shall implement service level agreements for non-agency provided technology services to ensure appropriate security controls are established and maintained.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History—New _____.

71A-1.016 Media Protection.

(1) The agency shall implement procedures to protect agency information from loss, destruction, and unauthorized or improper disclosure or modification.

(2) The agency shall maintain electronic data in accordance with applicable regulatory retention requirements.

(3) The agency shall sanitize or destroy information media according to the applicable retention schedule and before disposal or release for reuse.

(4) The agency shall document procedures for sanitization of agency-owned computer equipment prior to reassignment or disposal.

(5) Equipment sanitization shall be performed such that there is reasonable assurance that the data may not be easily retrieved and reconstructed. File deletion and media formatting are not acceptable methods of sanitization.

(6) Acceptable methods of sanitization include using software to overwrite data on computer media, degaussing, or physically destroying media.

(7) Users shall take reasonable precautions, based upon applicable facts and circumstances, to protect mobile computing devices in their possession from loss, theft, tampering, unauthorized access, and damage.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History—New _____.

71A-1.017 Physical and Environmental Protection.

(1) Information technology resources shall be protected by physical controls.

(2) The agency shall implement procedures to manage physical access to information technology facilities.

(3) Physical controls shall be appropriate for the size and criticality of the information technology resources.

(4) Physical access to central information resource facilities shall be restricted to authorized personnel.

(5) Visitors shall be recorded and, in locations housing systems categorized as moderate impact or high impact, they shall be supervised.

(6) Information technology resources shall be protected from environmental hazards (e.g., temperature, humidity, air movement, dust, and faulty power) in accordance with manufacturers' specifications.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History—New _____.

71A-1.018 System and Application Security Planning.

(1) The agency shall document security controls required to protect the information technology infrastructure.

(2) Application owners shall define application security-related business requirements.

(3) Each agency application or system with a Federal Information Processing Standards (FIPS) 199 categorization of moderate-impact or higher shall have a documented system security plan.

(4) System security plans shall document controls necessary to protect production data in the production infrastructure and copies of production data used in non-production infrastructures.

(5) Production exempt, or confidential and exempt data shall not be used for development.

(6) Production exempt, or confidential and exempt data may be used for testing if: the data owner authorizes the use; test system security controls provide for restricted access and auditing; and production exempt, and confidential and exempt data is removed from the system when testing is completed.

(7) Application security documentation shall be maintained by the agency and be available to the Information Security Manager.

(8) The system security plan is confidential per Section 282.318, Florida Statutes. The agency Information Security Manager or designee shall be provided access to system security plans.

(9) Technology managers shall restrict and tightly control the use of utility programs that may be capable of overriding system and application controls.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History—New _____.

71A-1.019 Personnel Security and Acceptable Use.

(1) Agency workers shall follow agency security policies whenever they are using agency IT resources and data, whether they are inside the agency building or elsewhere.

(2) The agency shall document and implement disciplinary procedures for workers failing to comply with agency security policies and procedures. Disciplinary action shall be appropriate to the violation up to and including termination and/or criminal prosecution as provided by law.

(3) Each agency worker shall agree in writing, to comply with agency acceptable use policies prior to using agency information technology resources.

(4) Agency workers shall agree in writing to comply with agency procedures for handling exempt, and confidential and exempt information prior to accessing exempt, or confidential and exempt information.

(5) Agency workers must obtain documented authorization before taking information technology equipment, software, or information away from the agency facility.

(6) Each agency shall document parameters that govern personal use of agency information technology resources.

(7) The agency shall determine whether an information technology use is personal or business.

(8) Personal use, if allowed by the agency, shall not interfere with the normal performance of a worker's duties.

(9) Personal use, if allowed by the agency, shall not consume significant amounts of state information technology resources (e.g. bandwidth, storage).

(10) To prevent loss of data, agency users shall ensure unique copies of agency data stored on workstations or mobile devices is backed up.

