

OFR RULE CHAPTER 69V-180 PRESENTATION

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FLORIDA OFFICE of FINANCIAL REGULATION



Smart, Efficient and Effective Regulation



Rules up for Discussion

- **Rule 69V-180.002 (proposed new rule)**
- **Rule 69V-180.010 (proposed amendment)**
- **Rule 69V-180.020 (proposed amendment)**
- **Rule 69V-180.030 (proposed amendment)**
- **Rule 69V-180.031 (proposed new rule)**
- **Rule 69V-180.032 (proposed new rule)**
- **Rule 69V-180.040 (proposed amendment)**
- **Rule 69V-180.070 (proposed new rule)**
- **Rule 69V-180.100 (proposed amendment)**

TIMELINE

- **December 17, 2014:**
 - Notice of Rule Development published in the Florida Administrative Register (FAR)
- **April 3, 2015:**
 - Notice of Proposed Rulemaking published in FAR. No comments received and no notice of hearing filed.
- **August 5, 2015:**
 - Rules approved for adoption at Cabinet Meeting.

RULE 69V-180.002 (Adoption of Forms)

Proposed New Rule

- The Office proposes to adopt a new rule to re-adopt certain forms (Form OFR-COM-101, Exhibit A to form OFR-COM-101, and Form OFR-CCA-101) and to adopt certain new forms (Form OFR-559-101, and Form OFR-559-102) that replace existing forms.

RULE 69V-180.002

Proposed New Rule

JAPC's Comments:

- **69V-180.002(1)(a)(2).:**
Please list the effective date of this incorporated material in the rule text.
- **69V-180.002(a)(b)1.:**
Under what circumstances must an applicant utilize the “Biographical Summary” pages of this form (consumer collection registration form)? It is unclear what persons are required to submit these pages.

OFR's Response

- Office will file a Notice of Change reflecting an effective date for Exhibit A.
- Office will file a Notice of Change specifying each ultimate equitable owner of 10% or greater interest, each chief executive officer, each chief financial officer, chief operations officer, chief legal officer, chief compliance officer, control person, member, partner, joint venturer, and each director of an entity applying for registration as a consumer collection agency, will be required to submit a biographical summary page form.

Changes to Rule 69V-180.002

JAPC 's Comments

- JAPC asked Office to make sure Rule 69V-180.010 reflects the correct name and effective date for surety bond Form OFR-CCA-101.

OFR's Response

- Office also updated 69V-180.002(1)(a)(3), F.A.C. to make sure the surety bond form name and effective date is reflected correctly both provisions.

Changes that will be filed as a Notice of Change in the FAR

These changes are made in response to a proposed objection by the Joint Administrative Procedures Committee and at a public hearing held on the rule on July 6, 2015.

69V-180.002 Adoption of Forms.

(1) No change.

(a) No change.

1. No change.

2. Exhibit A, effective MM/DD/YYYY; and available at <http://www.flrules.org>.

3. State of Florida Office of Financial Regulation Bond Form – Form OFR-CCA-101, effective 05-01-04, available at <http://www.flrules.org>.

(b) Consumer Collection Agency Forms:

1. Registration as Consumer Collection Agency – Form OFR-559-101, effective _____, and available at <http://www.flrules.org>;

2. Florida Consumer Collection Practices Act Complaint Form – Form OFR-559-102, effective _____, and available at <http://www.flrules.org>.

(2) Each ultimate equitable owner of 10% or greater interest, each chief executive officer, each chief financial officer, chief operations officer, chief legal officer, chief compliance officer, control person, member, partner, joint venturer, and each director of an entity applying for registration as a consumer collection agency, shall submit a completed Biographical Summary Form OFR-559-101 to the Office of Financial Regulation.

The remainder of the rule reads as previously published.

Rule 69V-180.010

(Commercial Collection Surety Bond and Procedures) Proposed Amendment

- The Office proposes to amend an obsolete rulemaking authority reference in the current rule, to update a form date reference, to remove an obsolete form title reference, to correct the reference to the Office's zip code in the current rule, and to provide the current rulemaking authority for this rule.

Changes to Rule 69V-180.010

JAPC's Comments:

- **69V-180.010(1):**
Pursuant to rule 1-1.013(2)(a), Florida Administrative Code, the incorporation by reference of a form requires the listing of the form's title, along with the form number and effective date. Please revise to include this form's title. In addition, the title should be found on the form itself.

Office's Response

- The rule as presented for proposed rulemaking on April 3, 2015 reflects the updated form title as it currently exists. We have made technical changes to capitalize all words in the form title and include the word "FORM" at the bottom of each page of the form.

