

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

COMMISSION
CLERK

12 JUN - 8 PM 12: 58

RECEIVED-FPSC

DATE: June 8, 2012
TO: Ann Cole, Commission Clerk, Office of Commission Clerk
FROM: Rosanne Gervasi, Senior Attorney, Office of the General Counsel
RE: Docket No. 120050-TP

Please file the attached rule amendment certification packet in the docket file listed above.

Thank you.

Attachment

DOCUMENT NUMBER DATE

03759 JUN-8 12

FPSC-COMMISSION CLERK

COMMISSIONERS:
RONALD A. BRISÉ, CHAIRMAN
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

June 8, 2012

Ms. Liz Cloud
Florida Department of State
Administrative Code and Weekly Section
Room 701, the Capitol
Tallahassee, FL 32399-0250

VIA HAND DELIVERY

FILED
2012 JUN -8 AM 11:15
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

Re: Rule Certification Packet for Rules 25-4.020 and 25-4.0201, F.A.C.

Dear Ms. Cloud:

Enclosed for filing is a complete rule certification packet for Rules 25-4.020 and 25-4.0201, F.A.C., consisting of:

- (1) One compact disc containing the coded text of the rules;
- (2) The e-mail approval confirmation with the certification form required by Rule 1B-30.005, F.A.C., for the materials incorporated by reference that were filed electronically.
- (3) One original and two copies of the signed rule certification form;
- (4) One original and two copies of the coded text of the rule, including the legal citations and history notes;
- (5) One original and two copies of the summary of the rule;
- (6) One original and two copies of the detailed written statement of the facts and circumstances justifying the rule; and
- (7) One original and two copies of the summary of the hearings held on the rule.

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Please let me know if you have any questions. The contact name and information for this rule are Rosanne Gervasi, Florida Public Service Commission, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, 413-6224, rgervasi@psc.state.fl.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosanne Gervasi", with a stylized flourish at the end.

Rosanne Gervasi
Senior Attorney

Enclosures

CERTIFICATION OF FLORIDA PUBLIC SERVICE COMMISSION

ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and

(2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S.; and

(a) Are filed not more than 90 days after the notice; or

(b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

(e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

(g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

(h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

(i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA
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Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule Nos.

25-4.020, F.A.C.

25-4.0201, F.A.C.

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)


ANN COLE

Commission Clerk
Title _____
5
Number of Pages Certified

SUMMARY OF THE RULE

Rule 25-4.020, F.A.C., currently requires telecommunications companies to preserve their records for the period of time specified in Form PSC/ECR/17-T (5/93), and to keep their records at their offices within the State unless otherwise authorized by the Commission. The rule amendment will eliminate these requirements. The rule amendment will also eliminate the waiver of the reimbursement requirement for reasonable travel expenses incurred during a Commission review of out-of-state records that are located within 50 miles of the Florida state line. Rule 25-4.0201, F.A.C., currently requires Commission access to telecommunications company and affiliate company records. The rule amendment will no longer require Commission access to affiliate company records. All references to “utility” will be changed to “company.”

WRITTEN STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

With respect to Rule 25-4.020, F.A.C., due to improved technology, it is no longer necessary for telecommunications companies to preserve their records in their original form for a specific period of time. With the advent of electronic communications and the requirement for companies to reimburse the Commission for reasonable travel expenses incurred during any review of out-of-state records under Rule 25-4.020(2), F.A.C., it is no longer necessary for telecommunications companies to keep their records at their offices within the state unless otherwise authorized by the Commission. Waiver from the requirement for telecommunications companies to reimburse the Commission for reasonable travel expenses incurred during a Commission review of a company’s records has not been utilized by a company for many years and has become obsolete. With respect to Rule 25-4.0201, F.A.C., the 2011 Legislature eliminated from section 364.183(1), F.S., the Commission’s authority to access the records of telecommunications company affiliates. All references to “utility” will be changed to “company,” in keeping with the statutory references to telecommunications companies in section 364.183, F.S.