(11) Agency computer users shall have unique user accounts.

(12) Agency computer users shall be held accountable for activities performed by their accounts.

(13) User accounts shall be authenticated at a minimum by a complex password.

(14) Users shall change their passwords at least every 60 days for high risk systems, every 90 days for moderate risk systems and every 180 days for low risk systems.

(15) Agency workers are responsible for safeguarding their passwords and other authentication methods.

(16) Agency workers shall not share their agency accounts, passwords, personal identification numbers, security tokens, smart cards, identification badges, or other devices used for identification and authentication purposes.

(17) Remote access client accounts shall not be shared.

(18) Agency workers shall immediately report suspected unauthorized account activity according to agency incident reporting procedures.

(19) Agency workers shall immediately report lost security tokens, smart cards, identification badges, or other devices used for identification and authentication purposes according to agency incident reporting procedures.

(20) Agency workers shall have no expectation of privacy with respect to the contents of agency-owned or agency-managed information technology resources.

(21) The agency may inspect all files stored on agency internal network or computer systems, including attached removable media.

(22) The agency may monitor the use of agency information technology resources.

(23) Use of agency information technology resources constitutes consent to monitoring activities whether or not a warning banner is displayed.

(24) Agency computer users shall follow agency-established guidelines for acceptable use of e-mail and other messaging resources.

(25) Exempt, or confidential and exempt information sent by e-mail shall be encrypted.

(26) Inappropriate use of agency e-mail includes the following: distribution of malware, forging headers, propagating "chain" letters, and auto-forwarding agency messages to a private e-mail address.

(27) Agency computer users shall follow agency-established guidelines for acceptable use of Internet resources.

(28) Inappropriate use of the Internet includes unauthorized, non-work related access to the following: chat rooms, political groups, singles clubs or dating services; peer-to-peer file sharing; material relating to gambling, weapons, illegal drugs, illegal drug paraphernalia, hate-speech, or violence; hacker web-site/software; and pornography and sites containing obscene materials.

(29) Agency computer users shall logoff or lock their workstations prior to leaving the work area.

(30) Workstations shall be secured with a password-protected screensaver with the automatic activation feature set at no more than 15 minutes.

(31) Only agency-approved software shall be installed on agency computers.

(32) Illegal duplication of software is prohibited.

(33) No privately-owned devices (e.g., MP3 players, thumb drives, printers, CDs, DVDs) shall be connected to state-owned information technology resources without documented agency authorization.

(34) Information security activities such as monitoring, sniffing, and related security activities shall be performed only by agency workers based on job duties and responsibilities when given explicit consent.

(35) Agency workers shall not attempt to access information technology resources and information to which they do not have authorization or explicit consent.

(36) Agency information technology resources shall not be used for personal profit, benefit or gain.

(37) Agency information technology resources shall not be used to access, create, store, or transmit offensive, indecent or obscene material unless these activities are a required aspect of the worker's job duties.

(38) Agency workers shall not use agency information technology resources to engage in activities that may harass, threaten, or abuse others.

(39) Agency information technology resources shall not be used for political campaigning or unauthorized fund raising.

(40) Agency workers shall not circumvent agency computer security measures.

(41) Agency information technology resources shall not be used for any activity which adversely affects the confidentiality, integrity, or availability of information technology resources.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History--New _____.

71A-1.020 Risk Assessment.

(1) The agency shall categorize information technology resources according to the Federal Information Processing Standards (FIPS) Publication 199, which is hereby incorporated by reference. This process estimates the magnitude of harm that would result from unauthorized access, unauthorized modification or destruction, or loss of availability of a resource – low-impact, moderate-impact, or high-impact relative to the security objectives of confidentiality, integrity, and availability.

