

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Pat Whitford, Economic Self-Sufficiency Services, Telephone (850)410-3479

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

## Section II Proposed Rules

### DEPARTMENT OF TRANSPORTATION

|            |                                 |
|------------|---------------------------------|
| RULE NOS.: | RULE TITLES:                    |
| 14-1.020   | General Purpose and Application |
| 14-1.021   | Final Orders                    |

PURPOSE AND EFFECT: Rule Chapter 14-1, F.A.C., is being amended to remove unnecessary language and repeal Rule 14-1.020, F.A.C.

SUMMARY: Rule Chapter 14-1, F.A.C., is being amended to update and reorganize the rules.

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: 344.044(2) FS.

LAW IMPLEMENTED: 120.53(1), (2) 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: 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:

14-1.020 General Purpose and Application.

Rulemaking Specific Authority 334.044(2) FS. Law Implemented 120.53(1)(b),(c), 120.533(2)-(4), 120.57 FS. History—New 6-26-75, Amended 9-1-75, Formerly 14-6.01, Amended 8-1-90, 4-6-93, 1-17-99, Formerly 14-6.001, Repealed \_\_\_\_\_.

14-1.021 Final Orders.

(1) To ensure public access, ~~t~~The Department of Transportation (Department) will maintain a uniform index of final orders: ~~p~~Pursuant to Sections 120.53 and 120.533, F.S.

~~Florida Statutes, and Rule 1B-30.007, F.A.C. this rule chapter establishes the minimum requirements for indexing final orders as defined in Section 120.52(7), Florida Statutes.~~

~~(2) Public Inspection and Duplication.~~

~~(a) The following shall be made available by the Department for public inspection and copying, at no more than cost:~~

~~1. All final orders.~~

~~2. A current subject matter index.~~

~~(b) The Clerk of Agency Proceedings assigned by the Department shall maintain and store such final orders and assist the public in obtaining copies of final orders and maintain a current subject matter index.~~

~~(c) The Department shall maintain and store such final orders, index with the Clerk of Agency Proceedings, Office of the General Counsel, 605 Suwannee Street, Room 550, Mail Station 58, Tallahassee, Florida 32399-0458. The office is open to the public between the hours of 8:00 a.m. and 5:00 p.m., excluding holidays and weekends.~~

~~(2)(d) Final orders required to be indexed pursuant to under Section 120.53(1)(a)2.c., F.S. Florida Statutes, which are entered on or after July 1, 1998, will also be maintained, stored, and indexed on an electronic database Pursuant to Section 120.53(2)(a), F.S. Florida Statutes, the Department hereby designates the Municipal Code Corporation as the its official reporter for creating the electronic database and indexing and preserving final orders therein. ~~The electronic database will allow users to research and retrieve the full texts of agency final orders by using commonly used search terms and descriptive information about the orders, including major subject headings. The indexing system for the electronic database shall have fixed fields to ensure common usage of such terms by anyone who uses the system.~~ The Department will maintain the electronic database and make it available for public use. The following website is available to view Final Orders issued by the Department: <http://www.mccinnovations.com/weblink/Browse.aspx> <http://www.mccimaging.com>.~~

~~(3) Final Orders Required to be Indexed. The Department shall index all final orders.~~

~~(3)(4) Numbering of Final Orders.~~

~~(a) All final orders shall be sequentially numbered using a two-part number separated by a dash. The first part before the dash indicates the year and the second part indicates the numerical sequence of the order issued for that year, beginning with number "1" each new calendar year with zeros left of the case number for computer sorting purposes. For example, "00-001" is the first case for calendar year 2000. The assigned agency prefix, ~~which is~~ "FDOT," shall precede the two-part number.~~

~~(4)(5) System for Indexing Final Orders.~~

~~(a) The Department shall maintain an alphabetical subject matter index for final orders. The subject matter index will go from general to specific. The initial headings shall be by~~

subject broad enough to incorporate the subject titles from the Florida Statutes under which the order is rendered. The indentations below the subject headings or titles shall be more specific with the final indentation being the most specific. Related key words (specific words, terms, or phrases) and common and colloquial words shall be listed sequentially in an indentation immediately below the applicable text indentation.

(b) The Department shall designate the major subject headings to be used in the index. The index shall be cumulative for at least one year, updated at least every 120 days, and made accessible to the public.

~~(5)(6)~~ Maintenance of Records. Final orders ~~pursuant to this rule chapter~~ shall be maintained by the Department pursuant to the retention schedule approved by the Department of State, Division of Library and Information Services.

Rulemaking Specific Authority 120.53(1), 334.044(2) FS. Law Implemented 120.53(2) FS. History—New 4-6-93, Amended 2-20-96, 11-16-00, 5-8-03, Formerly 14-6.0011, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bruce R. Conroy, Chief, Administrative Law Division  
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Stephanie C. Kopelousos, Secretary  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 25, 2010  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 9, 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."

**EXECUTIVE OFFICE OF THE GOVERNOR**

**Florida Energy and Climate Commission**

RULE NO.: 27N-3.001  
RULE TITLE: Florida ENERGY STAR Appliance Rebate Program

PURPOSE AND EFFECT: Section 377.808, F.S., authorized the Florida Energy and Climate Commission to administer a consumer rebate program for the replacement of older appliances with qualified specific residential ENERGY STAR appliances and products, consistent with 42 U.S.C. s. 15821 and any federal agency guidance or regulations issued in furtherance of federal law.

SUMMARY: This rule establishes the authority for the Florida Energy and Climate Commission to secure a third party to administer the Florida ENERGY STAR Residential HVAC

Rebate program and describes the program. It establishes which HVAC systems qualify for the rebate, the amount of the rebate, program duration, and application requirements.

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: 377.807 FS.

LAW IMPLEMENTED: 377.807 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: September 27, 2010, 9:00 a.m. – 12:00 Noon

PLACE: Toni Jennings Room, 110 Senate Office Building, Tallahassee, FL

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: Brittany Cummins at (850)487-3800. 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: Brenda Buchan

THE FULL TEXT OF THE PROPOSED RULE IS:

27N-3.001 Florida ENERGY STAR Appliance Rebate Program.

(1) GENERAL. The Florida Energy and Climate Commission is authorized to administer a consumer rebate program for the replacement of older appliances with qualified specific residential ENERGY STAR appliances and products, consistent with 42 U.S.C. s. 15821 and any federal agency guidance or regulations issued in furtherance of federal law.

(a) Only new appliances purchased for use at the consumer's residence, to replace older appliances, are eligible for this rebate. To qualify, the new appliance must be purchased in the state of Florida, from an establishment that collects and remits Florida sales tax. This program is not intended to be used by a multi-family building owner.

~~(b) For the purposes of receiving a rebate, consumers may purchase no more than one of each type of ENERGY STAR appliance per address. However, the total amount of rebate monies received shall not exceed \$1,500 per consumer, per address.~~

~~(e) Rebates shall be available only for the following new ENERGY STAR certified appliances and products: refrigerators, freezers, clothes washers, dishwashers, room air conditioners and gas tank-less water heaters. These are "qualified appliances" for the purpose of the rebate program.~~

~~(d) In order to be eligible to receive a rebate, a consumer must first purchase a qualified appliance or product during the designated period and submit proof of purchase of the qualified appliance to the program administrator postmarked no later than May 10, 2010.~~

~~(e) Consumers may obtain rebate redemption information and applications from several locations including retail locations, the Florida Energy and Climate Commission website, the program administrator's website, or program partners' websites.~~

~~(f) Rebates will be a flat 20 percent off the retail, pretax price of the appliance.~~

~~(b)(g) The issuance of a rebate through other rebate programs does not preclude a consumer from receiving a rebate through this rebate program.~~

~~(h) Recycling is encouraged. Therefore, an additional \$75 will be added to the rebate if the consumer provides the recycled appliance's serial number and evidence of having recycled the appliance being replaced. No appliance may be refurbished and put back into use.~~

~~1. Evidence of having recycled the appliance being replaced may consist of:~~

~~a. Statement on the retailer receipt indicating pick up of the appliance being replaced; or~~

~~b. Receipt from the public or private landfill of delivery of the appliance being replaced. This receipt must include the name and address of the landfill, the date, the receiving person's signature and a brief description of the product.~~

~~2. The recycled appliance must be of the same type as the newly purchased qualified appliance for which the rebate is being applied.~~

~~3. The additional \$75 is only offered for the purchase of a new appliance.~~

~~4. All appliances accepted by landfills or retail establishments to recycle as part of this program must be sent to a metal recycler.~~

~~(2) PROGRAM DURATION. The rebates shall only be available for the purchase of qualified appliances during the designated period of the program associated with each appliance from 12:01 a.m., April 16, 2010, through 11:59 p.m., April 25, 2010. This time period coincides with Florida's Earth Day.~~

~~(3) PROGRAM ADMINISTRATOR. The Florida Energy and Climate Commission may select a third party vendor to administer the rebates. If the Florida Energy and Climate Commission decides to select a third party to act as the program administrator, the Commission will issue a request for proposal and select the vendor who can process the rebates in~~

the most efficient, accurate and cost-effective manner. Under no circumstance is the program administrator permitted to sell, give away or utilize for purposes other than this rebate program the names, addresses or phone numbers of the consumers applying for the rebate.

(4) ADVERTISING AND PROMOTION. The Florida Energy and Climate Commission shall coordinate with the program administrator, the participating retailers, environmental groups and the participating utilities to partner together to promote the rebate program broadly to the entire state. Advertising and promotions for the rebate program conducted by participating partners will include information that is consistent with these rules.

(5) APPLICATION AND ISSUANCE. Applications for rebates shall be submitted to the program administrator and postmarked on or before the dates designated by each appliance under subsection (6) May 10, 2010 to be considered timely.

(a) Applications shall be submitted to the program administrator in hard copy format, using the rebate application form identified by appliance type in subsection (6) hereby incorporated by reference: Form FECC 1, effective date April 2010. The application form can be obtained beginning April 16, 2010 from the Florida ENERGY STAR Appliance Rebate website or by writing the Florida Energy and Climate Commission at 600 South Calhoun Street, Suite 251, Tallahassee, Florida 32399-0001.

(b) In order to be considered complete, applications must include all information required on the application form, the original purchase receipt for the appliance and any additional information specified in subsection (6), if seeking the additional \$75 for recycling, evidence demonstrating that the appliance being replaced has been recycled. All information provided to the program administrator must be legible.

(c) The Florida Energy and Climate Commission does not guarantee that every consumer submitting a complete rebate application will receive a rebate. Rebates can only be issued if funding is available. The rebates will be dispensed upon (1) successful completion of the rebate form with required attached receipts and forms, (2) the order in which they arrive, and (3) the availability of funds.

(d) Provided funds are available, the program administrator shall review each timely application to determine if the application includes all required information. The program administrator shall issue each rebate only after it determines that all required information has been provided and the application is complete.

1. An application that is determined to be complete shall be placed in the first-come, first-served order for allocation of rebates based upon the date and time the application is filed.

2. Timely submitted applications which are not complete shall not be considered as eligible for rebates and shall not receive a position in the first-come, first-served order for

allocation of rebates. If the program administrator determines that the application is not complete and does not contain all of the required information, the program administrator shall notify the applicant of the incompleteness of the application.

3. Applicants who are notified of the incompleteness of a timely submitted application may submit subsequent information by mail in order to make the application complete. If an application is then determined to be complete, it shall be placed in the first-come, first-serve order for allocation of rebates based upon the date and time the application is determined complete.

(6) REBATE ELIGIBILITY FOR SPECIFIC APPLIANCES. The following program requirements will apply to the specific appliances being offered rebates.

(a) Rebates shall be available for the following ENERGY STAR certified appliances and products: refrigerators, freezers, clothes washers, dishwashers, room air conditioners and gas tank-less water heaters. These are "qualified appliances" for the purpose of the rebate program.

1. To qualify for a rebate, the new appliance must be purchased in the state of Florida, from an establishment that collects and remits Florida sales tax.

2. For the purposes of receiving a rebate, consumers may purchase no more than one of each type of ENERGY STAR appliance per address. However, the total amount of rebate monies received shall not exceed \$1,500 per consumer, per address.

3. In order to be eligible to receive a rebate, a consumer must first purchase a qualified appliance or product during the designated period and submit proof of purchase of the qualified appliance to the program administrator postmarked in a timely manner.

4. Consumers may obtain rebate redemption information and applications from several locations including retail locations, the Florida Energy and Climate Commission website, the program administrator's website, or program partners' websites.

5. Rebates will be a flat 20 percent off the retail, pretax price of the appliance.

6. Recycling is encouraged. Therefore, an additional \$75 will be added to the rebate if the consumer provides the recycled appliance's serial number and evidence of having recycled the appliance being replaced. No appliance may be refurbished and put back into use.

a. Evidence of having recycled the appliance being replaced may consist of a statement on the retailer receipt indicating pick-up of the appliance being replaced; or a receipt from the public or private landfill of delivery of the appliance being replaced. This receipt must include the name and address of the landfill, the date, the receiving person's signature and a brief description of the product.

b. The recycled appliance must be of the same type as the newly purchased qualified appliance for which the rebate is being applied.

c. The additional \$75 is only offered for the purchase of a new appliance.

d. All appliances accepted by landfills or retail establishments to recycle as part of this program must be sent to a metal recycler.

7. The rebates shall only be available for the purchase of qualified appliances during the period from 12:01 a.m., April 16, 2010, through 11:59 p.m., April 25, 2010. This time period coincides with Florida's Earth Day.

8. Applications for rebates shall be submitted to the program administrator and postmarked on or before May 10, 2010 to be considered timely.

9. Applications shall be submitted to the program administrator in hard copy format, using the rebate application form hereby incorporated by reference: Form FECC 1, effective date April 2010.

(b) Rebates shall be available for the following new ENERGY STAR certified HVAC appliances and products: central air conditioners, air source heat pumps, and geothermal heat pumps.

1. To qualify for this rebate the homeowner must:

a. Purchase a new HVAC or geothermal system that meets the Federal Energy Tax Credits standards to replace an existing system; and

b. Hire a Class 1 Florida Energy Gauge Certified Energy Rater, a State of Florida Mechanical Contractor, or a recognized test and balance agent and have their home's duct system tested with the test results indicating the home's duct system has no more than 15% leakage to the outside of the home (0.10 Qn.out) as indicated on the Air Distribution System Test Report hereby incorporated by reference.

2. To qualify for this rebate the appliance must be purchased and installed in the State of Florida by a Florida licensed installer and the installer must comply with Florida's laws regarding filing for mechanical permits to replace existing HVAC units and using a Manual J for sizing the new replacement unit.

3. Rebate is limited to one rebate of \$1,500 per residence.

4. The rebate shall only be available for HVAC appliances if the appliances are purchased and installed during the period from 12:01 a.m., August 30, 2010 through 11:59 p.m., December 31, 2010 or when the rebate funds are depleted.

5. Applications shall be submitted to the program administrator in hard copy format, using the application form FECC 3 hereby incorporated by reference, effective August 30, 2010. The application form can be obtained beginning August 30, 2010 from the FECC website.

6. In order to be considered complete, the HVAC rebate application must include all information required on the application form and submission of the following documents:

- a. Signed and completed application
- b. A copy of the mechanical building permit that must be applied for by the HVAC installer (this must contain the applicant's home address)
- c. A copy of the HVAC or geothermal sales receipt (this must contain the make and model of the HVAC unit, the sales date, and the applicant's home address)
- d. A completed and signed copy of the Air Distribution System Test Report as provided by the HVAC duct tester indicating leakage does not exceed 15% to the outside as measured by a score of 0.10 (Qn.out) or less.
- e. Front or summary page of the Manual J as provided by the HVAC installer that confirms the HVAC installer used the Manual J to appropriately size the new unit

(c) Rebates for other certified ENERGY STAR Appliances.

- 1. Rebates for ENERGY STAR appliances not included in paragraphs (6)(a) and (b) may be offered by the Commission if additional funds become available.
- 2. Such rebate offerings will have a limited duration.
- 3. Only one rebate per appliance will be paid per residence.
- 4. If the Commission offers such rebates, applications shall be submitted to the program administrator in hard copy format, using the applicable form made available on the FECC website.

Rulemaking Authority 377.807 FS. Law Implemented 377.807 FS. History--New 3-11-10, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Brenda Buchan  
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Rob Vickers  
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 20, 2010  
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 2010

**DEPARTMENT OF CORRECTIONS**

RULE NO.: 33-210.102                      RULE TITLE: Legal Documents and Legal Mail  
 PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify the procedures for presenting outgoing legal mail for delivery.  
 SUMMARY: The proposed rule clarifies the process for presenting outgoing legal mail for delivery.  
 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, 944.09, 944.11 FS.  
 LAW IMPLEMENTED: 944.09, 944.11 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:

- 33-210.102 Legal Documents and Legal Mail.
- (1) through (7) No change.
- (8) Processing of Legal Mail.
- (a) through (f) No change.
- (g) Inmates shall present all outgoing legal mail unsealed to the mail collection representative to determine, in the presence of the inmate, that the correspondence is legal mail, bears that inmate's return address and signature, and that it contains no unauthorized items. Only the address may be read to determine whether it is properly addressed to a person or entity identified in subsection (2) of this rule. If the outgoing mail contains unauthorized items or is not legal mail, the inmate shall be subject to disciplinary action. If the outgoing mail is legal mail and it contains no unauthorized items, the mail collection representative shall stamp the document(s) to be mailed and the inmate's copy, if provided by the inmate, "Provided to (name of institution) on (blank to insert date) for mailing." The mail collection representative shall then have the inmate initial the document(s) next to the stamp and have the inmate seal the envelope in the mail collection representative's presence. For confinement areas, the staff member who picks up the legal mail each day shall stamp the documents, have the inmate place his or her initials next to the stamp, and have the inmate seal the envelope in the staff member's presence. The use of mail drop boxes for outgoing legal mail is prohibited.
- (h) through (15) No change.

Rulemaking Authority 20.315, 944.09, 944.11 FS. Law Implemented 944.09, 944.11 FS. History--New 10-8-76, Amended 4-19-79, 7-2-81, 6-8-82, 9-23-85, Formerly 33-3.05, Amended 10-7-86, 8-20-89, 4-4-91, 9-1-93, 4-28-96, 2-12-97, 5-25-97, 10-7-97, 12-7-97, 2-15-98, Formerly 33-3.005, Amended 12-20-99, Formerly 33-602.402, Amended 5-5-02, 12-4-02, 5-11-03, 8-25-03, 9-20-04, 12-23-07, 4-23-09, 2-23-10, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Wendell Whitehurst, Assistant Deputy Secretary of Institutions  
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Walter McNeil, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 20, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 2010

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.217
RULE TITLE: Elderly Offender Housing

PURPOSE AND EFFECT: The purpose and effect of the proposed rulemaking is to remove reference to the Correctional Privatization Commission, as the commission no longer exists.