Rule 69V-180.020

(Commercial Collection Registration Form and Procedures)

Proposed Amendment

- The Office proposes to amend this rule to remove an obsolete rulemaking authority reference in the current rule, to update a form date reference, to correct the reference to the Office's zip code in the current rule, to include a cross-reference to amended subsection 69V-180.010(1), F.A.C., and to delete a requirement in the current rule that the registration fee be paid in certified funds.

Changes to Rule 69V-180.020

JAPC's Comments:

- **The date indicated that the notice of proposed rule development was published is incorrect. The notice was published on December 17, 2014. Please publish a corrective notice.**
- **69V-180.020(1)(a): As the submission of Exhibit A to the registration form may be required by an applicant, a reference should be made to this form and the rule in which it is incorporated.**
- **69V-180.020(2): It appears that the reference to subsection 120.60(2), Florida Statutes, is incorrect.**

OFR CHANGES:

- The Office will file a Notice of Change in the FAR making this change from December 17, 2015 to December 17, 2014.
- The Office will file a Notice of Change referencing Exhibit A in this subsection and re-lettering the subsequent paragraphs. Will now read “(b) If a partnership, sole proprietorship or corporation, a completed Exhibit A, effective _____, which is hereby incorporated by reference and available by mail from the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376 or available at <http://www.flrules.org>.”
- The Office will file a Notice of Change citing to the corrected provision of 120.60(1), F.S.

OFR's Unilateral Changes to Rule 69V-180.020

- Rule 69V-180.020(1)(c), removed the requirement for certified payment of the \$500 registration fee for commercial collection agencies, so the Office also removed the word “certified” from the commercial collection agency registration form (OFR-COM-101) to conform to the new rule language.
- The Office amended Rule 69V-180.020 to note that exhibit A, the surety bond form, the registration as consumer collection form, and the consumer complaint form are available at www.flrules.org.

Changes that will be filed as a Notice of Change in the FAR

These changes are made in response to a proposed objection by the Joint Administrative Procedures Committee.

69V-180.020 Commercial Collection Registration Form and Procedures.

(1) No change.

(a) No change.

(b) If a partnership, sole proprietorship or corporation, a completed Exhibit A, effective _____, which is hereby incorporated by reference and available by mail from the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376 or available at <http://www.flrules.org>.

(~~c~~) A non-refundable registration fee of \$500 for the annual registration period beginning January 1 of each calendar year or any part thereof.

(~~e~~) Evidence of a current surety bond in the amount of \$50,000 as required in Rule 69V-180.010(1), F.A.C.

(2) Request for Additional Information. An incomplete registration form shall not be considered as validly received. A request for additional information will be made by the Office of Financial Regulation within thirty (30) days after initial receipt of the incomplete registration form by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within forty-five (45) days from the date of request. Failure to respond to the request within forty-five (45) days from the date of request shall be construed by the Office of Financial Regulation as grounds for rejection of the registration for failure to complete the registration and the registration shall be rejected pursuant to Section 120.60(~~1~~2), F.S.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: December 17, ~~2014~~2015

The remainder of the rule reads as previously published.

Rule 69V-180.030

(Consumer Collection Registration Form and Procedures)

Proposed Amendment

- The Office proposes to amend this rule to amend an obsolete rulemaking authority reference in the current rule, to update a form number and date reference, to correct the reference to the Office's zip code, to delete a requirement that the registration fee be paid in certified funds, and to add a provision regarding the fingerprints of applicants to conform to statutory changes.

Changes to Rule 69V-180.030

JAPC's Comments:

- 69V-180.030.: For this section, please review whether section 559.551, Florida Statutes, is correctly cited as a law implemented and whether section 559.730 should be cited as a law implemented.

OFR's Responses:

- Section 559.551, F.S. was incorrectly cited and should have been cited as Section 559.5551, F.S. instead.
- Section 559.730 should not be cited as law implemented, as section 559.730 relates to grounds for disciplinary action and subsequent administrative penalties, rather than consumer collection registration forms and procedures as set forth in rule 69V-180.030.

Changes that will be filed as a Notice of Change in the FAR

These changes are made in response to a proposed objection by the Joint Administrative Procedures Committee.

69V-180.030 Consumer Collection Registration Form and Procedures.

Rulemaking Authority 559.554, 559.555, 559.5551 FS. Law Implemented, ~~559.554~~, 559.5551, 559.553, 559.555 FS. History—New 2-15-94, Formerly 3D-180.030, Amended _____.

The remainder of the rule reads as previously published.