		Potential Impact on Agency or State Operations, Assets or Individuals		
		Low	Moderate	High
Security Objective Lost	Confidentiality (unauthorized disclosure)	limited adverse effect	serious adverse effect	severe or catastrophic adverse effect
	Integrity (improper modification or destruction)	limited adverse effect	serious adverse effect	severe or catastrophic adverse effect
	Availability (disruption of accessibility)	limited adverse effect	serious adverse effect	severe or catastrophic adverse effect

(2) The agency shall implement a documented risk management program, including risk analysis for high-impact information resources.

(3) Every three years, the Office of Information Security shall coordinate a comprehensive risk assessment to be conducted in each agency.

(4) The agency Information Security Manager shall submit comprehensive risk assessment findings to the Office of Information Security.

(5) The agency shall implement risk mitigation plans to reduce identified risks to agency information technology resources and data.

(6) The agency Information Security Manager shall monitor and document risk mitigation implementation.

(7) Documentation of an agency's information security risk analysis and risk mitigation plans is confidential pursuant to Section 282.318, Florida Statutes, except that such information shall be available to the Auditor General, the Agency for Enterprise Information Technology, and the respective agency's Inspector General.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History--New _____.

71A-1.021 Systems, Applications and Services Acquisition and Development.

(1) The agency shall perform an impact analysis prior to introducing a new technology. The purpose of this analysis is to assess effects of the new technology on the existing environment.

(2) The agency shall perform an impact analysis prior to modifying current technology, systems, or applications. The purpose of this analysis is to assess effects of the modifications on the existing environment.

(3) The agency shall ensure software applications obtained, purchased, leased, or developed provide appropriate security controls to minimize risks to the confidentiality, integrity, and availability of the application, its data, and other information technology resources.

(4) The agency shall develop procedures to ensure that security requirements are specified throughout the procurement process for information technology resources.

(5) The agency shall develop procedures to ensure that security requirements are specified throughout the application procurement process and incorporated into each phase of the application development lifecycle.

(6) The application development team shall implement appropriate security controls to minimize risks to agency information technology resources and meet the security requirements of the application owner.

(7) Agency software applications obtained, purchased, leased, or developed will be based on secure coding guidelines. Some examples of secure coding guidelines are: OWASP [Open Web Application Security Project] Secure Coding Principles – http://www.owasp.org/index.php/Secure_Coding_Principles; CERT Security Coding – <http://www.cert.org/secure-coding/>, Top 10 Security coding Practices – <https://www.securecoding.cert.org/confluence/display/seccode/Top+10+Secure+Coding+Practices>.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History–New _____.

71A-1.022 System and Communications Protection.

(1) The Department of Management Services Division of Telecommunications provides the statewide network referred to as SUNCOM. The Department of Management Services establishes standards for SUNCOM network connections and regulates and monitors SUNCOM network connections. (Reference Chapters 60FF-1, 60FF-2, 60FF-3, F.A.C.)

(2) Preventative actions taken by agencies to protect information technology resources help ensure the protection of the statewide SUNCOM network and reduce probability of adverse impacts among the agencies that connect to the SUNCOM network.

(3) The agency Information Security Manager or designee shall be granted access to monitor all agency information technology resources.

(4) Technology managers shall monitor technology resources to ensure desired performance and facilitate future capacity-based planning.

(5) The agency shall establish procedures to ensure regular review of system activity logs.

(6) The agency may inspect any files stored on agency internal network or computer systems, including attached removable media.

(7) The agency shall establish and document firewall and router configuration standards that include a current network diagram.

(8) The agency shall ensure network perimeter security measures are in place to prevent unauthorized connections to agency information technology resources.

(9) Databases containing mission critical, exempt, or confidential and exempt data shall be placed in an internal network zone, segregated from the DMZ.

(10) The agency shall monitor for unauthorized network access points.

(11) Unauthorized wireless access points connected to the agency internal network shall be removed immediately upon detection.

(12) Wireless transmission of agency data shall be implemented using strong cryptography for authentication and transmission.