SUMMARY: The proposed rule removes references to the Correctional Privatization Commission, as the commission no longer exists, and is amended to reflect recent changes to Section 944.804, F.S.

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: 944.09, 944.804 FS.

LAW IMPLEMENTED: 944.09, 944.804 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:

33-601.217 Elderly Offender Housing.

(1) Definitions.

(a) No change.

(b) State Classification Office (SCO) – refers to a staff member at the central office level who is responsible for the review of inmate classification decisions. Duties include approving, disapproving, or modifying or rejecting ICT recommendations.

(c) Elderly Offender – an inmate age 50 or older in a state correctional institution or facility operated by the Department of Corrections or a state correctional facility operated by a private entity under contract with the Department of Management Services or the Correctional Privatization Commission.

(d) Geriatric Facility or Dorm River Junction Work Camp – a geriatric facility or dorm within a facility authorized designated by Section 944.804, F.S., for generally healthy elderly offenders who can perform general work appropriate for their physical and mental condition.

(e) No change.

(2) Placement criteria. Inmates shall be recommended for placement at a geriatric facility or dorm River Junction Work Camp through routine classification assignment.

(a) Inmates shall meet the following criteria for housing at a geriatric facility or dorm RJCF:

- 1. No change.
2. Medium, minimum, or community custody;
3. No change.
4. Are not otherwise deemed to be a security risk for placement; and
5. No change.

(b) An inmate The following inmates shall not be eligible for housing at a geriatric facility or dorm if he RJCF:

- 1. Is close Close or maximum custody;
2. Has Have a current or prior conviction for any sex offense;
3. Has Have a current or prior conviction for first degree murder;
4. Has Have an escape history or escape arrest with unknown disposition;
5. Has Have a violent felony or INS detainer;
6. Has Have an ex-death sentence;
7. Has Have a life sentence without parole eligibility;
8. Has Have been released from close management status within the last six months; or
9. Has Have a special medical need that which cannot be accommodated in the work camp setting.

Rulemaking Specific Authority 944.09, 944.804 FS. Law Implemented 944.09, 944.804 FS. History–New 9-15-02, Amended 4-1-04,\_\_\_\_\_.

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: November 23, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 11, 2009

AGENCY FOR HEALTH CARE ADMINISTRATION

Cost Management and Control

RULE NOS.: 59B-9.031, 59B-9.032, 59B-9.034, 59B-9.038
RULE TITLES: Definitions, Ambulatory and Emergency Department Data Reporting and Audit Procedures, Reporting Instructions, Ambulatory Data Elements, Codes and Standards

**PURPOSE AND EFFECT:** The agency is proposing this rule amendment to remove the ambulatory exception provision upon recommendation of the State Consumer Health Information and Policy Advisory Council. This change will require that all ambulatory facilities report regardless of low patient volume. This amendment will also modify existing ambulatory data element codes to align with recent revision in the CMS Health Insurance Claim Form (UB04) and its electronic equivalent. The amendment deletes all ICD-10-CM references due to delayed national implementation and the Agency's inability to receive an ICD-10-CM format. Additional revisions are amended for clarification.

**SUMMARY:** The agency is proposing amendments to Rules 59B-9.031; 59B-9.032; 59B-9.034, and 59B-9.038, F.A.C., that modify ambulatory and emergency department reporting codes; delete all ICD-10 references, and remove ambulatory reporting exemption for volumes less than 200.

**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:** 408.15(8) FS.

**LAW IMPLEMENTED:** 408.061, 408.062, 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:**

**DATE AND TIME:** Monday, September 27, 2010, 1:00 p.m.

**PLACE:** Agency for Health Care Administration, First Floor Conference Room A, Building 3, 2727 Mahan Drive, Tallahassee, Florida 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: Patrick Kennedy at (850)412-3757. 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:** Patrick Kennedy at (850)412-3757

**THE FULL TEXT OF THE PROPOSED RULES IS:**

59B-9.031 Definitions.

(1) "Ambulatory Center." For the purposes of this rule, an ambulatory center means a freestanding ambulatory surgery center, ~~and~~ a short-term acute care hospital and an Emergency Department.

(2) through (3) No change.

(4) "E-code" means a Supplementary Classification of External Causes of Injury and Poisoning ICD-9-CM codes where environmental events, circumstances, and conditions are the cause of injury, poisoning and other adverse effects as specified in the ICD-9-CM ~~or ICD-10-CM~~ manual and the conventions of coding.

(5) through (12) No change.

Rulemaking Authority 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063 FS. History--New 1-1-10, Amended.

Editorial note: see former rule 59B-9.010

59B-9.032 Ambulatory and Emergency Department Data Reporting and Audit Procedures.

(1) The following entities shall submit patient data reports to the Agency for Health Care Administration (AHCA or Agency):

(a) through (b) No change.

(c) All Emergency Departments licensed under Chapter 395, F.S.:

(c) through (d) renumbered (d) through (e) No change.

(2) Each facility in paragraph (1)~~(a)(b)~~ above shall submit a separate report for each location per Section 408.061(3), F.S.

(3) All ambulatory centers performing the services set forth in Rules 59B-9.030 through 59B-9.039, F.A.C., shall submit ambulatory patient data as set forth in Rules 59B-9.037 and 59B-9.038, F.A.C., ~~unless the reporting entity meets the criteria listed in subsection 59B-9.032(5), F.A.C., below:~~

~~(4) Any Ambulatory Surgical Center receiving 200 or more patient visits during the reporting quarter periods outlined in Rule 59B-9.033, F.A.C., are required to report data as specified in Rules 59B-9.037 and 59B-9.038, F.A.C.~~

~~(5) Ambulatory Surgical Centers (ASC) receiving fewer than 200 patient visits during the reporting quarter periods outlined in Rule 59B-9.033, F.A.C., may request an exemption from a quarters reporting requirement. To request an exemption, the ASC shall send a letter on facility letterhead stating the number of patient visits for the reporting quarter and signed by the entity's chief executive officer or director. The exemption letter shall be received at the Agency office in Tallahassee on or prior to the deadline for submission of the quarterly report. This is not a onetime letter, but must be submitted for each quarter with fewer than 200 visits.~~

~~(4)(6)~~ Upon notification by the Agency staff, all facilities shall provide access to all required information from the medical records and billing documents underlying and documenting the ambulatory patient data submitted, as well as other patient related documentation deemed necessary by the Agency to conduct complete ambulatory patient data audits subject to the limitations as set forth in Section 408.061(1)(d), F.S. No patient records that support patient data are exempt from disclosure to AHCA for audit purposes.

Proposed Effective Date 7-1-2011.

Rulemaking Authority 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063, 408.07, 408.08, 408.15(11) FS. History—New 1-1-10, 7-1-11.

Editorial note: see former rule 59B-9.011.

59B-9.034 Reporting Instructions.

(1) Ambulatory Surgical centers shall report data for:

(a) No change.

1. through 3. No change.

4. Report one record for each visit, except pre-operation visits may be combined with the record of the associated ambulatory surgery visit. See subsection 59B-9.031(11), F.A.C.

(2) Emergency Departments (ED) shall report data for: an Emergency Department Evaluation and Management Procedure code representing the patient's acuity as part of the emergency department visit.

(a) Report all Emergency department visits in which emergency department registration occurs for the purpose of seeking emergency care services, including observation, and the patient is not admitted for inpatient care at the reporting entity.

(b) The CPT-HCPCS codes representing the services provided as part of the emergency department visit. CPT-HCPCS codes are reported in the 'OTHER CPT-HCPCS' fields (1-30) and are not restricted to the CPT-HCPCS reportable range defined in paragraph 59B-9.034(1)(a), F.A.C., for an ambulatory surgical center.

(c) An Emergency Department Evaluation and Management Procedure code representing the patient's acuity as part of the emergency department visit.

(b) through (c) renumbered (d) through (e) No change.

(3) Hospitals shall exclude records of any patient visit in which the outpatient and inpatient billing record is combined because the patient was admitted to inpatient care within a facility at the same location per Section 408.061(3), F.S. Report one record for each visit, except pre-operation visits may be combined with the record of the associated ambulatory surgery visit. See subsection 59B-9.031(11), F.A.C.

(4) through (5) No change.

Rulemaking Authority 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063 FS. History—New 1-1-10, Amended.

Editorial note: see former rule 59B-9.015.

59B-9.038 Ambulatory Data Elements, Codes and Standards.

(1) No change.

(2) Patient Control Number. The 'Patient Control Number' is defined as 'Record id' in the schema. Up to twenty four (24) characters. A required field. Duplicate patient control

numbers are not permitted. The facility must maintain a key list to locate actual records upon request by AHCA. A required field.

(3) through (9) No change.

(10) Patient Country Code. A required entry for type of service "2". Use 99 where the country of residence is unknown, or where efforts to obtain the information have been unsuccessful, or if type of service is "1". A required entry for type of service "2".

(11) No change.

(12) Source or Point of Origin of Admission. No change.

(a) 01 – Non-health care facility point source of origin – The patient presented to this facility for outpatient services. Includes patients coming from home, physician office or workplace. The patient presents to this facility with an order from a physician for services, or seeks scheduled services for which an order is not required. Includes non-emergent self-referrals.

(b) 02 – Clinic or Physician's Office. The patient presented was referred to this facility for outpatient services from a clinic or physician's office or referenced diagnostic procedures.

(c) through (e) No change.

(f) 07 – Emergency Room. The patient received unscheduled services in this facility's emergency department and discharged without an inpatient admission. Includes self-referrals in emergency situations that require immediate medical attention. Excludes patients who came to the emergency room from another health care facility.

(g) through (k) renumbered (f) through (j) No change.

(14) Principal Diagnosis Code. Must contain a valid ICD-9-CM or ICD-10-CM diagnosis code if type of service is "1" indicating ambulatory surgery. Must contain a valid ICD-9-CM or ICD-10-CM diagnosis code. If not space filled, must contain a valid ICD-9-CM diagnosis code or valid ICD-10-CM diagnosis code for the reporting period.

(15) Other Diagnosis Code. If not space filled, must contain a valid ICD-9-CM code or valid ICD-10-CM code for the reporting period.

(16) Evaluation and Management Code (1), Less than five entries is permitted. Ambulatory surgical centers, type of service "1", should not report Evaluation and Management codes. A required field.

(17) through (39) No change.

(40) Patient Visit Ending Date. Patient visit ending date must occur within the calendar quarter included in the data report. A blank field is not permitted unless type of service is "2" indicating an emergency department visit and patient status is "07" indicating the patient left against medical advice or discontinued care.

(41) through (42) No change.



(43) Patient’s Reason for Visit ICD-CM Code (Admitting Diagnosis). The code representing the patient’s chief complaint or stated reason for seeking care in the Emergency Department. Must contain a valid ICD-9-CM code ~~or valid ICD-10-CM code~~ for the reporting period if type of service is “2” indicating an emergency department visit.

(44) Principal ICD-CM Procedure Code. Must contain a valid ICD-9-CM ~~or ICD-10-CM~~ procedure code for the reporting period. The code must be entered with use of a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code.

(45) Other ICD-CM Procedure Code (1), Must be a valid ICD-9-CM ~~or ICD-10-CM~~ procedure code for the reporting period. The code must be entered with use of a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code.

(46) External Cause of Injury Code. If not space filled, must be a valid ICD-9-CM ~~or ICD-10-CM~~ cause of injury code for the reporting period. Alpha characters must be in upper case.

(47) No change.

(48) Patient Status.

(a) through (h) No change.

(i) 21 – Discharged or transferred to court/law enforcement jail.

(j) through (p) renumbered (j) through (q) No change.

(49) No change.

Rulemaking Authority 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063 FS. History–New 1-1-10, Amended.

Editorial note: see former rule 59B-9.018.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Patrick Kennedy at (850)412-3757

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Thomas W. Arnold, AHCA Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 24, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 16, 2010, Vol. 36/28 and July 23, 2010, Vol. 36/29

**AGENCY FOR HEALTH CARE ADMINISTRATION  
Hospital and Nursing Home Reporting Systems and Other Provisions Relating to Hospitals**

|            |  |
|------------|--|
| RULE NOS.: | RULE TITLES:                                 |
| 59E-7.021  | Definitions                                  |
| 59E-7.028  | Inpatient Data Elements, Codes and Standards |

PURPOSE AND EFFECT: The agency is proposing this rule amendment to modify existing inpatient data element codes to align with recent revision in the CMS Health Insurance Claim Form (UB04). The proposed inpatient amendment will

incorporate a new P7 data element to explicitly flag inpatient admissions from a hospital’s emergency department. The amendment deletes all ICD-10-CM references due to delayed national implementation and the Agency’s inability to receive an ICD-10-CM format. Nursery Level I, II, and III Charge data elements are modified to include acceptable revenue codes previously omitted in error. Additional revisions are amended for clarification and correction.

SUMMARY: The agency is proposing amendments to Rules 59E-7.021 and 59E-7.028, F.A.C., which modifies inpatient reporting codes; delete all ICD-10 references, correct reporting of nursery 179 revenue codes, and add a new element Special Indicator Code field.

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: 408.15(8) FS.

LAW IMPLEMENTED: 408.061, 408.062 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:

DATE AND TIME: Monday September 27, 2010, 2:00 p.m.

PLACE: Agency for Health Care Administration, First Floor Conference Room A, Building 3, 2727 Mahan Drive, Tallahassee, Florida 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: Patrick Kennedy at (850)412-3757. 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: Patrick Kennedy at (850)412-3757

THE FULL TEXT OF THE PROPOSED RULES IS:

59E-7.021 Definitions.

(1) through (3) No change.

(4) “E-code” means a Supplementary Classification of External Causes of Injury and Poisoning, ICD-9-CM ~~or ICD-10-CM~~, where environmental events, circumstances, and conditions are the cause of injury, poisoning, and other adverse effects as specified in the ICD-9-CM ~~or ICD-10-CM~~ manual and the conventions of coding.

(5) through (10) No change.

Rulemaking Authority 408.061(1)(e), 408.15(8) FS. Law Implemented 408.061 FS. History– New 1-1-10, Amended.

Editorial note: see former rule 59E-7.011.

59E-7.028 Inpatient Data Elements, Codes and Standards.

(1) No change.

(2) Patient Control Number. The 'Patient Control Number' is defined as 'Record id' in the schema. Up to twenty four (24) characters. ~~A required field.~~ The facility must maintain a key list to locate actual records upon request by AHCA. A required field.

(3) through (12) No change.

(13) Source or Point of Origin for Admission. No change.

(a) 01 – Non-health care facility point source of origin. The patient was admitted to this facility. ~~upon an order of a physician.~~ Includes a patient coming from home, ~~physician office~~ or workplace.

(b) 02 – Clinic or Physician's Office. The patient was admitted to this facility from a clinic or physician's office. ~~as a transfer or referral from a freestanding or non-freestanding clinic.~~

(c) through (e) No change.

~~(f) 07 – Emergency Room. The patient was admitted to this facility after receiving services in this facility's emergency department. Excludes patients who came to the emergency room from another health care facility.~~

(g) through (k) renumbered (f) through (j) No change.

(4) Codes required for newborn admissions (Priority of Admission=4):

(l) through (m) renumbered (k) through (l) No change.

(14) through (17) No change.

(18) Patient Discharge Status.

(a) through (h) No change.

(i) 21 – Discharged or transferred to court/law enforcement.

(i) through (p) renumbered (j) through (q) No change.

(19) No change.

(20) Principal Diagnosis Code. Principal diagnosis code must contain a valid ICD-9-CM ~~or ICD-10-CM code~~ for the reporting period.

(21) Other Diagnosis Code (1), Must contain a valid ICD-9-CM code ~~or valid ICD-10-CM code~~ for the reporting period. Alpha characters must be in upper case.

(22) No change.

(23) Principal Procedure Code. Must contain a valid ICD-9-CM ~~or ICD-10-CM~~ procedure code for the reporting period. The code must be entered with use of a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code.

(24) Principal Procedure Date. The principal procedure date must be less than seven (7) days ~~four (4)~~ days prior to the admission date and not later than the discharge date.

(25) Other Procedure Code (1), Must be a valid ICD-9-CM ~~or ICD-10-CM~~ procedure code for the reporting period. The code must be entered with use of a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code.

(26) Other Procedure Code Date (1), The procedure date must be less than seven (7) days ~~four (4)~~ prior to the admission date and not later than the discharge date.

(27) through (29) No change.

(30) Operating or Performing Practitioner National Provider Identification (NPI). An unique ten (10) character identification number assigned to a provider who had primary responsibility for the Principal Procedure performed.

(31) No change.

(32) Other Operating or Performing Practitioner National Provider Identification (NPI). A unique ten (10) character identification number assigned to a provider who assisted the operating or performing practitioner or performed a secondary procedure who had primary responsibility for the Principal Procedure.

(33) No change.

(34) Nursery Level I Charges. Report charges for revenue code 170 and 171, or 179 if applicable, as used in the UB-04.

(35) Nursery Level II Charges. Accommodation charges for services which include provision of ventilator services. Report charges for revenue code 172, or 179 if applicable, as used in the UB-04.

(36) Nursery Level III Charges. Report charges for revenue code 173 and 174, or 179 if applicable, ~~(Level III)~~ as used in the UB-04.

(37) through (58) No change.

(59) Infant Linkage Identifier. Zero fill ~~No entry is permitted~~ if the patient is two (2) years of age or older. A required entry.

(60) Admitting Diagnosis. Must contain a valid ICD-9-CM code ~~or valid ICD-10-CM code~~ for the reporting period.

(61) External Cause of Injury Code (1), Must be a valid ICD-9-CM ~~or ICD-10-CM~~ cause of injury code for the reporting period. Alpha characters must be in upper case.

(62) through (63) No change.

(64) Special Indicator Code. A two-character code that describes patients admitted to the inpatient facility after receiving treatment in the facility's emergency department. Do not use this code for patients admitted to the hospital through the ED when the registration department is closed. Report using the two-character indicator code 'P7'. Otherwise zero fill using "00." A required field.

~~(65)(64)~~ No change.