SUMMARY OF ANY HEARINGS HELD ON THE RULE

No timely request for a hearing was received by the agency, and no hearing was held.

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TALLAHASSEE, FLORIDA

25-4.020 Location and Preservation of Records.

(1) Any company that keeps its records outside the State shall reimburse the Commission for the reasonable travel expense incurred by each Commission representative during any review of the out-of-state records of the company or its affiliates. Reasonable travel expenses are those travel expenses that are equivalent to travel expenses paid by the Commission in the ordinary course of its business.

(a) The company shall remit reimbursement for out-of-state travel expenses within 30 days from the date the Commission mails the invoice.

(b) The reimbursement requirement in subsection (1) shall be waived for any company that makes its out-of-state records available at the company's office located in Florida or at another mutually agreed upon location in Florida within 10 working days from the Commission's initial request. If 10 working days is not reasonable because of the complexity and nature of the issues involved or the volume and type of material requested, the Commission may establish a different time frame for the company to bring records into the state. For individual data requests made during an audit, the response time frame established in Rule 25-4.0201, F.A.C., shall control. All records that a company is required to keep, by reason of these or other rules prescribed by the Commission, shall be kept at the office or offices of the company within the State unless otherwise authorized by the Commission.

(2) During any audit or review of records, the company shall provide Commission staff with adequate and comfortable working and filing space, consistent with the prevailing conditions and climate, and comparable with the accommodations provided the company's outside auditors. Any company that keeps its records outside the State shall reimburse the Commission for the reasonable travel expense incurred by each Commission representative during any review of the out-of-state records of the company or its affiliates. Reasonable travel expenses are those travel expenses that are equivalent to travel expenses paid by the Commission in the ordinary course of its business.

(a) The company shall remit reimbursement for out-of-state travel expenses within 30 days from the date

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TALLAHASSEE, FLORIDA

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~~the Commission mails the invoice.~~

~~(b) The reimbursement requirement in subsection (2) shall be waived:~~

~~1. For any company that makes its out-of-state records available at the company's office located in Florida or at another mutually agreed upon location in Florida within 10 working days from the Commission's initial request. If 10 working days is not reasonable because of the complexity and nature of the issues involved or the volume and type of material requested, the Commission may establish a different time frame for the company to bring records into the state. For individual data requests made during an audit, the response time frame established in Rule 25-4.0201, F.A.C., shall control; or~~

~~2. For a company whose records are located within 50 miles of the Florida state line.~~

~~(3) All records shall be preserved for the period of time specified in Form PSC/ECR/17-T (5/93), entitled "Schedule of Records and Periods of Retention" which is incorporated by reference into this rule, and may be obtained from the Director, Division of Economic Regulation, Florida Public Service Commission.~~

~~(a) However, all source documents retained as required by subsection 25-4.020(3), F.A.C., shall be maintained in their original form for a minimum of three years, or for any lesser period of time specified for that type of record in Form PSC/ECR/17-T, after the date the document was created or received by the company. This paragraph does not require the company to create paper copies of documents where the company would not otherwise do so in the ordinary course of its business. The Commission may waive the requirement that documents be retained in their original form upon a showing by a company that it employs a storage and retrieval system that consistently produces clear, readable copies that are substantially equivalent to the originals, and clearly reproduces handwritten notations on documents.~~

~~(b) The company shall maintain written procedures governing the conversion of source documents to a storage and retrieval system, which procedures ensure the authenticity of documents and the completeness of records. Records maintained in the storage and retrieval system must be easy to search and easy to read.~~

~~(4) During any audit or review of records, the company shall provide Commission staff with adequate and~~

~~comfortable working and filing space, consistent with the prevailing conditions and climate, and
comparable with the accommodations provided the company's outside auditors.~~

Rulemaking Authority 350.127(2), 364.016, ~~364.17, 364.18~~, 364.183, ~~364.185~~ FS. Law Implemented

364.016, ~~364.17, 364.18~~, 364.183, ~~364.185~~ FS. History—Revised 12-1-68, Amended 3-31-76, Formerly 25-

4.20, Amended 6-23-93, 11-13-95, 1-25-09, XX-XX-XX.