(13) For agency wireless environments, the agency shall change wireless vendor defaults, including default encryption keys, passwords, and SNMP (Simple Network Management Protocol) community strings, and ensure wireless device security settings are enabled for strong cryptography technology for authentication and transmission.

(14) Agencies shall establish procedures to ensure agency cryptographic implementations are developed and maintained according to the Federal Information Processing Standards (FIPS) Publication 140-2, Security Requirements for Cryptographic Modules (2004).

(15) Key management processes and procedures for cryptographic keys used for encryption of data will be fully documented and will cover key generation, distribution, storage, periodic changes, compromised key processes, and prevention of unauthorized substitution.

(16) Key management processes must be in place and verified prior to encrypting data at rest (including e-mail messages, data files, hard drives, data backups).

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History–New _____.

71A-1.023 System and Information Integrity.

(1) Controls shall be established to ensure the accuracy and completeness of data.

(2) The development and test infrastructures shall be physically or logically separated from the production infrastructure.

(3) A sufficiently complete history of transactions shall be maintained for each session involving access to critical information to permit an audit of the system by tracing the activities of individuals through the system.

(4) Individuals accessing critical information shall be uniquely identified.

(5) The agency shall ensure anti-malware software is maintained on agency information technology resources.

(6) The agency shall implement a patch management process for information technology resources.

(7) The Agency for Enterprise Information Technology Office of Information Security will monitor the Internet and appropriate global information security resources for any abnormalities or threats present on the Internet and provide relevant Security Alerts to state agencies.

(8) Application developers shall incorporate validation checks into applications to detect data corruption that may occur through processing errors or deliberate actions.

Rulemaking Authority 14.204(7), 282.318(3), 282.318(6) FS. Law Implemented 282.318 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
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NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2010

DATE NOTICES OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 21, 2009 and October 9, 2009

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Plant Industry

RULE NO.:	RULE TITLE:
5B-65.005	Movement of Regulated Articles

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 36, No. 21, May 28, 2010 issue of the Florida Administrative Weekly.

The Notice of Change published in the Vol. 36, No. 21, May 28, 2010, issue of the FAW contained the following error:

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 42, October 23, 2009, Vol. 36 No. 20, May 21, 2010 issue of the Florida Administrative Weekly.

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 ENVIRONMENTAL PROTECTION

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NOS.:	RULE TITLES:
62-302.400	Classification of Surface Waters, Usage, Reclassification, Classified Waters
62-302.530	Table: Surface Water Quality Criteria

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. 16, April 23, 2010 issue of the Florida Administrative Weekly.

62-302.400 Classification of Surface Waters, Usage, Reclassification, Classified Waters.

(1) through (3) No change.

(4) Water quality classifications are arranged in order of the degree of protection required, with Class I water having generally the most stringent water quality criteria and Class V the least. However, Class I, II, and III surface waters share water quality criteria established to protect fish consumption, recreation and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife. For manmade lakes, canals or ditches, or streams converted to canals before November 28, 1975, considered under subsections (5) and (11) below, the Department shall evaluate the limited aquatic life support and habitat limitations of such waters, recognizing the physical and hydrologic characteristics and water management uses for which they were constructed.

(5) Class III-Limited surface waters share the same water quality criteria as Class III except for any site specific alternative criteria that have been established for the waterbody under Rule 62-302.800, F.A.C. Class III-Limited waters are restricted to waters with human-induced physical or habitat conditions that prevent attainment of Class III uses and do not include waterbodies that were created for mitigation purposes. “Limited recreation” means opportunities for recreation in the water are reduced due to physical conditions. “Limited population of fish and wildlife” means the aquatic biological community does not fully resemble that of a natural system in the types, tolerance and diversity of species present. Class III-Limited waters are restricted to:

(a) Wholly artificial waterbodies that were constructed consistent with regulatory requirements under Part I or Part IV of Chapter 373, Part I or Part III of Chapter 378, or Part V of Chapter 403, F.S.; or

(b) No change.

(6) through (7) No change.