Rulemaking Authority 408.061(1)(e), 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063 FS. History—New 1-1-10, Amended.

Editorial note: see former rule 59E-7.014.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Patrick Kennedy at (850)412-3757

NAME OF AGENCY HEAD WHO APPROVED THE  
PROPOSED RULE: Thomas W. Arnold, AHCA Secretary

DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: August 24, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: July 16, 2010 Vol. 36/28

**DEPARTMENT OF MANAGEMENT SERVICES**

**Agency for Workforce Innovation**

|             |   |
|-------------|---|
| RULE NOS.:  | RULE TITLES:  |
| 60BB-3.0251 | Definitions Relating to Emergency Unemployment Compensation |
| 60BB-3.0252 | Eligibility for Emergency Unemployment Compensation         |
| 60BB-3.0253 | Emergency Unemployment Compensation Individual Accounts     |
| 60BB-3.0254 | How to Apply for Emergency Unemployment Compensation        |

PURPOSE AND EFFECT: The proposed amendments to the above referenced rules implement procedure and policy relating to the federally funded Emergency Unemployment Compensation Program authorized under Public Laws 110-252, 110-449, 111-5, 111-92, 111-118, 111-144, 111-157, and 111-205, and implemented in Florida through an agreement between the State of Florida and the United States Department of Labor.

SUMMARY: The proposed amendments incorporate changes set forth in Public Law 111-205 relating to the time period during which an individual may claim and receive Emergency Unemployment Compensation and to the amount of weekly benefits an individual may receive if he or she is still receiving such benefits more than one year after the claim for regular unemployment compensation is filed. The proposed amendments also streamline the administrative process relating to claims for Emergency Unemployment Compensation by eliminating forms that are no longer needed.

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: 443.1317(1)(b) FS.

LAW IMPLEMENTED: 443.036, 443.091, 443.101, 443.111, 443.151, 443.191, 443.221(3) FS.

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

DATE AND TIME: Friday, September 24, 2010, 3:00 p.m. – 4:00 p.m.

PLACE: Agency for Workforce Innovation, Room 110, 107 East Madison Street, Tallahassee, Florida 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John R. Perry, Assistant General Counsel, Agency for Workforce Innovation, Office of General Counsel, 107 East Madison Street, MSC 110, Tallahassee, Florida 32399-4128, (850)245-7150, fax (850)921-3230, email john.perry@flaawi.com

THE FULL TEXT OF THE PROPOSED RULES IS:

60BB-3.0251 Definitions Relating to Emergency Unemployment Compensation.

(1) Emergency Unemployment Compensation: A federally funded program created by Public Laws 110-252, 110-449, 111-5, 111-92, 111-118, 111-144, ~~and~~ 111-157, and 111-205, and implemented in Florida through an agreement between the Agency for Workforce Innovation and the United States Department of Labor which provides additional weeks of unemployment benefits to qualified individuals who have exhausted their rights to regular unemployment compensation on claims that were effective on or after May 2, 2006.

(2) Extended unemployment compensation: Benefits, including benefits payable to federal civilian employees and to ex-servicemembers under 5 U.S.C. ss. 8501-8525, that are payable to an individual under Section 443.1115 or 443.1117, Florida Statutes.

(3) Qualifying benefit year: The benefit year established on a Florida claim for regular unemployment compensation which was effective on or after May 2, 2006, and is the basis of the individual's eligibility for emergency unemployment compensation.

(4) Regular unemployment compensation: Benefits payable to an individual under Chapter 443, Florida Statutes, including benefits payable to federal civilian employees and to ex servicemembers under 5 U.S.C. ss. 8501-8525, other than extended unemployment compensation under Section 443.1115, Florida Statutes.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.036, 443.221(3) FS. History–New 8-11-10, Amended \_\_\_\_\_.

60BB-3.0252 Eligibility for Emergency Unemployment Compensation.

(1) Eligibility Conditions. Emergency Unemployment Compensation is available to individuals who:

(a) Have exhausted all rights to regular unemployment compensation on a Florida claim with a benefit year that ended on or after May 1, 2007;

(b) Have no rights to unemployment compensation under any other state or federal law;

(c) Are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(d) Are legally authorized to work in the United States.

(2) Exhaustion of Benefits. For purposes of this rule, an individual has exhausted all rights to regular unemployment compensation when that individual:

(a) Has received all regular unemployment compensation available on the qualifying benefit year; or

(b) Had rights to regular unemployment compensation on the qualifying benefit year, but has insufficient wage credits to establish a new benefit year for regular unemployment compensation.

(3) Exception to Exhaustion Requirement.

(a) Notwithstanding paragraph (1)(a) of this rule, the expiration of a qualifying benefit year during which the individual has earned sufficient wage credits to establish monetary eligibility for a new benefit year will not render the individual ineligible for emergency unemployment compensation if:

1. The individual has established entitlement to emergency unemployment compensation with respect to that qualifying benefit year;

2. The individual's qualifying benefit year expired on or after July 23, 2010;

3. The individual has remaining entitlement to emergency unemployment compensation benefits with respect to that benefit year; and

4. The weekly benefit amount established under the new benefit year is at least either 25% or \$100 less than the weekly benefit amount for the qualifying benefit year.

(b) If the criteria set forth in paragraph (3)(a) of this rule are satisfied, the Agency shall establish a new benefit year for the individual, but shall defer payment of regular unemployment compensation for the new benefit year until all emergency unemployment compensation payable to the individual has been exhausted.

~~(4)(3)~~ Amount Payable.

(a) The amount of emergency unemployment compensation payable to an individual for any week of total unemployment will be equal to the amount of regular unemployment compensation payable during the individual's qualifying benefit year for a week of total unemployment.

(b) The maximum amount of emergency unemployment compensation payable to any individual will not exceed the amount established for such individual in the emergency unemployment compensation account described in Rule 60BB-3.0253, F.A.C.

~~(5)(4)~~ Applicable Law. The terms and conditions of the law under which the individual claimed and received regular unemployment compensation will apply to claims for and payment of emergency unemployment compensation.

~~(6)(5)~~ Overpayments. An individual who receives emergency unemployment compensation to which he is not entitled will repay any such overpayment to the Agency for Workforce Innovation. The requirement to repay the overpayment will not be waived.

(a) The Agency may recoup any such overpayments by deducting 50 percent of the weekly benefit amount from any future payments until the overpayment is repaid in full.

(b) Recoupment of overpayments from future benefits may occur at any time during the 3-year period after the date the individual received the payment of the emergency unemployment compensation to which he was not entitled.

(c) No waiver of such recoupment may occur except as permitted by Section 443.151(6)(c), Florida Statutes.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.091, 443.111, 443.151(6), 443.221(3) FS. History—New 8-11-10, Amended.

60BB-3.0253 Emergency Unemployment Compensation Individual Accounts.

(1) Establishment of Account. Persons deemed eligible under Rule 60BB-3.0252, F.A.C., will be paid from emergency unemployment compensation accounts established for each individual with respect to that individual's benefit year.

(2) Eligibility Established Prior to November 23, 2008. The emergency unemployment compensation accounts of individuals whose period of eligibility began between July 6, 2008 and November 22, 2008, will be augmented as provided in this subsection.

(a) The amount established in an account under this subsection will equal the lesser of:

1. 50 percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or

2. 13 times the individual's average weekly benefit amount for the benefit year.

(b) Benefits under this subsection may be paid only for weeks of unemployment beginning on or after July 6, 2008.

(c) If the individual exhausts these benefits before November 23, 2008, no further benefits may be paid to the individual except as provided in subsections (3), (4), (5), and (6) of this rule.

(3) Tier One.

(a) Tier One benefits may be paid only for weeks of unemployment beginning on or after November 23, 2008.

(b) The emergency unemployment compensation account of each individual whose period of eligibility began after November 22, 2008, will be augmented with an amount equal to the lesser of:

1. 80 percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or

2. 20 times the individual's average weekly benefit amount for the benefit year.

(c) The emergency unemployment compensation account of an individual whose period of eligibility began before November 23, 2008 will, if the individual remains otherwise eligible, receive an additional augmentation equal to the amount previously paid under paragraph (b) of this subsection minus the amount actually received under subsection (2).

(d) Tier One benefits may be paid only in cases in which an individual's regular unemployment compensation benefits are exhausted by the week ending November 20 ~~May 22~~, 2010.

(4) Tier Two.

(a) The emergency unemployment compensation account of an individual who receives benefits pursuant to subsection (3) of this rule will receive an additional augmentation pursuant to paragraph (b) of this subsection if:

1. The individual exhausts all Tier One benefits by the week ending November 27 ~~May 29~~, 2010;

2. The individual remains otherwise eligible.

(b) Amount Added to Account. The amount established in an account under this subsection will equal the lesser of:

1. 54 percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or

2. 14 times the individual's average weekly benefit amount for the benefit year.

(c) Tier two benefits may be paid only for weeks of unemployment beginning on or after November 23, 2008.

(5) Tier Three.

(a) The emergency unemployment compensation account of an individual who receives benefits pursuant to subsection (4) of this rule will receive an additional augmentation pursuant to paragraph (b) of this subsection if:

1. The individual exhausts all Tier Two benefits by the week ending November 27 ~~May 29~~, 2010;

2. The individual remains otherwise eligible; and

3. During or after the week these benefits are exhausted, but no later than the week ending November 27 ~~May 29~~, 2010, one of the following circumstances occur:

a. The rate of insured unemployment for the current week and the immediately preceding 12 weeks equals or exceeds 4 percent; or

b. The average rate of total unemployment, seasonally adjusted, for the most recent 3 month period for which data for all States are published equals or exceeds 6 percent.

(b) The amount established in an account under this subsection will equal the lesser of:

1. 50 percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or

2. 13 times the individual's average weekly benefit amount for the benefit year.

(c) Tier Three benefits may be paid only for weeks of unemployment beginning on or after November 8, 2009.

(6) Tier Four.

(a) The emergency unemployment compensation account of an individual who receives benefits pursuant to subsection (5) of this rule will receive an additional augmentation pursuant to paragraph (b) of this subsection if:

1. The individual exhausts all Tier Three benefits by the week ending November 27 ~~May 29~~, 2010;

2. The individual remains otherwise eligible; and

3. During or after the week these benefits are exhausted, but no later than the week ending November 27 ~~May 29~~, 2010, one of the following circumstances occur:

a. The rate of insured unemployment for the current week and the immediately preceding 12 weeks equals or exceeds 6 percent; or

b. The average rate of total unemployment, seasonally adjusted, for the most recent 3 month period for which data for all States are published equals or exceeds 8.5 percent.

(b) The amount established in an account under this subsection will equal the lesser of:

1. 24 percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or

2. 6 times the individual's average weekly benefit amount for the benefit year.

(c) Tier Four benefits may be paid only for weeks of unemployment beginning on or after November 8, 2009.

(7) Termination of Emergency Unemployment Compensation. An individual who has a balance remaining in his or her individual account as of November 27 ~~May 29~~, 2010, will continue to receive emergency unemployment compensation from such balance for any week beginning after that date for which he or she meets the eligibility requirements of this rule, except that no compensation will be payable for any week beginning after April 30, 2011 ~~November 6, 2010~~.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.111, 443.191, 443.221(3) FS. History—New 8-11-10, Amended.

60BB-3.0254 How to Apply for Emergency Unemployment Compensation.

(1) Method of Application. Individuals whose regular unemployment compensation benefits are exhausted, whose benefit year expires between July 6, 2008 and May 29, 2010, or who are entitled to an augmentation of their emergency unemployment compensation accounts pursuant to Rule 60BB-3.0253, F.A.C., will receive notice regarding their eligibility or ineligibility for emergency unemployment compensation. Individuals who qualify for augmentation under any of the provisions set forth in subsections 60BB-3.0253(4)-(6), F.A.C., will be deemed eligible to receive these benefits without filing an application as long as they

comply with the continued claims reporting requirements set forth in Rule 60BB-3.015, F.A.C. All other individuals who wish to receive emergency unemployment compensation must submit an application for benefits to the Agency for Workforce Innovation. An application may be submitted:

(a) Online by clicking on the "Internet Unemployment Compensation Claim Application (Initial Claim)" link to the Online Internet Unemployment Compensation Claim Application (11/07), or by clicking on the "Solicitud de Reclamo de Compensacion por Desempleo en el Internet (Reclamo Inicial)" link to the Online Internet Unemployment Compensation Claim Application (Spanish version) (11/07), which are incorporated by reference in paragraphs 60BB-3.029(1)(yy) and (zz), F.A.C., and which are available at <https://www2.myflorida.com/fluid/>, [www.fluidnow.com](http://www.fluidnow.com); or

(b) In writing on one of the forms listed in subsection (2) of this rule, which are hereby incorporated by reference into this rule and which are available at [www.floridajobs.org/unemployment/ue\\_emp\\_claims.html](http://www.floridajobs.org/unemployment/ue_emp_claims.html).

(2) Submitting Written Applications.

(a) To submit a written application for emergency unemployment compensation under subsections (2), (3), or (4) of Rule 60BB-3.0253, F.A.C., the claimant must complete and submit one of the following forms:

(a)1- Form AWI-UC310EUC (Rev. 08/10 10/09), Application for Emergency Unemployment Compensation, which may be found at [http://www.floridajobs.org/unemployment/EUC\\_09/EUC\\_app.pdf](http://www.floridajobs.org/unemployment/EUC_09/EUC_app.pdf);

(b)2- Form AWI-UC310EUC (S) (Rev. 08/10 10/09), Solicitud de Compensacion de emergencia por desempleo, which may be found at [http://www.floridajobs.org/unemployment/EUC\\_09/EUC\(s\)\\_app.pdf](http://www.floridajobs.org/unemployment/EUC_09/EUC(s)_app.pdf); or

(c)3- Form AWI-UC310EUC (C) (Rev. 08/10 10/09), Aplikasyon pou Alokasyon Chomaj sou Ka Dijan, which may be found at [http://www.floridajobs.org/unemployment/EUC\\_09/EUC\(c\)\\_app.pdf](http://www.floridajobs.org/unemployment/EUC_09/EUC(c)_app.pdf).

(b) To submit a written application for emergency unemployment compensation under subsections (5) or (6) of Rule 60BB-3.0253, F.A.C., the claimant must complete and submit one of the following forms:

1. Form AWI-UC310EUCHI (12-09), Application for Tier III;

2. Form AWI-UC310EUCHI (Sp) (12-09), Agencia para la innovacion en la fuerza de trabajo de Florida Compensacion de emergencia por desempleo; or

3. Form AWI-UCB310EUCHI (Cr) (12-09), Ajans pou Inovasyon Fos Travay "Agency for Workforce Innovation" Konpansasyon Chomaj Dijans.

(c) The applications described in paragraph (2)(b) of this rule will be mailed to:

1. All out of state claimants whose application for extended benefits was denied because the law of their state of residence did not permit payment of extended benefits; and

2. All claimants who did not qualify for extended benefits because their Tier Two benefits expired before February 27, 2009.

(d) All applications mailed pursuant to paragraph (2)(c) of this rule will be accompanied by Form AWI-UC310EUCHI LTR(N) (Rev. 4/10), Emergency Unemployment Compensation Instruction Sheet or a Form AWI-UC310EUCHI LTR(S) (Rev. 4/10), Emergency Unemployment Compensation Instruction Sheet, which are hereby incorporated by reference into this rule.

(3) Submitting Written Applications. The claimant must submit his or her application by mailing the completed form to the address set forth on the form and/or accompanying instructions, or by faxing the form to the Agency for Workforce Innovation, Unemployment Compensation Records Unit, (850)921-3938.

(4) Notice of Determination.

(a) Notice of ineligibility for cases in which a claimant does not exhaust his or her regular benefits by the week ending November 20, 2010, will be mailed to the claimant on a Form AWI-UCB11 EXH (08/10), Notice of EUC Ineligibility, Form AWI-UCB11 EXH(S) (08/10), Eligibilidad Nota de EUC, or a Form AWI-UCB11 EXH(C) (08/10), Avi Sou Kalifikasyon EUC, which are hereby incorporated by reference into this rule.

(b) Notice of ineligibility for cases in which the claimant does not meet the eligibility requirements of Rule 60BB-3.0252, F.A.C., will be mailed to the claimant on a Form AWI-UCB11-I EUC (10/09), Emergency Unemployment Compensation Monetary Determination, which is hereby incorporated by reference into this rule.

(c) Notice of the Agency's determination of a claimant's eligibility or ineligibility for emergency unemployment compensation under subsections (2) or (3) of Rule 60BB-3.0253, F.A.C., will be mailed to the claimant on a Form AWI-UCB11 EUC (Rev. 7/10 11/09), Emergency Unemployment Compensation Monetary Determination, which is hereby incorporated by reference into this rule.

(d) Notice of the Agency's determination of a claimant's eligibility or ineligibility for emergency unemployment compensation under paragraph (4)(b) of Rule 60BB-3.0253, F.A.C., will be mailed to the claimant:

1. On a Form AWI-UCB11 EUC-2 (Rev. 7/10 11/09) Emergency Unemployment Compensation Monetary Determination, which is hereby incorporated by reference into this rule, when the claimant exhausts his Tier One benefits; or

2. On a Form AWI-UCB11 EUC-2R (12/09), Emergency Unemployment Compensation Tier II Monetary Determination, which is hereby incorporated by reference into this rule, when the claimant:

a. Claimed weeks on a Florida claim for extended benefits in a state in which extended benefits are not payable;

b. Received extended benefit payments for any week ending on or after November 14, 2009; or

c. Was determined to be entitled to an additional week of Tier Two benefits under the augmentation authorized by Public Law 111-92 for any week ending on or after November 14, 2009.

~~(e)~~(f) Notice of the Agency’s determination of a claimant’s eligibility or ineligibility for emergency unemployment compensation under subsection (5) of Rule 60BB-3.0253, F.A.C., will be mailed to the claimant on a Form AWI-UCB11 EUC3 (Rev. 7/10 ~~4/10~~) Emergency Unemployment Compensation Monetary Determination, which is hereby incorporated by reference into this rule.