Rule 69V-180.031

(Consumer Collection Agency Electronic Filing of Forms and Fees)

Proposed New Rule

- The Office proposes to adopt a new rule to specify that the required electronic filing of the registration form adopted under subparagraph 69V-180.002(1)(b)1., F.A.C., and payment of fees under Rule 69V-180.030, F.A.C., are to be submitted through the REAL System.

Changes to Rule 69V-180.031

JAPC's Comments:

- **Notice of Proposed Rules:**
The date indicated that the notice of proposed rule development was published is incorrect. The notice was published on December 17, 2014. Please publish a corrective notice.

OFR's Responses:

- The Office will publish a Notice of Change reflecting the correct date of December 17, 2014, instead of December 17, 2015.

Changes that will be filed as a Notice of Change in the FAR

These changes are made in response to a proposed objection by the Joint Administrative Procedures Committee

DATE NOTICE OF PROPOSED RULE
DEVELOPMENT PUBLISHED IN FAR:
December 17, 2014~~2015~~

The remainder of the rule reads as previously published.

Rule 69V-180.032

(Effect of Law Enforcement Records on Applications for Consumer Collection Agency Registration)

Proposed New Rule

- The Office proposes to adopt a new rule to implement statutory requirements under Sections 559.554 and 559.730, Florida Statutes. The rule would specify the procedures to be followed and the documents to be provided to the Office by an applicant for Consumer Collection Agency Registration in disclosing any pending criminal charges and all criminal matters in which a control person of the applicant has pled guilty or nolo contendere, or was convicted or found guilty. The proposed new rule would also specify the classification of crimes by the Office, the specification of time periods for which an applicant is disqualified from registration with the Office based upon the classification of crimes, the effect of multiple crimes on the disqualifying period, and the aggravating and mitigating factors to be considered by the Office in determining the period of disqualification from registration.

Changes to Rule 69V-180.032

JAPC's Comments:

- **69V-180.032:** It appears that section 559.5551, Florida Statutes, should be cited as a law implemented as opposed to providing rulemaking authority.
- **69V-180.032(2):** In this section it appears that the reference to “paragraphs 16, 17, and 18” should be to subsections (15), (16), and (17).
- **69V-180.032(4)(a):** In this section, it appears that the reference to “subsections 16, 17, and 18” should be to subsections (15), (16), and (17).

OFB's Responses:

- The Office will file Notices of Change in the FAR to reflect these changes.

Office's Unilateral Changes to Rule 69V-180.032

- The Office noticed that 69V-180.032(7)(a)1., F.A.C., should be amended to read “One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the control person of the applicant would pose no significant threat to public welfare if registered as a Consumer Collection Agency.”

Changes that will be filed as a Notice of Change in the FAR

These changes are made in response to a proposed objection by the Joint Administrative Procedures Committee and at a public hearing held on the rule on July 6, 2015.

69V-180.032 Effect of Law Enforcement Records on Applications for Consumer Collection Agency Registration.

(2) General Procedure Regarding Law Enforcement Records. At the time of submitting an Application for Registration as a Consumer Collection Agency, Form OFR-559-101, which is incorporated by reference in Rule 69V-180.002(1)(b)1, F.A.C., the applicant shall disclose on the application form any pending criminal charges and all criminal matters in which a control person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of any crime. The applicant shall supply the Office with required documentation for each control person, as specified in this rule, relating to: 1) all criminal matters in which the control person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a class "A", "B", or "C" crime as described in paragraphs 15, 16, and 17 ~~16, 17, and 18~~ of this rule, 2) any pending criminal charges for a control person relating to a class "A", "B", or "C" crime as described in this rule, or 3) evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:

(4) Classification of Crimes.

(a) The Office makes a general classification of crimes into three classes: A, B and C, as listed in subsections (15), (16), and (17) ~~(16), (17) and (18)~~ of this rule.

(7) No change.

(a) No change.

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

Rulemaking Authority 559.554, 559.555, ~~559.5551~~, FS. Law Implemented 559.554(2)(b), 559.5551, 559.730 FS. History – New _____.

Rule 69V-180.040

(Consumer Collection Agency Complaint Form and
Procedures)

Proposed Amendment

- The Office proposes to amend this rule to amend an obsolete rulemaking authority reference in the current rule, and to update a form title, form number, and date reference in the current rule.

Changes to Rule 69V-180.040

- NO CHANGES TO RULE REQUESTED BY JAPC!