25-4.0201 Audit Access to Records.

This rule addresses the reasonable access to company utility and affiliate records provided by Section 364.183(1), F.S., for the purposes of management and financial audits.

- (1) The audit scope, audit program and objectives, and audit requests are not constrained by relevancy standards narrower than those provided by Section 364.183(1), F.S.
- (2) Reasonable access means that company responses to audit requests for access to records shall be fully provided within the time frame established by the auditor. In establishing a due date, the auditor shall consider the location of the records, the volume of information requested, the number of pending requests, the amount of independent analysis required, and reasonable time for the company utility to review its response for possible claims of confidentiality or privilege.
- (3) In those instances where the company utility disagrees with the auditor's assessment of a reasonable response time to the request, the company utility shall first attempt to discuss the disagreement with the auditor and reach an acceptable revised date. If agreement cannot be reached, the company utility shall discuss the issue with successive levels of supervisors at the Commission until an agreement is reached. If necessary, a final decision shall be made by the Prehearing Officer. If the audit is related to an undocketed case, the Chairman shall make the decision.
- (4) The company utility and its affiliates shall have the opportunity to safeguard ~~its~~ ~~their~~ records by copying them or logging them out, provided, however, that safeguard measures shall not be used to prevent reasonable access by Commission auditors to company utility or affiliate records.
- (5) Reasonable access to records includes reasonable access to personnel to obtain testimonial evidence in response to inquiries or through interviews.
- (6) Nothing in this rule shall preclude Commission auditors from making copies or taking notes. In the event these notes relate to documents for which the company has asserted confidential status, such notes shall also be given confidential status.

(7) Form PSC/APA 6 (2/95), entitled "Audit Document and Record Request/Notice of Intent" is incorporated by reference into this rule and is available at:

<http://www.flrules.org/Gateway/reference.asp?No=Ref-01303>. This form is used by auditors when requests are formalized. This form documents audit requests, the due dates for responses, and all Notices of Intent to Seek Confidential Classification.

Rulemaking Authority 350.127(2) FS. Law Implemented 364.183(1) FS. History—New 3-1-95, Amended

XX-XX-XX

Julie Phillips

From: FL-Rules@dos.state.fl.us
Sent: Monday, June 04, 2012 1:12 PM
To: Julie Phillips
Cc: flrules@dos.state.fl.us
Subject: 25-4.0201 Reference Material for Rule Adoption Approved

Dear JPhillips:

The reference material for rule adoption you submitted has been approved by the Administrative Code and Weekly Staff.

The approved material is available in the Review/Modify Agency Reference Material list (Agency Main Menu page).

Rule Number: 25-4.0201

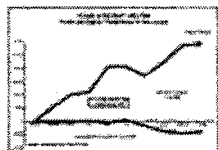
Reference Number: Ref-01303; Reference Name: Audit Document and Record Request/Notice of Intent, Form PSC/APA 6 (2/95)


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Administrative Code and Weekly Staff
Division of Library and Information Services
Florida Department of State

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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

CERTIFICATION OF MATERIALS INCORPORATED

BY REFERENCE IN RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify pursuant to Rule 1B-30.005, Florida Administrative Code:


(1) That materials incorporated by reference in Rule 25-4.0201, F.A.C., have been electronically filed with the Department of State.

(2) That because there would be a violation of federal copyright laws if the submitting agency filed the incorporated materials described below electronically, a true and complete paper copy of the incorporated materials are attached to this certification for filing. Paper copies of the incorporated materials below may be obtained at the agency by [include address(es)/location(s)].

List form number(s) and form title(s), or title of document(s) below:

Form PSC/APA 6 (2/95), entitled "Audit Document and Record Request/Notice of Intent"

Under the provisions of Section 120.54(3)(e)6., F. S., the attached material(s) take effect 20 days from the date filed with the Department of State, or a later date as specified in the rule.



Ann Cole

Commission Clerk

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