~~(f)~~(e) Notice of the Agency’s determination of a claimant’s eligibility or ineligibility for emergency unemployment compensation under subsection (6) of Rule 60BB-3.0253, F.A.C., will be mailed to the claimant on a Form AWI-UCB11 EUC4 (Rev. 7/10 ~~4/10~~), Emergency Unemployment Compensation Monetary Determination, which is hereby incorporated by reference into this rule.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.091, 443.101, 443.111, 443.151, 443.221(3) FS. History–New 8-11-10, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: John R. Perry, Assistant General Counsel, Agency for Workforce Innovation, Office of General Counsel, 107 East Madison Street, MSC110, Tallahassee, Florida 32399-4128, (850)245-7150, Fax (850)921-3230, email john.perry@flaawi.com.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Cynthia R. Lorenzo, Director, Agency for Workforce Innovation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 24, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 2010

**DEPARTMENT OF MANAGEMENT SERVICES**

**Agency for Workforce Innovation**

|             |   |
|-------------|---|
| RULE NOS.:  | RULE TITLES:                              |
| 60BB-3.0261 | Definitions Relating to Extended Benefits |
| 60BB-3.0262 | How to Apply for Extended Benefits        |
| 60BB-3.0263 | Diligent Work Search Requirements         |

PURPOSE AND EFFECT: The proposed amendments to the above referenced rules implement procedure and policy relating to the federally funded Extended Benefit Program authorized under Public Laws 110-252, 110-449, 111-118, 111-144, 111-157, and 111-205.

SUMMARY: The proposed amendments incorporate changes set forth in Public Law 111-205 relating to the time period during which an individual may claim and receive Extended Benefits.

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: 443.1317(1)(b) FS.

LAW IMPLEMENTED: 443.036, 443.091, 443.1115, 443.1117 FS.

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

DATE AND TIME: Friday, September 24, 2010, 4:00 p.m. – 5:00 p.m.

PLACE: Agency for Workforce Innovation, Room 110, 107 East Madison Street, Tallahassee, Florida 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John R. Perry, Assistant General Counsel, Agency for Workforce Innovation, Office of General Counsel, 107 East Madison Street, MSC 110, Tallahassee, Florida 32399-4128, (850)245-7150, fax (850)921-3230, email john.perry@flaawi.com

THE FULL TEXT OF THE PROPOSED RULES IS:

60BB-3.0261 Definitions Relating to Extended Benefits. For the purposes of extended benefits payable under Section 443.1117, Florida Statutes, and Rules 60BB-3.0261 through 60BB-3.0263, F.A.C., the following definitions apply:

(1) Good job prospects: An individual has good job prospects if he or she has a definite return to work date within 4 weeks of the eligibility notices referred to in subsection 60BB-3.0263(2), F.A.C.

(2) Regular unemployment compensation: Benefits payable to an individual under Chapter 443, Florida Statutes, including benefits payable to federal civilian employees and to ex servicemembers under 5 U.S.C. 8501-8525, other than emergency unemployment compensation, trade readjustment allowance, disaster unemployment assistance, and extended unemployment compensation under Sections 443.1115 and 443.1117, Florida Statutes.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.036, 443.1115, 443.1117 FS. History–New \_\_\_\_\_.

60BB-3.0262 How to Apply for Extended Benefits.

(1) Initiating a Claim for Extended Benefits. The Agency will mail a Form AWI-UC310EB (07/10), Application for Extended Benefits (EB), which is hereby incorporated by reference into this rule, to all individuals who exhaust their

available emergency unemployment compensation. This form will advise the recipient that the application for extended benefits may be filed using the form or by applying online at <http://www.floridajobs.org>. The online application report (AWI UCB-310EB-ONL (Rev. 2/10) Extended Benefit Online Application) is hereby incorporated by reference into this rule. When the individual is eligible for retroactive payment of extended benefits, the Agency will mail the claimant a Form AWI-UC310EBR (Rev 07/10) Information and Initial Claims Form for Retroactive Claims, which is hereby incorporated by reference into this rule. The Form AWI-UC310EB or Form AWI-UC310EBR may be submitted by:

(a) Mailing the completed form to the Agency for Workforce Innovation, Unemployment Compensation Records Unit, P. O. Drawer 5700, Tallahassee, Florida 32314-5350.

(b) Faxing the form to the Agency for Workforce Innovation, Unemployment Compensation Records Unit, (850)922-0107.

(2) Notice of Determination.

(a) Notice of the Agency's determination of an individual's eligibility or ineligibility for extended benefits will be mailed to the individual on a Form AWI-UCB11 EB (07/10), Monetary Determination/Redetermination for Extended Benefits, which is hereby incorporated by reference into this rule, when the Agency:

1. Determines that the individual is eligible for extended benefits; or

2. Determines that the individual is ineligible for extended benefits because:

a. The individual has available credits remaining on a claim for regular benefits or emergency unemployment compensation; or

b. The individual's claim for extended benefits was previously made in relation to the wrong regular unemployment claim.

(b) Notice of the Agency's determination of an individual's eligibility or ineligibility for extended benefits will be mailed to the individual on a Form AWI-UCB11-I EB (07/10), Extended Benefits Determination of Eligibility, which is hereby incorporated by reference into this rule, when the individual:

1. Has not exhausted his or her regular benefits or emergency unemployment compensation;

2. Did not exhaust his or her regular benefits or emergency unemployment compensation during his or her eligibility period;

3. Has rights to regular or extended benefits available or is potentially eligible for such benefits under the law of any state (which shall include Puerto Rico, the U.S. Virgin Islands, or the District of Columbia); or

4. Is receiving compensation under the unemployment compensation law of Canada.

(c) Any notice mailed pursuant to this rule will be accompanied by an EB BRI (7/10), Extended Benefits Benefit Rights Information, which is hereby incorporated by reference into this rule.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.091, 443.1115, 443.1117 FS. History—New \_\_\_\_\_.

60BB-3.0263 Diligent Work Search Requirements.

(1) Claim Certification. Every two weeks, an individual determined to be eligible for extended benefits must report his or her work search activities. The individual may satisfy this requirement by reporting online at <http://www.floridajobs.org/unemployment/EB/index.html>, and clicking on the "Claim Your Weeks" icon. The individual may also file his or her report on a Form AWI UCB-60EB (07/10), Unemployment Compensation Benefit Weekly Claim Certification, or a Form AWI-UCB-60EBR (07/10) Information and Initial Claims Form for Retroactive Claims, in the manner prescribed in paragraphs 60BB-3.0262(1)(a) and (b), F.A.C. The Agency mails the Form AWI UCB-60EB and the Form AWI UCB-60EBR to the claimant for this purpose. The online work search reports (AWI UCB-60EB-ONL (Rev. 08/10) Weekly Claim Certifications and AWI UCB-60EB-ONL (S) (Rev. 08/10), Certificaciones para Reclamaciones Semanales), the Form AWI UCB-60EB and the Form AWI UCB-60EBR are hereby incorporated by reference into this rule.

(2) Work Search Requirements. Except as provided in subsection (3) of this rule, any eligible individual must conduct at least two work search activities on separate days per week.

(3) Good Job Prospects. Individuals who have been determined to have good job prospects, as defined in subsection 60BB-3.0261(1), F.A.C.:

(a) Are not required to seek other employment, except as provided by subsection (4) of this rule.

(b) Must list, in the Work Search Record portion of the report required in subsection (1) of this rule, the name and address of the employer to which the individual expects to report to work, and the date such work is expected to begin.

(4) Additional Reporting Requirement for Individuals with Good Job Prospects. If, after four weeks of extended benefits, an individual determined to have good job prospects remains unemployed, the Agency will mail him or her an AWI Form UCB231EB (Rev. 12/09), Unemployment Compensation Extended Benefits (EB) Eligibility Review Questionnaire, which is hereby incorporated by reference into this rule. The individual shall fill out and return this form within ten days of the mailing date, in the manner prescribed in paragraphs 60BB-3.0262(1)(a) and (b), F.A.C.

(5) Failure to Comply. Failure to comply with the requirements of this rule will result in the individual's disqualification from receiving extended benefits until:

(a) Four weeks have passed since the noncompliance; and



(b) The individual has earned wages that equal four times his or her weekly benefit amount.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.091, 443.1115, 443.1117 FS. History—New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
John R. Perry, Assistant General Counsel, Agency for Workforce Innovation, Office of General Counsel, 107 East Madison Street, MSC 110, Tallahassee, Florida 32399-4128, (850)245-7150, fax (850)921-3230, email john.perry@flaawi.com.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Cynthia R. Lorenzo, Director, Agency for Workforce Innovation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 24, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 2010

## DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

### Florida Real Estate Appraisal Board

RULE NOS.:                   RULE TITLES:  
61J1-8.002                   Disciplinary Guidelines

PURPOSE AND EFFECT: The Board proposes to amend the rule to update violations and penalties.

SUMMARY: Violations and penalties will be updated.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that 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: 455.2273, 475.614 FS.

LAW IMPLEMENTED: 455.227, 475.622, 475.6221(3), 475.624, 475.626 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Thomas W. O'Bryant, Jr., Director, Division of Real Estate, 400 West Robinson Street, Hurston Building, North Tower, Suite N801, Orlando, Florida 32801

THE FULL TEXT OF THE PROPOSED RULE IS:

#### 61J1-8.002 Disciplinary Guidelines.

(1) Pursuant to Section 455.2273, F.S., the Florida Real Estate Appraisal Board sets forth below a range of disciplinary guidelines from which disciplinary penalties will be imposed upon licensees guilty of violating Chapter 455 or Part II, Chapter 475, F.S. (For purposes of this rule, the term licensee shall refer to registrants, license holders or certificate holders.) The purpose of the disciplinary guidelines is to give notice to licensees of the range of penalties which normally will be imposed for each count following a Section 120.57, F.S. ~~during a formal or an informal~~ hearing. The brief description of each violation is provided for quick reference and is not meant to convey all elements of any given statutory provision; the full language of each statutory provision cited must be consulted in order to determine the conduct involved. For purposes of this rule, the order of penalties, ranging from lowest to highest, is: reprimand, fine, probation, suspension, and revocation or denial. Pursuant to Section 475.624, F.S., combinations of these penalties are permissible by law. All penalties at the upper range of the sanctions set forth in the guidelines, i.e., suspension, revocation, etc., include lesser penalties, i.e., fine, probation or reprimand, which may be included in the final penalty at the Board's discretion. Nothing in this rule shall preclude any discipline imposed upon a licensee pursuant to a stipulation or settlement agreement, nor shall the ranges of penalties set forth in this rule preclude the probable cause panel from issuing a letter of guidance in lieu of ~~upon~~ a finding of probable cause, where appropriate.

(2) No change.

(3) The penalties are as listed unless aggravating or mitigating circumstances apply pursuant to subsection (4):

| VIOLATION   | PENALTY RANGE  |  |
|---|--|--|
|   | FIRST VIOLATION  | SECOND AND SUBSEQUENT VIOLATIONS   |
| (a) Section 475.622(1), F.S.<br>Failed to place the registration, license or certification number adjacent to or immediately beneath the state designation.   | Up to <del>30</del> 90 days suspension <u>and an administrative fine of \$500.</u>   | <u>Up to 90 days suspension and an administrative fine of \$1,000.</u>   |
| (b) Section 475.622(1), F.S.<br>Failed to include the appropriate designation and number in an advertisement.   | Up to <del>30</del> 90 days suspension <u>and an administrative fine of \$500.</u>   | <u>Up to 90 days suspension and an administrative fine of \$1,000.</u>   |
| (c) Section 475.622(2), F.S.<br>Failed to use the state registration, license or certification designation in any appraisal report.   | Up to <del>30</del> 90 days suspension <u>and an administrative fine of \$500.</u>   | <u>Up to 90 days suspension and an administrative fine of \$1,000.</u>   |
| <del>(d) Section 455.227(1)(g), F.S.. Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee. Section 475.624(1), F.S. Violated any provisions of this part or Section 455.227(1), F.S.</del> | <del>The usual action of the Board shall be to impose a penalty up to \$5,000 and an administrative fine up to \$5,000.</del>  | <u>Revocation and an administrative fine of \$5,000.</u>   |
| (e) Section 475.624(2), F.S.<br>Guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme or device, culpable negligence or breach of trust, <u>or Section 455.227(1)(m), F.S.</u>                                       | In the case of fraud, misrepresentation and dishonest dealing, <del>the usual action of the Board shall be to impose a penalty of</del> <u>revocation and an administrative fine up to \$5,000.</u><br><br>In the case of concealment, false promises and false pretenses, <del>the usual action of the Board shall be to impose a penalty of a</del> <u>3 to 5 year suspension and an administrative fine of \$1,000.</u><br><br>In the case of culpable negligence and breach of trust, <del>the usual action of the Board shall be to impose a penalty from a</del> <u>\$1,000 fine to a 1 year suspension.</u> | <u>Revocation and an administrative fine of \$5,000.</u><br><br><u>Revocation and an administrative fine of \$5,000.</u><br><br><u>Revocation and an administrative fine of \$5,000.</u> |
| (f) Section 475.624(3), F.S.<br>False, deceptive or misleading advertising, <u>or Section 455.227(1)(a), F.S.</u>   | <del>The usual action of the Board shall be to impose a penalty from a</del> <u>\$1,000 fine to a 1 year suspension.</u>   | <u>Revocation and an administrative fine of \$5,000.</u>   |

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| <p>(g) Section 475.624(4), F.S.<br/>Violated any of the provisions of this section or any lawful order or rule issued under the provisions of this section or Chapter 455, F.S., or Section 455.227(1)(b), F.S.</p>  | <p><del>The usual action of the Board shall be to impose a penalty up to \$5,000.</del> Revocation and an administrative fine up to \$5,000.</p>  | <p><u>Revocation and an administrative fine of \$5,000.</u></p> |
| <p>(h) Section 475.624(5), F.S.<br/>Convicted or found guilty of a crime related to appraising or involves moral turpitude or fraudulent or dishonest dealing, or Section 455.227(1)(c), F.S.</p>  | <p><del>The usual action of the Board shall be to impose a penalty from \$500 to \$2,500.</del> Revocation and an administrative fine up to \$2,500.</p>  | <p><u>Revocation and an administrative fine of \$5,000.</u></p> |
| <p>(i) Section 475.624(6), F.S.<br/>Has license disciplined or acted against or an application denied by another jurisdiction, or Section 455.227(1)(f), F.S.</p>  | <p>Imposition of discipline comparable to the discipline which would have been imposed if the substantive violation had occurred in Florida or suspension of the license until the license is unencumbered in the jurisdiction, in which the disciplinary action was originally taken, and an administrative fine of \$1,000.</p> | <p><u>Revocation and an administrative fine of \$5,000.</u></p> |
| <p>(j) Section 475.624(7), F.S.<br/>Impairment by drunkenness, or use of drugs or temporary mental derangement.</p>  | <p><del>The usual action of the Board shall be to impose a penalty of \$500 to \$1,000.</del> Suspension for the period of incapacity and an administrative fine up to \$1,000.</p>   | <p><u>Revocation and an administrative fine of \$5,000.</u></p> |
| <p>(k) Section 475.624(8), F.S.<br/>Confined in jail, prison or mental institution; or through mental disease can no longer practice with skill or in a confidential capacity.</p>   | <p><del>The usual action of the Board shall be to impose a penalty of \$500 to \$1,000.</del> Suspension and an administrative fine up to \$1,000.</p>  | <p><u>Revocation and an administrative fine of \$5,000.</u></p> |
| <p>(l) Section 475.624(9), F.S.<br/>Failed to give the Board written notice within 30 days after a guilty or nolo contendere plea or having been convicted of any felony.</p>  | <p><del>The usual action of the Board shall be to impose a penalty from a 5 year suspension to revocation and an administrative fine of \$1,000.</del></p>  | <p><u>Revocation and an administrative fine of \$5,000.</u></p> |
| <p>(m) Section 475.624(10), F.S.<br/>Guilty for the second time of misconduct in the practice of real estate appraisal that demonstrates incompetent dishonest or negligent dealings with those persons with whom the licensee sustains a confidential relationship.</p> | <p><del>The usual action of the Board shall be to impose a penalty of \$500 to \$5,000.</del> Suspension to revocation and an administrative fine up to \$5,000.</p>  | <p><u>Revocation and an administrative fine of \$5,000.</u></p> |
| <p>(n) Section 475.624(11), F.S.<br/>Has made or filed a report or record which the licensee knows to be false or willfully failed to file a report or record or willfully impeded such filing as required by state or federal law, or Section 455.227(1)(l), F.S.</p>   | <p><del>The usual action of the Board shall be to impose a penalty of \$500 to \$2,500.</del> Suspension to revocation and an administrative fine up to \$2,500.</p>  | <p><u>Revocation and an administrative fine of \$5,000.</u></p> |

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| (o) Section 475.624(12), F.S.<br>Obtained a license by fraud, misrepresentation or concealment, or Section 455.227(1)(h), F.S.   | <del>The usual action of the Board shall be to impose a penalty of R</del> revocation   | <u>Revocation.</u>  |
| (p) Section 475.624(13), F.S.<br>Has paid money or other consideration to a member of the Board or employee of the Board to obtain a license registration or certification, or Section 455.227(1)(h), F.S.     | <del>The usual action of the Board shall be to impose a penalty of R</del> revocation.  | <u>Revocation.</u>  |
| (q) Section 475.624(14), F.S.<br>Has violated any standard for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice.     | <del>The usual action of the Board shall be to impose a penalty from a 5 year suspension to revocation and an administrative fine of \$1,000.</del><br><u>Probation up to a 1 year suspension</u> | <u>Up to 5 year suspension to revocation and an administrative fine of \$5,000.</u> |
| (r) Section 475.624(15), F.S.<br>Has failed or refused to exercise reasonable diligence in developing or preparing an appraisal report.  | <del>The usual action of the board shall be to impose a penalty from a 5 year suspension to revocation and an administrative fine of \$1,000.</del>   | <u>Up to 5 year suspension to revocation and an administrative fine of \$5,000.</u> |
| (s) Section 475.624(16), F.S.<br>Has failed to communicate an appraisal without good cause.  | <del>The usual action of the Board shall be to impose a penalty from a \$1,000 fine to a 1 year suspension.</del>   | <u>Up to 5 year suspension to revocation and an administrative fine of \$5,000.</u> |
| (t) Section 475.624(17), F.S.<br>Has accepted an appraisal assignment contingent upon the licensee reporting a predetermined result, analysis or opinion.  | <del>The usual action of the Board shall be to impose a penalty of revocation.</del><br><u>30 day suspension up to</u>  | <u>Revocation.</u>  |
| (u) Section 475.624(18), F.S.<br>Has failed to timely notify the department of any change in business location, or has failed to fully disclose all business locations from which he operates as an appraiser. | <u>Up to 90 days suspension and an administrative fine of \$500.</u>  | <u>Up to 6 month suspension and an administrative fine of \$1,000.</u>              |
| (v) Section 475.626(1)(a), F.S.<br>Has practiced without a valid and current license, registration or certification.   | <del>The usual action of the Board shall be to impose a penalty from a 5 year suspension to revocation and an administrative fine of \$1,000.</del>   | <u>Revocation and an administrative fine of \$5,000.</u>                            |
| (w) Section 475.626(1)(b), F.S.<br>Has violated any order or rule of the Board.  | <del>The usual action of the Board shall be to impose a penalty of R</del> revocation and an administrative fine of \$1,000.  | <u>Revocation and an administrative fine of \$5,000.</u>                            |
| (x) Section 475.626(1)(d), F.S.<br>Made a false affidavit or affirmation or gave false testimony before the Board.   | <del>The usual action of the Board shall be to impose a penalty of revocation.</del><br><u>Up to 5 years suspension to revocation and an administrative fine of \$1,000.</u>                      | <u>Revocation and an administrative fine of \$5,000.</u>                            |