Rule 69V-180.070

(Consumer Collection Agency Registration Renewal)

Proposed New Rule

- The Office proposes to adopt a new rule to specify the renewal requirements for registrations that expire on December 31, 2014, specifically, the non-refundable renewal fee to be submitted by a registrant, the procedures to be followed by registrants in submitting fingerprints for each control person prior to the registration renewal, to establish a deadline for registrants to respond to the Office with additional information, and to provide that a registration will automatically expire if the registrant does not respond to the Office by the deadline. The proposed new rule also specifies the renewal requirements for registrations expiring on December 31, 2015, and thereafter, specifically, the non-refundable renewal fee to be submitted by a registrant, and the non-refundable fee to be submitted by a registrant to cover the costs in retaining the fingerprints of each control person. The proposed new rule states that failure to remit the fees required by the expiration date for registrations expiring on December 31, 2015, and thereafter will automatically result in expiration of the registration

Changes to Rule 69V-180.070

- NO CHANGES TO RULE REQUESTED BY JAPC

Rule 69V-180.100

(Guidelines for Imposing Administrative Penalties) Proposed Amendment

The Office proposes to amend this rule to change the title of the rule; to amend an obsolete rulemaking authority reference; to update a statutory reference in the rule; to both adopt and incorporate by reference into the rule, the “Office of Financial Regulation, Division of Consumer Finance, Disciplinary Guidelines for Consumer Collection Agencies” document; to specify how a copy of the “Office of Financial Regulation, Division of Consumer Finance, Disciplinary Guidelines for Consumer Collection Agencies” document may be obtained from the Office; to amend language in the current rule regarding references to guidelines, violations, and citations numbers; to delete requirements from the current rule; and to clarify the use of the term “citation” in the proposed rule. The proposed rule also clarifies what actions the Office may take against a registrant based upon the “Office of Financial Regulation, Division of Consumer Finance, Disciplinary Guidelines for Consumer Collection Agencies,” and specifies the mitigating and aggravating factors the Office shall consider in determining the appropriate penalty. The proposed rule further clarifies the current ranges for administrative fines to be imposed by the Office as a penalty, and specifies the ranges for suspensions to be imposed by the Office as a penalty.

Changes to Rule 69V-180.100

JAPC Comments:

- 69V-180.100(1): Please ensure that the effective date of the incorporated material is included in the rule text prior to adoption.
- 69V-180.100(3)(a)5.: How does the Office intend to determine whether a registrant has provided “substantial assistance” for purposes of mitigation? Please be aware that pursuant to section 120.52(8), Florida Statutes, a rule that is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency is an invalid exercise of legislative authority.

OFR’s Revisions

- Office will file a Notice of Change to reflect the effective date for the Disciplinary Guidelines for Consumer Collection Agencies.
- The Office has revised the language found in that specific subsection. The subsection now reads, “If the registrant was cooperative with the Office in its examination or investigation of the underlying misconduct; “

OFR's Unilateral Changes to Rule 69V-180.100(1)

- Rule 69V-180.100(1), references a Disciplinary Matrix, we changed row 28 of the matrix to reflect the exact language as found in 559.730(1)(b).
- Fraud, misrepresentation, deceit, negligence, or incompetence in a collection transaction ~~concealment, or dishonest dealing by trick, scheme, or device, culpable negligence; breach of trust in a business transaction in any state, nation, or territory; or aiding, assisting, or conspiring with another person engaged in such misconduct and in furtherance thereof.~~

Changes that will be filed as a Notice of Change in the FAR

These changes are made in response to a proposed objection by the Joint Administrative Procedures Committee and at a public hearing held on the rule on July 6, 2015.

69V-180.100 Disciplinary Guidelines.

(1) Pursuant to Section 559.730(7), F.S., guidelines applicable to each ground for disciplinary action that may be imposed by the Office against a person for a violation of Part VI, Chapter 559, F.S. are hereby adopted. The disciplinary guidelines are contained in “Office of Financial Regulation, Division of Consumer Finance, Disciplinary Guidelines for Consumer Collection Agencies”, which is hereby incorporated by reference, effective MM/DD/YYYY. A copy of the disciplinary guidelines is available on the Office’s website at www.flofr.com, ~~and~~ by mail from the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376 and at <http://www.flrules.org>. In determining an appropriate penalty within the range of penalties prescribed in the guidelines for each violation as based upon the citation number, the Office shall consider subsection (2) and (3). For the purpose of this rule and the guidelines, the term “citation” means any written notice provided to and received by the registrant that specifies a violation of Chapter 559, F.S., or any rule promulgated under that chapter.

(3) No change.

a. No Change.

5. If the registrant was cooperative with ~~provided substantial assistance to~~ the Office in its examination or investigation of the underlying misconduct; or

The remainder of the rule reads as previously published.

QUESTIONS???? OR COMMENTS!!!

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