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|---|--|--|
| (y) Section 475.626(1)(e), F.S.<br>Failed to comply with subpoena issued by the Department of Business and Professional Regulation, or Section 455.227(1)(q), F.S.  | Up to 5 years suspension <u>to revocation and an administrative fine of \$1,000.</u>   | Revocation and an administrative fine of \$5,000.              |
| (z) Section 475.626(1)(f), F.S.<br>Obstructed or hindered the enforcement of Part II of Chapter 475, F.S., or Section 455.227(1)(r), F.S.   | Up to 5 years suspension <u>to revocation and an administrative fine of \$1,000.</u><br><del>The usual action of the Board shall be to impose a penalty of revocation.</del> | Revocation and an administrative fine of \$5,000.              |
| (aa) Section 475.626(1)(g), F.S.<br>Knowingly concealed information relating to violations of Chapter 475, F.S., Part II.   | Up to 90 days suspension <u>and an administrative fine of \$1,000.</u>   | Up to 5 year suspension and an administrative fine of \$5,000. |
| (bb) Section 475.6221(3), F.S.<br>Supervisory appraiser employed by a trainee appraiser.  | <del>The usual action of the Board shall be to impose a penalty of up to</del><br>Revocation and an administrative fine of \$5,000.  | Revocation and an administrative fine of \$5,000.              |
| (cc) Section 475.6222, F.S.<br>Failure to provide direct supervision or training of trainee appraiser.  | <del>The usual action of the Board shall be to impose a penalty of up to</del><br>Revocation and an administrative fine of \$5,000.  | Revocation and an administrative fine of \$5,000.              |
| (dd) Section 455.227(1)(j), F.S. Aiding unlicensed activity.  | Revocation and an administrative fine of \$5,000.  | Revocation and an administrative fine of \$5,000.              |
| (ee) Section 455.227(1)(k), F.S. Failure to perform any statutory or legal obligation.  | Up to 5 years suspension and an administrative fine of \$5,000.  | Revocation and an administrative fine of \$5,000.              |
| (ff) Section 455.227(1)(n), F.S. Exercising influence on client for licensee's or third party's financial gain.   | Up to 5 years suspension and an administrative fine of \$5,000.  | Revocation and an administrative fine of \$5,000.              |
| (gg) Section 455.227(1)(o), F.S. Practicing or offering to practice beyond permitted scope.   | Up to a 5 year suspension and an administrative fine of \$1,000.   | Revocation and an administrative fine of \$5,000.              |
| (hh) Section 455.227(1)(p), F.S. Delegating beyond permitted scope.   | Up to a 5 year suspension and an administrative fine of \$1,000.   | Revocation and an administrative fine of \$5,000.              |
| (ii) Section 455.227(1)(t), F.S. Failure to timely report being convicted or found guilty of, or entering a plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction (more than 30 days late). | Reprimand and an administrative fine of \$1,000.   | Revocation and an administrative fine of \$5,000.              |

(4) No change.

Rulemaking Specific Authority 455.2273, 475.614 FS. Law Implemented 455.227, 475.622, 475.6221(3), 475.624, 475.626 FS. History—New 1-7-92, Formerly 21VV-8.002, Amended 1-9-94, 8-17-97, 6-8-03, 12-4-06, 11-25-07,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Florida Real Estate Appraisal Board

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Real Estate Appraisal Board  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 3, 2010  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 5, 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 ENVIRONMENTAL PROTECTION**

**Division of Beaches and Coastal Systems**

|            |  |
|------------|--|
| RULE NOS.: | RULE TITLES:   |
| 62B-41.002 | Definitions  |
| 62B-41.003 | General Prohibitions   |
| 62B-41.005 | Policy and Eligibility Criteria for Coastal Construction Permits |

**PURPOSE AND EFFECT:** To amend the existing rules that establish criteria for coastal construction authorization below the mean high water line.

**SUMMARY:** The Bureau proposes amendments to the rule in order address comments from the Joint Administrative Procedures Committee. The rule amendments will refine criteria for coastal construction permits for coastal armoring below the mean high water line, inlet construction and maintenance, and beach restoration and nourishment.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost was prepared because the rule amendments 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:** 161.041, 161.055, 161.085, FS.

**LAW IMPLEMENTED:** 161.021, 161.041, 161.042, 161.051, 161.055, 161.061, 161.063, 161.085, 161.088, 161.091, 161.142, 161.143, 161.144, 161.151, 161.161, 161.163, 379.2431 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:** October 5, 2010, 1:00 p.m.  
**PLACE:** Bureau of Beaches and Coastal Systems, 5050 W. Tennessee St., Rm #309, 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: Rosaline Beckham, (850)488-7708 or by e-mail at [rosaline.beckham@dep.state.fl.us](mailto:rosaline.beckham@dep.state.fl.us). 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: West Gregory, (850)245-2542 or by e-mail at [west.gregory@dep.state.fl.us](mailto:west.gregory@dep.state.fl.us)

THE FULL TEXT OF THE PROPOSED RULES IS:

62B-41.002 Definitions.

(1) through (16) No change.

~~(17) "Feasible" describes an act which is technically possible to accomplish with current technology, or is economically viable when compared to alternative strategies to protect a structure. Economically viable, as it relates to dune enhancement, or modification or relocation of a structure threatened by erosion, means that the cost of dune enhancement, or modification or relocation of a structure to be protected is no more than twice the cost of the proposed protection structure or other alternatives. In determining economic feasibility, the cost estimates submitted to the Department shall not include costs related to ineligible structures, or costs associated with overhead, contingencies, remodeling or landscaping. The cost of a proposed protection structure shall include the costs associated with use of any related state-owned property.~~

~~(17)~~(18) No change.

~~(18)~~(19) "Impacts" are defined as follows:

(a) "Adverse Impacts" are those ~~impacts to the active portion of the coastal system resulting from coastal construction. Such impacts are~~ caused by coastal construction that have which has a reasonable potential of causing a measurable interference with the natural functioning of the coastal system, damage to existing structures or properties, or denial or restriction of lateral beach access. The active portion of the coastal system extends offshore to the seaward limit of sediment transport and includes ebb tidal shoals and offshore bars.

(b) No change.

(c) "De Minimis Minimus Impacts" are impacts that ~~are have been determined by the Department to be~~ insignificant and do not have a measurable adverse impact not of a substantial nature either individually or cumulatively.

(d) "Significant Adverse Impacts" are adverse impacts of such magnitude that they are expected to alter the coastal system in a manner that results result in either:

1. An increase in the rate of erosion;
2. Rendering the coastal system unstable or vulnerable to the effects of coastal storms or interfere with its ability to recover from the effects of a coastal storm; or,
3. A take, as defined in subsection 62B-41.002(46) 62B-41.002(48), F.A.C., unless, as provided for by the provisions of paragraph 379.2431(1)(f), F.S.; ~~or~~
4. ~~An inconsistency with the provisions of paragraph 379.2431(1)(e)1., F.S.~~

(e) “Minor Impacts” are those impacts associated with coastal construction which are not considered by the Department to be adverse impacts due to their magnitude or temporary nature.

(f) “Other Impacts” are those impacts associated with coastal construction which may result in damage to existing structures or properties, or denial of lateral beach access.

(20) through (22) renumbered (19) through (21) No change.

~~(22)(23)~~ “Marine Turtle” is any turtle, including all life stages from egg to adult, found in Florida waters or using the beach as nesting habitat, including the following species: loggerhead *Caretta caretta* (*Caretta caretta* loggerhead), green *Chelonia Mydas* (*Chelonia Mydas* green), leatherback *Dermochelys coriacea* (*Dermochelys coriacea* leatherback), hawksbill *Eretmochelys imbricata* (*Eretmochelys imbricata* hawksbill), and Kemp’s ridley *Lepidochelys kemp* (*Lepidochelys kemp* Kemp’s ridley).

(24) through (26) renumbered (23) through (25) No change.

~~(26)(27)~~ “Mitigation” is an action or series of actions taken by the applicant that will offset ~~alleviate~~ adverse impacts to the coastal system caused by a proposed or existing coastal construction project.

~~(32)(33)~~ “Notice to Proceed” is the formal notification from the Department Office authorizing permitted coastal construction to commence.

~~(34)~~ “Office” is the Office of Beaches and Coastal Systems of the Department of Environmental Protection. The head of the Office is the Director.

(35) through (43) renumbered (33) through (41) No change.

~~(42)(44)~~ “Staff” is the staff of the Bureau Office of Beaches and Coastal Systems.

(45) through (46) renumbered (43) through (44) No change.

~~(45)(47)~~ “Structure” is the composite result of putting together or building related components in an ordered scheme. For purposes of this chapter, “structure” includes:

(a) through (c) No change.

(d) “Minor Coastal Structures” are structures designed to be expendable and to minimize resistance to water forces associated with high frequency coastal storms, and to break away when subjected to such forces and are of such size or design that they have a de minimis ~~minor~~ impact on the coastal system.

(e) through (f) No change.

(48) through (49) renumbered (46) through (47) No change.

Rulemaking Specific Authority 161.041(1), 161.055(1),(2), 161.085(5), 379.2431 FS. Law Implemented ~~161.011, 161.021(1),(6),(7),(9), 161.041(1), 161.042, 161.051, 161.085(1),(2) 161.0535, 161.054, 161.061, 161.071, 161.081, 161.088, 161.091, 161.101, 161.111, 161.141, 161.142(1),(2),(5), 161.143(1), 161.151(3) 161.161(1), 161.163, 379.2431(1) 161.181, 161.191, 161.201, 161.211, 161.212, 379.407~~ FS. History–New 8-23-92, Formerly 16B-41.002, Amended 10-23-01,\_\_\_\_\_.

62B-41.003 General Prohibitions.

(1) No change.

(2) No coastal construction shall be allowed if, after considering any proposed mitigation plan, the proposed project as a whole ~~it~~ will result in a significant adverse impact.

(3) No coastal construction shall interfere, except during construction, with the use by the public of any area of a beach seaward of the mean high-water line (or an established erosion control line) unless the Department determines such interference is unavoidable for purposes of protecting the beach or any endangered upland structure determined to be eligible pursuant to the criteria listed in subsection 62B-41.005(6), F.A.C. If interference with public access is unavoidable, the applicant shall provide comparable alternative access.

(4) No coastal construction shall be allowed to result in a take of marine turtles, as defined in subsection 62B-41.002(46), F.A.C., unless, as provided for by the provisions of Section 379.2431(1)(h), F.S.

Rulemaking Specific Authority 161.041(1), 161.055(1),(2) ~~161.051, 161.061, 161.121, 379.2431(1)~~ FS. Law Implemented ~~161.021(1), 161.041(1),(2), 379.2431(1) 161.042, 161.141, 161.142, 379.407(1)~~ FS. History–New 8-23-92, Formerly 16B-41.003, Amended 10-23-01,\_\_\_\_\_.

62B-41.005 Policy and Eligibility Criteria for Coastal Construction Permits.

(1) No change.

(2) Coastal construction authorized by the Department pursuant to Chapter 62B-41, F.A.C., shall have a net positive benefit to the coastal system resulting from the project’s impacts, as demonstrated by the applicant, taking into account the considerations and requirements of Section 161.041, F.S., and when proposing inlet construction and maintenance, the considerations and requirements of Section 161.142, F.S. Coastal construction authorized under this chapter shall be limited. The necessity to conduct such coastal construction shall be stated and fully justified by the applicant. Further, the potential benefits or impacts to the coastal system shall be clearly identified.

(3) through (4) No change.

(5) Structures which interfere with the natural longshore and onshore/offshore movement of sediments shall not be allowed unless a net positive benefit to the coastal system can reasonably be expected to occur and mitigation is provided for

any adverse impacts which may occur to the coastal system. ~~Proposed coastal construction which is reasonably expected to have a significant adverse impact shall not be allowed.~~

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

(c) All other alternatives, including dune enhancement, beach restoration, structure relocation, and modification of the structure's foundation to make it no longer vulnerable to the erosion impacts of at least a five year return interval storm event, are determined not to be economically and physically practicable ~~feasible~~;

(d) Such armoring does not result in a net reduction or restriction to public access along the beach below the mean high-water line. If interference with public access is unavoidable, the applicant shall provide comparable alternative access; and

(e) It is demonstrated that after considering any proposed mitigation plan, the proposed project as a whole there will not cause a ~~be no~~ significant adverse impact.

(7) through (10) No change.

(11) In addition to the other requirements of this chapter, opening of previously existing inlets that have been recently closed due to human activity, a ~~Alteration or maintenance of natural inlets, intermittent inlets and flushing outlets, and stabilization of natural shorelines of existing unstabilized altered inlets will be approved upon a showing that:~~

(a) All impacts are avoided or minimized to the greatest extent practicable, including consideration of less impactful alternatives. Significant adverse impacts will not occur as a result of the activity; and

(b) After avoidance and minimization, any adverse impacts that are reasonably likely to occur will be offset by a proposed mitigation plan. When evaluating the mitigation plan, the Department will consider the benefits of the long term sand management plan and the overall public benefit of the inlet activity including:

~~(b) A less impactful alternative to achieve the proposed project purpose is not practicable; and~~

~~(c) The project will provide public benefits including:~~

1. Meeting a recognized public need contained in the approved local comprehensive plan of the local government with jurisdiction over the inlet;

2. Conservation and enhancement of the supply of sand to adjacent beaches;

3. Preservation or enhancement of the natural functioning of the inlet system;

4. Protection and enhancement of the marine and beach habitat; and

5. Being consistent with an adopted inlet management plan and the statewide strategic beach management plan, where applicable; ~~or~~

(c) For the purposes of subsection 62B-41.005(11), F.A.C., previously existing inlets that have been recently closed due to human activity are areas of the coastal system that continue to exhibit features of an inlet such as an ebb or tidal shoal.

~~(d) The project is required to relieve severe public hardship caused by a major natural disaster.~~

(12) Creation of new inlets have the potential to significantly impact the surrounding coastal system by interrupting or altering the natural drift of beach compatible sand resources, which often results in these sand resources being deposited in nearshore areas, in the inlet channel, or in the inland waterway adjacent to the inlet, instead of providing natural nourishment to the adjacent beaches. There is also a growing demand for beach compatible sand and a limited supply of such sand resources. Therefore, in addition to the criteria in subsection 62B-41.005(11) F.A.C., for projects proposing the the creation of new inlets the applicant must also demonstrate that: The artificial creation of new inlets or flushing outlets is prohibited. Previously existing inlets which have been closed due to recent human activity may be reopened if the reopened inlet will:

(a) The inlet will b ~~Be~~ hydraulically stable under normal conditions; and

(b) The inlet will balance the sediment budget such that beach restoration and nourishment of the adjacent beaches, or other forms of shoreline stabilization, including jetties, are not required. Not require shoreline stabilization

~~(c) Restore water quality in disturbed coastal ecosystems to acceptable Department of Environmental Protection Water Quality Standards;~~

~~(d) Not result in a significant adverse impact; and~~

~~(e) Provide public benefits as described in paragraph 62B-41.005(12)(e), F.A.C.~~

(13) Maintenance of existing altered inlets and modification of existing unstabilized altered inlets are not subject to the requirements of subsections 62B-41.005(11) and 62B-41.005(12), F.A.C. shall be permitted in accordance with this chapter.

(14) through (16) No change.

(17) If the Department determines that the proposed coastal construction is reasonably likely to have has the potential for adverse impacts to the coastal system, then the Department shall require the applicant shall to revise the project design to avoid or minimize those impacts to the greatest extent practicable. After all practicable revisions have been made to avoid and minimize impacts; any remaining adverse impacts or other impacts shall be offset by a mitigation plan that has been proposed by the applicant.

(18) No change.



Rulemaking Specific Authority 161.041(1), 161.055(1), (2), 161.085(5) 379.407 FS. Law Implemented 161.041(1), (2), (3), (4), 161.042, 161.051, 161.055(1),(2), 161.061(1),(2), 161.085(1),(2), 461.088, 161.091, 161.142(1), (2), (5), (6), (7), 161.143(1), 161.144, 161.163, 379.2431(1) 379.407 FS. History--New 8-23-92, Formerly 16B-41.005, Amended 10-23-01,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Mimi Drew, Deputy Secretary  
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Michael Sole  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 11, 2010  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 22, 2009

**DEPARTMENT OF HEALTH**

**Board of Nursing**

RULE NO.: 64B9-6.003  
RULE TITLE: Reactivation of Inactive License  
PURPOSE AND EFFECT: The Board proposes this change to increase the number of hours of didactic education.

SUMMARY: The rule amendment will increase the number of hours needed of didactic education.

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

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

RULEMAKING AUTHORITY: 456.036, 464.006, 464.014 FS.

LAW IMPLEMENTED: 456.036, 464.014 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe R. Baker, Jr., Executive Director, Board of Nursing, 4052 Bald Cypress Way, Bin #C02, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

64B9-6.003 Reactivation of Inactive License.

(1) An inactive license may be reactivated upon application to the Department and demonstration of compliance with the following conditions:

- (a) through (d) No change.
- (2) No change.

(3) If a license has been inactive for more than two consecutive biennial licensure cycles, and the licensee has not been practicing nursing in any jurisdiction for the two years immediately preceding the application for reactivation, the

applicant for reactivation will be required to complete a nursing ~~remedial refresher~~ course as described in Rule 64B9-3.0025, F.A.C., with clinical component appropriate to the licensure level of the licensee. The ~~remedial refresher~~ course must be given at a Board-approved program, and must include at least ~~860~~ hours of didactic education classroom instruction and 96 hours of clinical experience in medical/surgical nursing and any specialty area of practice of the licensee.

Rulemaking Specific Authority 456.036, 464.006, 464.014 FS. Law Implemented 456.036, 464.014 FS. History--New 2-5-87, Amended 10-21-87, 6-21-88, Formerly 21O-14.005, Amended 9-7-93, 1-26-94, Formerly 61F7-6.003, Amended 1-1-96, Formerly 59S-6.003, Amended 3-14-00,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Nursing  
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Nursing  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 9, 2010  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 16, 2010

**DEPARTMENT OF HEALTH**

**Board of Nursing**

RULE NO.: 64B9-12.005  
RULE TITLE: Competency and Knowledge Requirements Necessary to Qualify the LPN to Administer IV Therapy

PURPOSE AND EFFECT: The Board proposes this change to add graduate practical nurse to requirements to administer IV therapy.

SUMMARY: The rule adds graduate practical nurse to requirements to administer IV therapy.

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: 464.006 FS.

LAW IMPLEMENTED: 464.003(b) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe R. Baker, Jr., Executive Director, Board of Nursing, 4052 Bald Cypress Way, Bin #C02, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

64B9-12.005 Competency and Knowledge Requirements Necessary to Qualify the LPN to Administer IV Therapy.

(1) No change.

(2) Central Lines. The Board recognizes that through appropriate education and training, a Licensed Practical Nurse is capable of performing intravenous therapy via central lines under the direction of a registered professional nurse as defined in subsection 64B9-12.002(2), F.A.C. Appropriate education and training requires a minimum of four (4) hours of instruction. The requisite four (4) hours of instruction may be included as part of the thirty (30) hours required for intravenous therapy education specified in subsection (4) of this rule. The education and training required in this subsection shall include, at a minimum, didactic and clinical practicum instruction in the following areas:

(a) through (f) No change.

(g) CVL complications and remedial measures.

Upon completion of the intravenous therapy training via central lines, the Licensed Practical Nurse shall be assessed on both theoretical knowledge and practice, as well as clinical practice and competence. The clinical practice assessment must be witnessed by a Registered Nurse who shall file a proficiency statement regarding the Licensed Practical Nurse's ability to perform intravenous therapy via central lines. The proficiency statement shall be kept in the Licensed Practical Nurse's personnel file.

(3) No change.

(4) Educational Alternatives. The cognitive training shall include one or more of the following:

(a) Post-graduate Level Course. In recognition that the curriculum requirements mandated by subsection 64B9-2.006(3), F.A.C., for practical nursing programs are extensive and that every licensed practical nurse will not administer IV Therapy, the course necessary to qualify a licensed practical nurse or graduate practical nurse to administer IV therapy shall be not less than a thirty (30) hour post-graduate level course teaching aspects of IV therapy containing the components enumerated in subsection 64B9-12.005(1), F.A.C.

(b) Credit for Previous Education. The continuing education provider may credit the licensed practical nurse or graduate practical nurse for previous IV therapy education on a post-graduate level, providing each component of the course content of subsection 64B9-12.005(1), F.A.C., is tested by and competency demonstrated to the provider.

(c) No change.

(5) No change.

Rulemaking Specific Authority 464.006 FS. Law Implemented 464.003(3)(b) FS. History--New 1-16-91, Formerly 21O-21.005, 61F7-12.005, Amended 7-15-96, Formerly 59S-12.005, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Nursing

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

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

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

**DEPARTMENT OF HEALTH**

**Board of Psychology**

RULE NO.:

64B19-13.003

RULE TITLE:

Continuing Psychological Education Credit

PURPOSE AND EFFECT: The proposed rule amendment is intended to clarify the continuing education requirement regarding professional ethics and psychology laws and rules.

SUMMARY: The proposed rule amendment clarifies the continuing education requirement with regard to professional ethics and psychology laws and rules.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Board prepared a Statement of Estimated Regulatory Costs for the rule. Specifically, the rule may have a fiscal impact on continuing education providers who will be required to restructure course offerings to include the subject areas outlined in the rule. CE Broker will incur costs in revising its system to ensure that both providers and licensees are in compliance with the appropriate continuing education.

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

RULEMAKING AUTHORITY: 456.013(7), 490.004(4), 490.0085(4) FS.

LAW IMPLEMENTED: 456.013(7), 490.007(2), 490.0085(1), (3) 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 Psychology, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B19-13.003 Continuing Psychological Education Credit.

(1) through (2) No change.

(3) As a condition of biennial licensure renewal, each licensee must complete forty (40) hours of continuing psychological education.

(a) Three (3) of the forty (40) hours must be on professional ethics and Florida Statutes and rules affecting the practice of psychology. Of those three hours, at least one hour shall be on professional ethics, and at least one hour shall be on Florida laws and rules relevant to the practice of psychology and shall include Chapters 456 and 490, F.S., and Rule Chapter 64B19, F.A.C.

(b) through (c) No change.

(4) through (5) No change.

Rulemaking Specific Authority 456.013(7), 490.004(4), 490.0085(4) FS. Law Implemented 456.013(7), 490.007(2), 490.0085(1), (3) FS. History—New 1-28-93, Amended 7-14-93, Formerly 21U-13.0042, Amended 6-14-94, Formerly 61F13-13.0042, Amended 2-8-96, 11-18-96, Formerly 59AA-13.003, Amended 1-10-01, 8-5-01, 5-21-02, 6-3-04, 1-2-06, 12-31-06, 2-24-08, 5-26-08, 1-7-09,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Psychology

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 23, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 2010

**DEPARTMENT OF HEALTH**

**Board of Psychology**

RULE NO.: 64B19-15.003                      RULE TITLE:                      Reactivation of Inactive Licenses

PURPOSE AND EFFECT: The proposed rule amendment is intended to incorporate the revised application for reactivation of an inactive license and to set forth the appropriate website address for obtaining said application.

SUMMARY: The proposed rule amendment incorporates the revised application for reactivation of an inactive license in the rule and sets forth the website address for the purpose of obtaining said application.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Board prepared a Statement of Estimated Regulatory Costs for the rule. The precise number of individuals affected is unknown since the number of inactive licensees who choose to reactivate an inactive license will vary each biennium. There appears to be no fiscal impact on licensees or small business with regard to the revised application form.

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: 456.036, 490.004(5) FS.

LAW IMPLEMENTED: 456.036 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 Psychology, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B19-15.003 Reactivation of Inactive Licenses.

(1) A licensee may reactivate his or her own inactive license and thereby place the license on active status by:

(a) Making application on form DH-MQA 1239 ~~DOH/MQA/PY-REACT APP/REV. 12/01~~, “Application for Reactivation of Inactive Psychologist Licensure,” (revised 07/10), effective 3-25-02, which is hereby adopted and incorporated by reference, and can be obtained from the Board of Psychology’s website at <http://www.doh.state.fl.us/mqa/psychology/index.html>; ~~copies of which may be obtained from the Board office;~~

(b) through (e) No change.

(2) No change.

Rulemaking Specific Authority 456.036, 490.004(5) FS. Law Implemented 456.036 FS. History—New 1-19-84, Formerly 21U-13.015, 21U-13.0015, 21U-19.003, 61F13-19.003, Amended 1-7-96, Formerly 59AA-15.003, Amended 8-5-01, 3-25-02, 12-27-05,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Psychology

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 23, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 2010

**DEPARTMENT OF HEALTH**

**Board of Psychology**

RULE NO.: 64B19-18.007                      RULE TITLE:                      Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes

PURPOSE AND EFFECT: The proposed rule amendments are intended to incorporate the APA Guidelines for Child Custody Evaluations in Divorce Proceedings, and the Specialty Guidelines for Forensic Psychologists into the Board’s rule and to set forth the website for the purpose of obtaining said guidelines.

SUMMARY: The proposed rule amendments incorporates the APA Guidelines for Child Custody Evaluations in Divorce Proceedings, and the Specialty Guidelines for Forensic Psychologists into the Board’s rule and sets forth the website for the purpose of obtaining said guidelines.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Board prepared a Statement of Estimated Regulatory Costs for the rule. The number of psychologist licensees who will be affected by the proposed rule is unknown. There appears to be no fiscal impact on licensees or small business with regard to the revised application form.

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: 490.004(4) FS.

LAW IMPLEMENTED: 490.009(2)(s) 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 Psychology, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B19-18.007 Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes.

- (1) No change.
- (2) The minimum standard of performance in court-ordered child custody evaluation and family law proceedings includes, but is not limited to, the following:
  - (a) The psychologist shall adhere to the “APA Guidelines for Child Custody Evaluations in Divorce Proceedings,” effective July, 1994, and the “Specialty Guidelines for Forensic Psychologists,” effective March 9, 1991. ~~These guidelines are incorporated by reference and copies may be obtained from the Board office. These~~ The “APA Guidelines for Child Custody Evaluations in Divorce Proceedings,” and the “Specialty Guidelines for Forensic Psychologists” are adopted and incorporated by reference and can be obtained from the Board of Psychology’s website at: [http://doh.state.fl.us/mqa/psychology/psy\\_statutes.html](http://doh.state.fl.us/mqa/psychology/psy_statutes.html). are also available at: [www.apa.org/practice/childcustody.html](http://www.apa.org/practice/childcustody.html) effective 3-25-02, which is hereby incorporated by reference.
  - (b) through (e) No change.
  - (3) No change.

Rulemaking Specific Authority 490.004(4) FS. Law Implemented 490.009(2)(s) FS. History–New 6-14-94, Formerly 61F13-20.007, Amended 1-7-96, Formerly 59AA-18.007, Amended 9-30-04,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Psychology

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 23, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 2010

**DEPARTMENT OF HEALTH**

**Division of Disease Control**

|           |   |
|-----------|---|
| RULE NO.: | RULE TITLE:   |
| 64D-3.046 | Immunization Requirements: Public and Nonpublic Schools, Grades Preschool, Kindergarten Through 12, and Adult Education Classes |

PURPOSE AND EFFECT: The Bureau of Immunization proposes an amendment to update forms and guidelines that are incorporated by reference.

SUMMARY: This rule amendment updates forms DH-680, Florida Certification of Immunization and DH Form 150-615, Immunization Guidelines – Florida Schools, Child Care Facilities and Family Day Care Homes.

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: 381.0011(13), 381.003(1), (2), 381.005(2), 1003.22 FS.

LAW IMPLEMENTED: 381.0011(4), 381.003(1), 381.005(1)(i), 1003.22 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: September 20, 2010, 10:00 a.m. (EDT)  
PLACE: 2585 Merchants Row Blvd., Room 105J, Tallahassee, FL 32399-1719

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Susan Lincicome, Senior Management Analyst Supervisor, Department of Health, Bureau of Immunization, 2585 Merchants Row Blvd., Room 210N, Tallahassee, FL 32399-1719

THE FULL TEXT OF THE PROPOSED RULE IS:

64D-3.046 Immunization Requirements: Public and Nonpublic Schools, Grades Preschool, Kindergarten Through 12, and Adult Education Classes.

(1)(a) Immunization and Documentation Requirements for School Entry/Attendance:

(a)(b) A student may attend a public or non-public school, grades preschool through 12 or an adult education class if younger than 21, if prior to admittance, attendance or transfer, they present one of the following for inspection for validity by an authorized school official:

1. DH Form 680, Florida Certification of Immunization (July 2010 July 2008), incorporated by reference, available from Department of Health (DOH) county health departments (CHDs), or physicians' offices; or

2. DH Form 681, Religious Exemptions for Immunizations (English/Spanish/Haitian-Creole) (February 2002), incorporated by reference, available at DOH CHDs, must be signed by the local county health department medical director or designee. Documentation of receipt of or exemption from must be noted for the following immunizations: diphtheria, tetanus, pertussis, poliomyelitis, measles (rubeola), rubella, mumps, varicella and hepatitis B. The manner and frequency of administration of the immunizations shall conform to recognized standards of medical practice.

(b)(2) Specific immunization requirements by grade, in addition to those in paragraph (1)(a) which must be documented prior to admittance, attendance or any other initial entrance are detailed in the Immunization Guidelines-Florida Schools, Childcare Facilities and Family Daycare Homes (July 2010), incorporated by reference, available online at: [www.doh.state.fl.us/disease\\_ctr/immune/schoolguide.pdf](http://www.doh.state.fl.us/disease_ctr/immune/schoolguide.pdf) transfer.

1. Preschool—Completion of Haemophilus influenzae type b vaccination.

(b) Preschool or kindergarten effective with the 2001/2002 school year—completion of varicella vaccination. Each subsequent year thereafter the next highest grade will be included in the requirement so that students transferring into Florida schools are added to the varicella immunized cohort.

1. 7th Grade—Completion of a tetanus diphtheria booster.

2. Additional Documentation Requirements for Exemptions:

1.3. Temporary or permanent medical exemption DH Form 680 must be signed by a practitioner licensed under Chapter 458 or 459, Florida Statutes, or their authorized representative. For temporary or permanent medical exemption the signing practitioner must possess medical records documenting the medical basis for each such exemption. For exemption from the rubeola immunization the practitioner must include with DH Form 680, Florida Certification of Immunization, incorporated by reference in subsection 64D-3.046(1), F.A.C., documentation on their own stationery of the physician's request for exemption, asserting that the

student had an illness comprised of a generalized rash lasting three or more days, a fever of 101 degrees Fahrenheit or greater, a cough, and/or coryza, and/or conjunctivitis and, in the physician's opinion, has had the ten-day measles (rubeola) or serologic evidence of immunity to measles.

2.(e) A DH Form 680 that does not include a temporary or permanent medical exemption must be signed Forms are to be fully executed by a practitioner licensed under Chapter 458, 459, 460, or 464, F.S., or their authorized representative (where permitted in the particular certification) per instructions for the appropriate school year as provided in DH Form 150-615, Immunization Guidelines Florida Schools, Child Care Facilities and Family Day Care Homes (July 2008), incorporated by reference, available online at: [www.doh.state.fl.us/disease\\_ctr/immune/schoolguide.pdf](http://www.doh.state.fl.us/disease_ctr/immune/schoolguide.pdf).

3. Florida SHOTS (State Health Online Tracking System) Electronically Certified DH Form 680 accessed directly by the school is considered certified in writing and signed by the Florida SHOTS private provider produced by a CHD or a physician's office, as provided in subsection (7), may be utilized.

(e) DH Forms 681, Religious Exemptions for Immunizations (English/Spanish/Haitian-Creole) (February 2002), incorporated by reference, available at DOH CHDs, must be issued and signed by the local county health department medical director or designee.

(f) Otherwise, required immunizations not performed must be accounted for under the Temporary or Permanent Medical Exemptions, DH Form 680, Florida Certification of Immunization, Parts B and C, incorporated by reference in subsection 64D-3.046(1), F.A.C.

(2)(3) Documentation Requirements for Schools:

(a) The original or a copy of a valid original of the form(s) required under this rule paragraph (1)(a) shall remain in the student's cumulative health record unless verified in Florida SHOTS.

(b) Antigen doses by dates of immunization shall be transferred as data elements through the Florida Automated System for Transferring Education Records (FASTER).

(c) Compliance Reporting:

1. Each public and nonpublic school with a kindergarten and/or seventh grade shall submit an annual compliance report. The report shall be completed on DH Form 684, Immunization Annual Report of Compliance for Kindergarten and Seventh Grade (June 2009 2007), incorporated by reference, available at DOH CHDs. The report shall include the immunization status of all children who were attending kindergarten and seventh grades at the beginning of the school year. The report shall be forwarded to the CHD director/administrator no later than October 1 of each school year where the data will be compiled on DH Form 685, Kindergarten and Seventh Grade Annual Report of Compliance County Summary (June 2009

~~November 2006~~), incorporated by reference, available at DOH CHDs; or electronically generated by the Department of Education.

2. After consultation with the Department of Education, the Department of Health shall require compliance reports from public and nonpublic schools and preschools for selected grades (K-12 and preschool) in special situations of vaccine preventable disease outbreak control or identified need for monitoring through surveys for immunization compliance levels. Such reports shall include the status of all children who were attending school at the beginning of the school year. Reports shall be forwarded to the CHD director/administrator within a specified period, as determined by the DOH.

~~(3)(4)~~ Homeless, Transfers and Juvenile Justice – A temporary exemption to requirements of subsection ~~(1)(2)~~ above not to exceed 30 days may be issued by an authorized school official for any of the following, consistent with the definitions in Section 1003.01, F.S.:

- (a) A homeless child.
- (b) A transfer student.
- (c) A student who enters a juvenile justice education program or school.

(d) Children of military families as defined under Section 1000.36, F.S.

~~(4)(5)~~ Notwithstanding subsection (2), the Department may:

(a) Designate any required immunization as unnecessary or hazardous, according to recognized standards of medical practice.

(b) Upon determination that a shortage of vaccine exists, approve issuance of temporary medical exemption with extended expiration dates by practitioners or authorized school officials until such time as, in the DOH’s opinion, vaccine will be available in sufficient quantity for such deferred vaccinations to be completed.

~~(5)(6)~~ Florida SHOTS (State Health Online Tracking System) Opt Out Provision – Parents or guardians may elect to decline participation in the Florida immunization registry, Florida SHOTS, by submitting a Florida SHOTS Notification and Opt Out Form to the DOH. The form, either a DH Form 1478 (English) or DH Form 1478S (Spanish) or DH Form 1478H (Haitian-Creole), incorporated by reference, is available from the DOH, Bureau of Immunization, 4052 Bald Cypress Way, Bin #A-11, Tallahassee, FL 32399-1719. The immunization records of children whose parents choose to opt-out will not be shared with other entities that are allowed by law to have access to the children’s immunization record via authorized access to Florida SHOTS.

~~(6)(7)~~ Florida SHOTS Private Provider Participation – Any health care practitioner licensed in Florida under Chapters 458, 459 or 464, F.S., may request authorization to access Florida SHOTS by filling out a DH Form 1479, Authorized Private Provider User Agreement for Access to Florida

SHOTS (January 2007), incorporated by reference, available from the DOH Bureau of Immunization, 4052 Bald Cypress Way, Bin #A-11, Tallahassee, FL 32399-1719. The DH Form 1479 will be returned to the Department of Health for processing and authorization to access Florida SHOTS. Notification of access approval and instructions for accessing Florida SHOTS will be provided by the DOH. The authorized user and the applicable licensing authority or agency shall notify the DOH, Bureau of Immunization Florida SHOTS personnel when an authorized user’s license or registration has expired or has been suspended or revoked.

~~(7)(8)~~ Florida SHOTS School and Licensed or Registered Child Care Facility Participation – Any public or nonpublic school, or licensed or registered child care facility may request authorization to access Florida SHOTS by completing a DH Form 2115, Authorized School and Licensed or Registered Child Care Facility User Agreement for Access to Florida SHOTS (January 2007), incorporated by reference, available from the DOH, Bureau of Immunization, 4052 Bald Cypress Way, Bin #A-11, Tallahassee, FL 32399-1719. The DH Form 2115 will be returned to the DOH for processing and authorization to access Florida SHOTS. Notification of access approval and instructions for accessing Florida SHOTS will be provided by the DOH. The authorized user and the applicable licensing authority or agency shall notify the DOH, Bureau of Immunization Florida SHOTS personnel when an authorized user’s license or registration has expired or has been suspended or revoked.

Rulemaking Specific Authority 381.0011(13), 381.003(1), (2), 381.005(2), 1003.22 FS. Law Implemented 381.0011(4), 381.003(1), 381.005(1)(i), 1003.22 FS. History–New 11-20-06, Amended 7-15-07, 7-28-08,\_\_\_\_\_.

Editorial Note: Formerly 10D-3.88, 10D-3.088 and 64D-3.011.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Susan Lincicome, Senior Management Analyst Supervisor  
Department of Health, Bureau of Immunization, 2585  
Merchants Row Blvd., Room 210N, Tallahassee FL  
32399-1719

NAME OF AGENCY HEAD WHO APPROVED THE  
PROPOSED RULE: State Surgeon General, Ana. M Viamonte  
Ros

DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: August 20, 2010

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

**DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

**Economic Self-Sufficiency Program**

|           |   |
|-----------|---|
| RULE NO.: | RULE TITLE:                                 |
| 65A-1.603 | Food Assistance Program Income and Expenses |

**PURPOSE AND EFFECT:** The proposed rule amendment amends the standard utility allowance, the basic utility allowance and the telephone standard.

**SUMMARY:** The proposed rule amendment increases the utility allowances.

**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:** 414.45 FS.

**LAW IMPLEMENTED:** 414.31 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:** September 28, 2010, 10:30 a.m.

**PLACE:** 1317 Winewood Boulevard, Building 2, Room 204-V, Tallahassee, Florida 32399-0700

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: Cindy Keil. 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:** Cindy Keil, ACCESS Florida Program Policy, 1317 Winewood Boulevard, Building 3, Tallahassee, Florida 32399-0700, cindy\_keil@dcf.state.fl.us, (850)410-3291

**THE FULL TEXT OF THE PROPOSED RULE IS:**

65A-1.603 Food Assistance Program Income and Expenses.

(1) No change.

(2) Standard Utility Allowance. A standard utility allowance (SUA) of ~~\$340~~ ~~\$317~~ must be used by AGs who incur or within the certification period expect to incur heating or cooling expenses separate and apart from their rent or mortgage and by AGs who receive direct or indirect assistance authorized under the Low Income Home Energy Assistance Act of 1981. Actual utility expenses are not allowed. Any additional utility expenses, including the telephone standard, are not used.

(3) Basic Utility Allowance. A basic utility allowance (BUA) of ~~\$279~~ ~~\$258~~ must be used by AGs who do not incur heating or cooling expenses, but do incur utility expenses such as electricity, fuel, water, sewerage, or garbage pickup,

separate and apart from their rent or mortgage. Actual utility expenses are not allowed. Any additional utility expenses, including the telephone standard, are not used.

(4) Telephone Standard. A telephone standard of ~~\$35~~ ~~\$32~~ must be used by AGs who incur only a telephone expense. Actual telephone expenses are not allowed. Any additional utility expenses, including the SUA or BUA, are not used.

(5) No change.

Rulemaking Authority 414.45 FS. Law Implemented 414.31 FS. History—New 1-31-94, Formerly 10C-1.603, Amended 1-12-99, 5-25-03, 8-22-05, 2-17-09, 12-13-09,\_\_\_\_\_.

**NAME OF PERSON ORIGINATING PROPOSED RULE:** Nathan Lewis

**NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE:** George H. Sheldon

**DATE PROPOSED RULE APPROVED BY AGENCY HEAD:** August 6, 2010

**DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:** July 30, 2010

**DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

**Agency for Persons with Disabilities**

|                   |                     |
|-------------------|---------------------|
| <b>RULE NOS.:</b> | <b>RULE TITLES:</b> |
| 65G-4.0021        | Tier Waivers        |
| 65G-4.0022        | Tier One Waiver     |
| 65G-4.0023        | Tier Two Waiver     |
| 65G-4.0024        | Tier Three Waiver   |
| 65G-4.0025        | Tier Four Waiver    |

**PURPOSE AND EFFECT:** The purpose of repealing these rules is to delete rules that were determined to be invalid in the case of Moreland vs APD, 19 So.3d 1009 (Fla 1DCA 2009). The Agency has since adopted replacement Rules 65G-4.0026, 65G-4.0027, 65G-4.0028, 65G-4.0029 and 65G-4.00291.

**SUMMARY:** These obsolete and invalid rules are being repealed.

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

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

**RULEMAKING AUTHORITY:** 393.0661(3) FS.

**LAW IMPLEMENTED:** 393.0661(3) FS.

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

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

contacting: Percy W. "Pete" Mallison, Agency Clerk, Agency for Persons with Disabilities, 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399, (850)921-3779. 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: Percy W. "Pete" Mallison, Agency Clerk, Agency for Persons with Disabilities, 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399, (850)921-3779

THE FULL TEXT OF THE PROPOSED RULES IS:

65G-4.0021 Tier Waivers.

Rulemaking Specific Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 10-20-08, Repealed.

65G-4.0022 Tier One Waiver.

Rulemaking Specific Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 10-20-08, Repealed.

65G-4.0023 Tier Two Waiver.

Rulemaking Specific Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 10-20-08, Amended 7-15-09, Repealed.

65G-4.0024 Tier Three Waiver.

Rulemaking Specific Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 10-20-08, Repealed.

65G-4.0025 Tier Four Waiver.

Rulemaking Specific Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 10-20-08, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Percy W. "Pete" Mallison, Agency Clerk, Agency for Persons with Disabilities, 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399, (850)921-3779

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Jim Debeaugrine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 19, 2010

**FINANCIAL SERVICES COMMISSION**

**OIR – Insurance Regulation**

|             |   |
|-------------|---|
| RULE NO.:   | RULE TITLE:   |
| 69O-138.047 | Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary |

PURPOSE AND EFFECT: To adopt changes to the NAIC Model Regulation by adding an additional requirement to the Regulatory Asset Adequacy Issues Summary as a result of changes to Rules 69O-162.203 and 69O-164.020, F.A.C.

SUMMARY: This rule calls for adopting changes to the NAIC Model Regulation. To take advantage of changes in rules 69O-162.203 and 69O-164.020, F.A.C., the rule requires disclosure of significant interim results, such as the impact of the insufficiency of assets to support payment of benefits and expenses and the establishment of statutory reserves.

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: 625.121(3)(a) FS.

LAW IMPLEMENTED: 625.121(3) 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: September 28, 2010, 9:30 a.m.

PLACE: 143 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: Kerry Krantz, Office of Insurance Regulation, E-mail Kerry.krantz@floiir.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: Kerry Krantz, Office of Insurance Regulation, E-mail Kerry.krantz@floiir.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69O-138.047 Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary.

(1) General.

(a)1. In accordance with subsection (3) of the Standard Valuation Law, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves.

2. The memorandum shall be made available for examination by the Office upon its request. Any memorandum in support of the opinion, and any other material provided by the company to the Office in connection therewith, is confidential and exempt from the provisions of Section 119.07(1), F.S., as provided in Section 625.121(3)(a)10., Florida Statutes.



(b) In preparing the memorandum, the appointed actuary may include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of subsection 69O-138.043(2), F.A.C., with respect to the areas covered in the memoranda, and shall so state in their memoranda.

(c) If the Office requests a memorandum and no such memorandum exists, or if the Office finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this part, the Office may designate a qualified actuary to review the opinion and prepare for review the required supporting memorandum. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Office.

(d)1. The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company.

2. The work papers and documentation of the reviewing actuary shall be retained by the Office.

3. Any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Office and kept confidential to the same extent prescribed by law with respect to other material provided by the company to the Office pursuant to the statute governing this part.

4. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this part for the current year or any one of the preceding 3 years.

(e) In accordance with Section 625.121(3), Florida Statutes, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in subsection 69O-138.047(3), F.A.C.

1. The regulatory asset adequacy issues summary shall be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required.

2. The regulatory asset adequacy issues summary shall be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(2) Details of the Memorandum Section Documenting Asset Adequacy Analysis. When an actuarial opinion is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in subsection 69O-138.043(3), F.A.C., and any additional standards under this part. It shall specify:

(a) For reserves:

1. Product descriptions, including market description, underwriting, and other aspects of a risk profile, and the specific risks the appointed actuary deems significant;

2. Source of liability in force;

3. Reserve method and basis;

4. Investment reserves;

5. Reinsurance arrangements.

6. Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis.

7.a. Documentation of assumptions to test reserves for the following:

(I) Lapse rates (both base and excess);

(II) Interest crediting rate strategy;

(III) Mortality;

(IV) Policyholder dividend strategy;

(V) Competitor or market interest rate;

(VI) Annuitization rates;

(VII) Commissions and expenses; and

(VIII) Morbidity.

b. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum can form a conclusion as to the reasonableness of the assumptions.

(b) For assets:

1. Portfolio descriptions, including a risk profile disclosing the quality, distribution, and types of assets;

2. Investment and disinvestment assumptions;

3. Source of asset data;

4. Asset valuation bases; and

5.a. Documentation of assumptions made for:

(I) Default costs;

(II) Bond call function;

(III) Mortgage prepayment function;

(IV) Determining market value for assets sold due to disinvestment strategy; and

(V) Determining yield on assets acquired through the investment strategy.

b. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum can form a conclusion as to the reasonableness of the assumptions.

(c) For the analysis basis:

1. Methodology;

2. Rationale for inclusion/exclusion of different blocks of business, and how pertinent risks were analyzed;

3. Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

4. Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and

5. Whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis.

(d) Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;

(e) Summary of Results; and

(f) Conclusion(s).

(3) Details of the Regulatory Asset Adequacy Issues Summary.

(a) The regulatory asset adequacy issues summary shall include:

1. Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios.

a. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values.

b. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.

2. The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

3. The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

4. Comments on any interim results that may be of significant concern to the appointed actuary; For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods;

5. The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and

6. Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(b) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

(4) Conformity to Standards of Practice. The memorandum shall include a statement:

"Actuarial methods, considerations, and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board which form the basis for this memorandum."

(5) Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve.

(a) An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis.

1. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy.

2. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

(b)1. The amount of the assets used for the AVR shall be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum.

2. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

(6) Documentation. The appointed actuary shall retain on file for at least seven (7) years sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

Rulemaking Specific Authority 625.121(3)(a) FS. Law Implemented 625.121(3) FS. History--New 5-18-93, Amended 1-23-03, Formerly 4-138.047, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kerry Krantz, Office of Insurance Regulation, E-mail Kerry.krantz@flor.com

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 10, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 11, 2010

**FINANCIAL SERVICES COMMISSION**

**OIR – Insurance Regulation**

RULE NO.: 690-162.203

RULE TITLE: Adoption of 2001 Commissioners Standard Ordinary (CSO) Preferred Mortality Tables for Determining Reserve Liabilities for Ordinary Life Insurance

**PURPOSE AND EFFECT:** To adopt changes to the NAIC Model Regulation and explain the conditions for use of the preferred class structure mortality tables and to permit use of the mortality tables for policies issued prior to the adoption date of the original rule.

**SUMMARY:** This rule calls for adopting changes to the NAIC Model Regulation. The rule allows for use of the 2001 CSO Preferred Class Structure Mortality Table for policies issued prior January 1, 2007, but only with the consent of the commissioner and subject to conditions on reserve credits.

**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), 625.121 FS.

**LAW IMPLEMENTED:** 624.307 (1), 625.121 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:** September 28, 2010, 9:30 a.m.

**PLACE:** 143 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: Kerry Krantz, Office of Insurance Regulation, E-mail [Kerry.krantz@flor.com](mailto:Kerry.krantz@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:** Kerry Krantz, Office of Insurance Regulation, E-mail [Kerry.krantz@flor.com](mailto:Kerry.krantz@flor.com)

**THE FULL TEXT OF THE PROPOSED RULE IS:**

69O-162.203 Adoption of 2001 Commissioners Standard Ordinary (CSO) Preferred Mortality Tables for Determining Reserve Liabilities for Ordinary Life Insurance.

(1) Scope. This rule shall govern mortality tables for use in reserves as set forth in Section 625.121, F.S.

(2) Purpose. The purpose of this rule is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between Preferred and Standard lives in determining minimum reserve liabilities in accordance with Section 625.121(5)(a)3., F.S., and subsection 69O-164.020(5), F.A.C.

(3) Definitions.

(a) “2001 CSO Mortality Table” means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002) and supplemented by the 2001 CSO Preferred Class Structure Mortality Table defined below in Subsection (b). Unless the context indicates otherwise, the “2001 CSO Mortality Table” includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following:

1. “2001 CSO Mortality Table (F)” means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

2. “2001 CSO Mortality Table (M)” means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

3. “Composite mortality tables” means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

4. “Smoker and nonsmoker mortality tables” means mortality tables with separate rates of mortality for smokers and nonsmokers.

(b) “2001 CSO Preferred Class Structure Mortality Table” means mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and Residual Standard Smoker splits of the 2001 CSO Nonsmoker and Smoker tables as adopted by the NAIC September 10, 2006, which is available in the NAIC Proceedings (3rd Quarter 2006) which is adopted herein and incorporated by reference. Unless the context indicates otherwise, the “2001 CSO Preferred Class Structure Mortality Table” includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

(c) “Statistical agent” means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

(4) 2001 CSO Preferred Class Structure Table.

(a) At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this rule, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007.

1. On valuation dates beginning with December 31, 2010, for policies issued on or after January 1, 2005 for policies not issued in this state, and on or after June 8, 2005, for policies issued in this state, and prior to January 1, 2007 wherever issued, these tables may be substituted with the consent of the commissioner and subject to the conditions of subsection (5).

2. In determining such consent, the commissioner may rely on the consent of the commissioner of the company's state of domicile.

(b) No such election shall be made until the company demonstrates at least 20% of the business to be valued on this table is in one or more of the preferred classes.

(c) A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of Rule 690-162.201, F.A.C., Adoption of 2001 Commissioners Standard Ordinary (CSO) Mortality Tables.

(5) Conditions.

(a) For each plan of insurance with separate rates for Preferred and Standard Nonsmoker lives, an insurer may use the Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables to substitute for the Nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, the appointed actuary shall certify that:

1. The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

2. The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) For each plan of insurance with separate rates for Preferred and Standard Smoker lives, an insurer may use the Preferred Smoker and Residual Standard Smoker tables to substitute for the Smoker mortality table found in the 2001

CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the Preferred Smoker Table, the appointed actuary shall certify that:

1. The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table corresponding to the valuation table being used for that class.

2. The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table.

(c) The use of the 2001 CSO Preferred Class Structure Table for the valuation of policies issued prior to January 1, 2007 shall not be permitted in any statutory financial statement in which a company reports, with respect to any policy or portion of a policy coinsured, either of the following:

1. In cases where the mode of payment of the reinsurance premium is less frequent than the mode of payment of the policy premium, a reserve credit that exceeds, by more than the amount specified in this paragraph as Y, the gross reserve calculated before reinsurance. Y is the amount of the gross reinsurance premium that (a) provides coverage for the period from the next policy premium due date to the earlier of the end of the policy year and the next reinsurance premium due date, and (b) would be refunded to the ceding entity upon the termination of the policy.

2.a. In cases where the mode of payment of the reinsurance premium is more frequent than the mode of payment of the policy premium, a reserve credit that is less than the gross reserve, calculated before reinsurance, by an amount that is less than the amount specified in this paragraph as Z. Z is the amount of the gross reinsurance premium that the ceding entity would need to pay the assuming company to provide reinsurance coverage from the period of the next reinsurance premium due date to the next policy premium due date minus any liability established for the proportionate amount not remitted to the reinsurer.

b. For purposes of this condition, the reserve (i) for the mean reserve method shall be defined as the mean reserve minus the deferred premium asset, and (ii) for the midterminal reserve method shall include the unearned premium reserve. A company may estimate and adjust its accounting on an aggregate basis in order to meet the conditions to use the 2001 CSO Preferred Class Structure Table.

(6) Effective Date. This rule shall be effective for policies issued on or after January 1, 2007, for valuation dates on or after the date this rule becomes effective.

Rulemaking Specific Authority 624.308(1), 625.121 FS. Law Implemented 624.307(1), 625.121 FS. History—New 1-16-08, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Kerry Krantz, Office of Insurance Regulation, E-mail Kerry.krantz@flor.com

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 10, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 11, 2010

## FINANCIAL SERVICES COMMISSION

### OIR – Insurance Regulation

RULE NO.: RULE TITLE:

69O-164.020 Valuation of Life Insurance Policies

PURPOSE AND EFFECT: To adopt changes to the NAIC Model Regulation reducing the minimum premium deficiency reserve requirement, subject to certain conditions to ensure adequacy of reserves.

SUMMARY: This rule calls for adopting changes to the NAIC Model Regulation. The rule reduces the minimum premium deficiency reserve requirements, subject to conditions to ensure the adequacy of reserves. The rule eliminates the reserve requirements placed on the X factor percentage that it not (1) be less than a minimum 20% and (2) decrease in successive policy years.

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), 625.121(5) FS.

LAW IMPLEMENTED: 624.307(1), 625.121(5) 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: September 28, 2010, 9:30 a.m.

PLACE: 143 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: Kerry Krantz, Office of Insurance Regulation, E-mail Kerry.krantz@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: Kerry Krantz, Office of Insurance Regulation, E-mail Kerry.krantz@flor.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69O-164.020 Valuation of Life Insurance Policies.

(1) Purpose.

(a) The purpose of this rule is to provide:

1. Tables of select mortality factors, identified as Appendix to Rule 69O-164.020, F.A.C., which is hereby adopted and incorporated by reference, and rules for their use;

2. Rules concerning a minimum standard for the valuation of plans with nonlevel premiums or benefits; and

3. Rules concerning a minimum standard for the valuation of plans with secondary guarantees.

(b) The method for calculating basic reserves defined in this rule will constitute the Commissioners' Reserve Valuation Method for policies to which this rule is applicable.

(2)(a) This rule is consistent with Appendix A-830 of the NAIC Accounting Practices and Procedures Manual as adopted in Rule 69O-137.001, F.A.C.

(b) This rule applies to policies issued during calendar year 2000 in addition to those issued on or after January 1, 2001.

(3) Applicability. This rule shall apply to all life insurance policies, with or without nonforfeiture values, issued on or after January 1, 2000, subject to the following exceptions and conditions:

(a) Exceptions.

1. This rule shall not apply to any individual life insurance policy issued on or after the effective date of this rule if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before January 1, 2000, that guarantees the premium rates of the new policy. This rule also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy.

2. This rule shall not apply to any universal life policy that meets all the following requirements:

a. Secondary guarantee period, if any, is 5 years or less;

b. Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO valuation tables as defined in paragraph (4)(f), or the ultimate mortality tables specified in subsection 69O-162.201(6), F.A.C., and the applicable valuation interest rate; and

c. The initial surrender charge is not less than 100 percent of the first year annualized specified premium for the secondary guarantee period.

3. This rule shall not apply to any variable life insurance policy that provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts.

4. This rule shall not apply to any variable universal life insurance policy that provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts.

5. This rule shall not apply to a group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

(b) Conditions.

1. Calculation of the minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits (other than universal life policies), or both, shall be in accordance with the provisions of subsection (6).

2. Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period shall be in accordance with the provisions of subsection (7).

(4) Definitions. For purposes of this rule:

(a) "Basic reserves" means reserves calculated in accordance with Section 625.121(7), Florida Statutes.

(b)1. "Contract segmentation method" means the method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in paragraph (f), or the mortality tables specified in subsection 690-162.201(6), F.A.C., and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in paragraph (5)(b) of this rule.

2. The length of a particular contract segment shall be set equal to the minimum of the value  $t$  for which  $G_t$  is greater than  $R_t$  (if  $G_t$  never exceeds  $R_t$  the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy), where  $G_t$  and  $R_t$  are defined as follows:

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

$x$  = original issue age;

$k$  = the number of years from the date of issue to the beginning of the segment;

$t = 1, 2, \dots$ ;  $t$  is reset to 1 at the beginning of each segment;

$GP_{x+k+t-1}$  = Guaranteed gross premium per thousand of face amount for year  $t$  of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$q_{x+k+t}$

$R_t = \frac{q_{x+k+t}}{1 - q_{x+k+t}}$ ; however,  $R_t$  may be increased or decreased by one

$q_{x+k+t-1}$  percent in any policy year, at the company's option, but  $R_t$  shall not be less than one;

where:

$x$ ,  $k$  and  $t$  are as defined above, and

$q_{x+k+t-1}$  = valuation mortality rate for deficiency reserves in policy year  $k+t$  but using the mortality of Section 5B(2) if Section 5B(3) is elected for deficiency reserves.

However, if  $GP_{x+k+t}$  is greater than 0 and  $GP_{x+k+t-1}$  is equal to 0,  $G_t$  shall be deemed to be 1000. If  $GP_{x+k+t}$  and  $GP_{x+k+t-1}$  are both equal to 0,  $G_t$  shall be deemed to be 0.

(c) "Deficiency reserves" means the excess, if greater than zero, of

1. Minimum reserves calculated in accordance with Section 625.121(11), Florida Statutes, over

2. Basic reserves.

(d) "Guaranteed gross premiums" means the premiums under a policy of life insurance that are guaranteed and determined at issue.

(e) "Maximum valuation interest rates" means the interest rates defined in Section 625.121(6), Florida Statutes, (Computation of Minimum Standard by Calendar Year of Issue) that are to be used in determining the minimum standard for the valuation of life insurance policies.

(f) "1980 CSO valuation tables" means the Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without 10-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

(g) "Scheduled gross premium" means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in subparagraph (7)(a)3., if any, or else the minimum premium described in subparagraph (7)(a)4.

(h)1. "Segmented reserves" means reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage

for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:

- a. The present value of the death benefits within the segment, plus
- b. The present value of any unusual guaranteed cash value (see paragraph (6)(d)) occurring at the end of the segment, less
- c. Any unusual guaranteed cash value occurring at the start of the segment, plus
- d. For the first segment only, the excess of the Item (I) over Item (II), as follows:

(I) A net level annual premium equal to the present value at the date of issue of the benefits provided for in the first segment after the first policy year; divided by the present value at the date of issue of an annuity of 1 per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the 19 year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.

(II) A net 1 year term premium for the benefits provided for in the first policy year.

2. The length of each segment is determined by the "contract segmentation method," as defined in this rule.

3. The interest rates used in the present value calculations for any policy shall not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy.

4. For both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments.

a. The segmentation requirement shall not be limited to plans with no cash surrender values; otherwise companies could avoid segmentation entirely by designing policies with minimal (positive) cash values.

b. Segmentation for plans with cash surrender values shall be based solely upon gross premium levels.

c. Basing segmentation upon the level of cash surrender values introduces complications because of the inter-relationship between minimum cash surrender values and gross premium patterns.

d. The requirements of this rule relating to reserves for plans with unusual cash values and to reserves if cash values exceed calculated reserves serve to link required reserves and cash surrender values.

e. The calculation of segmented reserves shall not be linked to the occurrence of a positive unitary terminal reserve at the end of a segment.

f. The requirement of this rule to hold the greater of the segmented reserve or the unitary reserve eliminates the need for any linkage.

(i) "Tabular cost of insurance" means the net single premium at the beginning of a policy year for 1 year term insurance in the amount of the guaranteed death benefit in that policy year.

(j) "Ten-year select factors" means the select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law.

(k)1. "Unitary reserves" means the present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

a. Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and

b. Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that at issue the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of Item (I) over Item (II), as follows:

(I) A net level annual premium equal to the present value at the date of issue of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the 19 year premium whole life plan of insurance of the same renewal year equivalent level amount at an age 1 year higher than the age at issue of the policy.

(II) A net 1 year term premium for the benefits provided for in the first policy year.

2. The interest rates used in the present value calculations for any policy shall not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

(l) "Universal life insurance policy" means any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy.

(5) General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves.

(a) At the election of the insurer for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors or the mortality tables specified in subsection 690-162.201(6), F.A.C. If select mortality factors are elected for use with the 1980 CSO valuation tables, they may be:

1. The 10 year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law; or
2. The select mortality factors in the Appendix.

(b) Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve.

1. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums.

2. At the election of the insurer for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors or the mortality tables specified in subsection 690-162.201(6), F.A.C. If select mortality factors are elected for use with the 1980 CSO valuation tables, they may be:

- a. The 10 year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
- b. The select mortality factors in the Appendix of this rule;
- c. For durations in the first segment, X percent of the select mortality factors in the Appendix, subject to the following:

(I) X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;

~~(II) X shall not be less than 20 percent;~~

~~(III) X shall not decrease in any successive policy years;~~

~~(II)(IV)~~ X is such that, when using the valuation interest rate used for basic reserves, item (A) is greater than or equal to Item (B);

(A) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X;

(B) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;

~~(III)(V)~~ X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first 5 years after the valuation date;

~~(IV)(VI)~~ The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of subparagraph (b)3.;

~~(V)(VII)~~ The appointed actuary may decrease X at any valuation date as long as X ~~does not decrease in any successive policy years and as long as it~~ continues to meet all the requirements of subparagraph (b)3.; and

~~(VI)(VIII)~~ The appointed actuary shall specifically take into account the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums.

~~(VII)(IX)~~ If X is less than 100 percent at any duration for any policy, the following requirements shall be met:

(A) The appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of Rule Chapter 690-138, F.A.C.; and

(B) The appointed actuary shall annually opine for all policies subject to this rule as to whether the mortality rates resulting from the application of X meet the requirements of subparagraph (b)2.c.

I. The opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries.

II. The X factors shall reflect anticipated future mortality without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience.

(C) The appointed actuary shall disclose, in the Regulatory Asset Adequacy Issues Summary, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods;

(c) This subsection applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. However, if the first segment is less than 10 years, the appropriate 10 year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue.

(d) In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium, but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums even if not included in the actual calculation of basic reserves.

(e) Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than 1 year after the date of the change shall be the greatest of the following:

1. Reserves calculated ignoring the guarantee;
2. Reserves assuming the guarantee was made at issue; and
3. Reserves assuming that the policy was issued on the date of the guarantee.



(f) The company shall document the extent of the adequacy of reserves for material blocks, including policies issued prior to the effective date of this rule. The documentation shall include:

1. A demonstration of the extent to which aggregation with immaterial blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of Chapter 69O-138, F.A.C.; and

2. A definition of material.

(6) Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Gross Premiums or Guaranteed Nonlevel Benefits (Other than Universal Life Policies).

(a) Basic Reserves. Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer in calculating segmented reserves and net premiums either of the adjustments described in subparagraph 1. or 2. below may be made:

1. Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment and subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

2. Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a pure endowment; and subtract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

(b) Deficiency Reserves.

1. The deficiency reserve at any duration shall be calculated:

a. On a unitary basis if the corresponding basic reserve determined by paragraph (a) is unitary;

b. On a segmented basis if the corresponding basic reserve determined by paragraph (a) is segmented; or

c. On the segmented basis if the corresponding basic reserve determined by paragraph (a) is equal to both the segmented reserve and the unitary reserve.

2. This subsection shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards in paragraph (5)(b) and rate of interest.

3. Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in paragraph (5)(b).

4. For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.

(c) Minimum Value.

1. Basic reserves shall not be less than the tabular cost of insurance for the balance of the policy year if mean reserves are used.

2. Basic reserves shall not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used.

3. The tabular cost of insurance shall use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves.

4. Mortality tables specified in subsection 69O-162.201(6), F.A.C., may be used.

5. However, if select mortality factors are used with the 1980 CSO valuation tables, they shall be the 10 year select factors incorporated into the 1980 amendments of the NAIC Standard Valuation Law.

6. In no case may total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination) be less than the amount that the policyowner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, upon termination of the policy.

(d) Unusual Pattern of Guaranteed Cash Surrender Values.

1. For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.

2. The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an n year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where

a. n is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:

(I) The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or

(II) The mandatory expiration date of the policy; and

b. The net premium for a given year during the n year period is equal to the product of the net to gross ratio and the respective gross premium; and

c. The net to gross ratio is equal to Item I divided by Item II as follows:

(I)(A) The present value at the beginning of the n year period of death benefits payable during the n year period, plus

(B) The present value at the beginning of the n year period of the next unusual guaranteed cash surrender value, if any, minus

(C) The amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the n year period.

(II) The present value at the beginning of the n year period of the scheduled gross premiums payable during the n year period.

3. For purposes of this subsection, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:

a. 110 percent of the scheduled gross premium for that year;

b. 110 percent of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and

c. 5 percent of the first policy year surrender charge, if any.

(e) Optional Exemption for Yearly Renewable Term Reinsurance. At the option of the company, the following approach for reserves on YRT reinsurance may be used:

1. Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

2. Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in paragraph (c).

3. Deficiency reserves.

a. For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

b. Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with paragraph (a) above.

4. For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without 10 year select mortality factors or the mortality tables specified in subsection 69O-162.201(6), F.A.C.

5. A reinsurance agreement shall be considered YRT reinsurance for purposes of this subsection if only the mortality risk is reinsured.

6. If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies.

(f) Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies. At the option of the company, the following approach for reserves for attained-age-based YRT life insurance policies may be used:

1. Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

2. Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in paragraph (6)(c).

3. Deficiency reserves.

a. For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

b. Deficiency reserves shall never be less than the sum of the present values at the date of valuation of the excesses determined in accordance with sub-subparagraph a. above.

4. For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without 10 year select mortality factors or the mortality tables specified in subsection 69O-162.201(6), F.A.C.

5. A policy shall be considered an attained-age-based YRT life insurance policy for purposes of this subsection if:

a. The premium rates on both the initial current premium scale and the guaranteed maximum premium scale are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and

b. The premium rates on both the initial current premium scale and the guaranteed maximum premium scale are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance, and attained age.

6. For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of this subsection may be used after the initial period if:

a. The initial period is constant for all insureds of the same sex, risk class, and plan of insurance; or

b. The initial period runs to a common attained age for all insureds of the same sex, risk class, and plan of insurance; and

c. After the initial period of coverage, the policy meets the conditions of subparagraph 5. above.

7. If this election is made, this approach shall be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after the effective date of this rule.

(g) Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met:

1. The policy consists of a series of n-year periods including the first period and all renewal periods where n is the same for each period, except that for the final renewal period, n may be truncated or extended to reach the expiry age, provided that:

a. This final renewal period is less than 10 years and less than twice the size of the earlier n-year periods, and

b. For each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;

2. The guaranteed gross premiums in all n-year periods are not less than the corresponding net premiums based upon the 1980 CSO Table with or without the 10 year select mortality factors or the mortality tables specified in subsection 69O-162.201(6), F.A.C.; and

3. There are no cash surrender values in any policy year.

(h) Exemption from Unitary Reserves for Certain Juvenile Policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue:

1. At issue, the insured is age 24 or younger;

2. Until the insured reaches the end of the juvenile period, which shall occur at or before age 25, the gross premiums and death benefits are level, and there are no cash surrender values; and

3. After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy.

(7) Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies that Contain Provisions Resulting in the Ability of a Policyowner to Keep a Policy in Force Over a Secondary Guarantee Period.

(a) General.

1. Policies with a secondary guarantee include:

a. A policy with a guarantee that the policy will remain in force at the original schedule of benefits, subject only to the payment of specified premiums;

b. A policy in which the minimum premium at any duration is less than the corresponding 1 year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without 10 year select mortality factors or the mortality tables specified in subsection 69O-162.201(6), F.A.C.; or

c. A policy with any combination of subparagraph a. and b.

2. A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee.

a. When a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees.

b. Secondary guarantees that are unilaterally changed by the insurer after issue shall be considered to have been made at issue.

c. Reserves described in paragraphs (b) and (c) below shall be recalculated from issue to reflect these changes.

3. Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.

4.a. For purposes of this section, the minimum premium for any policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy year, produces a zero account value at the end of the policy year.

b. The minimum premium calculation shall use the policy cost factors (including mortality charges, loads, and expense charges) and the interest crediting rate which are all guaranteed at issue.

5.a. The 1 year valuation premium means the net 1 year premium based upon the original schedule of benefits for a given policy year.

b. The 1 year valuation premiums for all policy years are calculated at issue.

c. The select mortality factors defined in subparagraphs (5)(b)2., 3., and 4. shall not be used to calculate the 1 year valuation premiums.

6. The 1 year valuation premium shall reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund.

(b) Basic Reserves for the Secondary Guarantees.

1. Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period.

2. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

3. The segments will be determined according to the contract segmentation method as defined in paragraph (4)(b).

(c) Deficiency Reserves for the Secondary Guarantees. Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same

manner as described in paragraph (6)(b) with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

(d) Minimum Reserves. The minimum reserves during the secondary guarantee period are the greater of:

1. The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or
2. The minimum reserves required by Rule 690-164.010, F.A.C., governing universal life plans.

(9) Effective Date.

(a) This rule shall be effective for policies issued on or after January 1, 2000 for valuation dates on or after the date this rule is adopted.

(b) For valuation dates prior to the effective date of this rule, at the option of the company, the company may report reserves for policies issued in calendar year 2000 based upon this rule.

Rulemaking Specific Authority 624.308(1), 625.121(5) FS. Law Implemented 624.307(1), 625.121(5) FS. History—New 12-24-03, Formerly 4-164.020, Amended 6-8-05,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Kerry Krantz, Office of Insurance Regulation, E-mail Kerry.krantz@flor.com

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 10, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 11, 2010

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

**DEPARTMENT OF TRANSPORTATION**

|           |  |
|-----------|--|
| RULE NO.: | RULE TITLE:  |
| 14-15.012 | Manual on Speed Zoning for Highways, Roads, and Streets in Florida |

**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. 27, July 9, 2010 issue of the Florida Administrative Weekly.

In response to comments from the Joint Administrative Procedures Committee, Rule 14-15.012, F.A.C., Manual on Speed Zoning for Highways, Roads, and Streets in Florida, is being corrected. The effective date of Form 750-10-03 is being amended from “10/99” to “03/10.”

**DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES**

**Division of Motor Vehicles**

|            |   |
|------------|---|
| RULE NOS.: | RULE TITLES:  |
| 15C-18.001 | Electronic Filing System                                      |
| 15C-18.006 | Electronic Filing System Requirements; Disclosure to Customer |

**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. 33, August 20, 2010 issue of the Florida Administrative Weekly.

These changes were omitted in error from the approved rule text.

15C-18.001(2), shall have the following paragraph (i) added:

(i) “Sales Agreement” means the document that buyer and seller sign memorializing the terms of the sale and includes, but is not limited to a buyer’s order and a bill of sale.

15C-18.006, subsection (5) shall read:

(5) If an EFS agent charges a fee to the customer for use of the electronic filing system in a title or registration transaction, the fee shall be disclosed separately and conspicuously in the sales agreement as an optional fee. The EFS agent may not disclose or disguise this as a State or Government fee.

**DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES**

**Division of Motor Vehicles**

|            |   |
|------------|---|
| RULE NOS.: | RULE TITLES:  |
| 15C-18.001 | Electronic Filing System                                      |
| 15C-18.002 | Electronic Filing System Features                             |
| 15C-18.003 | Tax Collector Responsibilities                                |
| 15C-18.004 | EFS Agent Participation Requirements                          |
| 15C-18.005 | Service Providers; Certification; Requirements                |
| 15C-18.006 | Electronic Filing System Requirements; Disclosure to Customer |
| 15C-18.007 | Enforcement; Service Providers; EFS Agents; Tax Collectors    |

**NOTICE OF PUBLIC HEARING**

The Department of Highway Safety and Motor Vehicles announces a hearing regarding the above rule, as noticed in Vol. 36, No. 33, August 20, 2010 Florida Administrative Weekly.

DATE AND TIME: September 27, 2010, 2:00 p.m. – 4:00 p.m.  
PLACE: Department of Highway Safety and Motor Vehicles, Neil Kirkman Building, 2900 Apalachee Parkway, Auditorium A427, Tallahassee, FL