

The Florida

Dietetics Nutrition Practice Council

Minutes

September 11, 2015

Telephone Conference Call

1-888-670-3525

Participant Code 7811783909#

Peggy Cooper, MS, RD, LDN
Chair

Jackie Shank, MS, RD, LDN
Vice Chair

Minutes

**DRAFT
DEPARTMENT OF HEALTH
DIETETICS AND NUTRITION PRACTICE COUNCIL
GENERAL BUSINESS MEETING
SEPTEMBER 11, 2015
AGENDA**

9:30 a.m. EST

Call to order – General Business Meeting

Ms. Cooper called the meeting to order at 9:31 a.m. Ms. Adams conducted roll call.

MEMBERS PRESENT

Peggy Cooper, MS, RD, LDN, Chair
Jackie Shank, MS, RD, LDN, Vice-Chair
Sheah Rarback, MS, RD, LDN
Linda Gammon, LNC
Linda Rex

STAFF PRESENT

Diane Guillemette, Assistant Attorney General
Allen Hall, Executive Director
Katrina Adams, Regulatory Supervisor/Consultant

WIC OFFICE

Nancy Spyker, MS, RD, LDN

OTHERS

Judy Stone, MS, CNS

ADMINISTRATIVE PROCEEDINGS

RULES REVIEW AND/OR DEVELOPMENT

TAB 1 Rules Review

64B8-41.001 Fees

Following discussion, the Council took the following action.

Ms. Cooper made a motion to open rule 64B8-41.001 for development. Ms. Rarback seconded the motion, which carried 5/0.

Ms. Cooper made a motion to forward the recommended language to the Board of Medicine for approval. Ms. Gammon seconded the motion, which carried 5/0.

These votes are the approval of this language.

The language reads as follow:

- (1) The application fee for licensure is ~~shall be~~ \$80.00.
- (2) The endorsement fee for an applicant seeking licensure by endorsement is ~~shall be~~ \$75.00.
- (3) The fee for a temporary permit is ~~shall be~~ \$50.00.
- (4) The fee for initial licensure shall be \$80.00. The Department of Health assesses an additional fee of \$5.00, payable at the time of initial licensure, for the fund to combat unlicensed activity pursuant to Section 456.065, F.S.
- (5) The initial retired license fee is ~~shall be~~ \$50.00.

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~~(6) When the Council certifies the applicant to sit for the examination or for re-examination, it is the applicant's responsibility to complete the examination process with the national vendor. In compliance with the Americans for Disabilities Act, any applicant requesting special accommodations shall comply with the Department of Health's Rule 64B-1.005, F.A.C.~~

~~(6) (7) The biennial renewal fee shall be \$95.00. The Department of Health assesses an additional fee of \$5.00, payable at the time of each biennial renewal, for the fund to combat unlicensed activity pursuant to Section 456.065, F.S.~~

~~(7) (8) The reactivation fee for inactive licenses is shall be \$50.00.~~

~~(8) (9) A fee of \$100.00 shall be paid to remove a license from delinquent status.~~

~~(9) (10) The fee for renewal of inactive status is shall be \$95.00. The Department of Health assesses an additional fee of \$5.00, payable at the time of each biennial renewal, for the fund to combat unlicensed activity pursuant to Section 456.065, F.S.~~

~~(10) (11) The change of status processing fee is shall be \$50.00.~~

~~(11) The fee for a duplicate license shall be \$25.00.~~

~~(12) The fee for a certified public record is \$25.00.~~

64B8-41.002 Duplicate License Fee and 64B8-41.003 Certification of Public Records

Following discussion, the Council took the following action.

Ms. Cooper move to repeal rules 64B8-41.002 and 64B8-41.003 and forward the rules to the Board of Medicine for approval. Ms. Rarback seconded the motion, which carried 5/0.

These votes are the approval of these languages.

The language reads as follow:

64B8-41.002

~~If a licensee wishes to request the Board or the Department to provide a duplicate license for replacement of a lost or destroyed license, the Board will issue the duplicate if the request is in writing and accompanied by a payment of \$25.~~

64B8-41.003

~~Any person desiring certification of any Board documents from the custodian of records as official public records shall submit that request along with a certification fee of \$25. Normal duplicating fees shall also apply.~~

64B8-42.002(6) Licensure by Examination

Following discussion, the Council took the following action.

Ms. Cooper moved to open rule 64B8-42.002(6) for development. Ms. Rarback seconded the motion, which carried 5/0.

Ms. Cooper made a motion to send rule 64B8-42.002(6) to the Board of Medicine for approval. Ms. Shank seconded the motion, which carried 5/0.

These votes are the approval of this language.

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The language reads as follow:

(1) Every applicant for certification by examination shall file the Application for Dietitian/Nutritionist Licensure, DOH Form DH-MQA 1161, ND APP, Rev. 07/2012, incorporated by reference, which can be accessed at www.doh.state.fl.us/mqa, or at <https://www.flrules.org/Gateway/reference.asp?No=Ref-02317> and demonstrate to the Council that he or she meets one of the following:

(a)1. Has a baccalaureate or post baccalaureate degree with a major in human nutrition, food and nutrition, dietetics, food management or equivalent major as determined by the Council from a school or program accredited by the appropriate accrediting agency recognized by the Council on Post-secondary Accreditation or its successor and the United States Department of Education and

2. Has completed 900 hours of planned and continuous supervised practice in dietetics or nutrition, or has education or experience determined to be equivalent by the Council as described in subsection (3); or

(b)1. Has an academic degree with a major course of study in human nutrition, food and nutrition, dietetics, or food management from a foreign country, provided that degree has been validated by an accrediting agency approved by the U.S. Department of Education as equivalent to the baccalaureate or post baccalaureate degree conferred by a regionally accredited college or university in the United States; and

2. Has completed 900 hours of planned and continuous supervised practice in dietetics or nutrition, or has education or experience determined to be equivalent by the Council as described in subsection (3).

(2) An equivalent major as mentioned in subparagraph 64B8-42.002(1)(a)1., F.A.C., shall be a course of study specially designed to prepare an individual to integrate and apply principles of nutrition under varying conditions of health, social, physical, psychological, and economic status to the appropriate care, nourishment and education of individuals or groups throughout the life cycle. Any major must include at least thirty semester hours covering human nutrition, nutrition in health and disease, nutrition education and counseling, food science, nutrition in the community, and administration of food service or nutrition programs.

(3) A documented and planned supervised practice experience component in dietetic and nutrition practice of not less than 900 hours shall provide the applicant with a broad spectrum of experiences in dietetics and nutrition. Such practice shall include:

(a) A minimum of 200 hours in Clinical Nutrition (generally acquired in a hospital or other acute care setting). Examples of clinical nutrition practical experience are as follows:

1. Assessment of nutritional status for both complex and uncomplicated medical conditions,
2. Design and implementation of nutrition care plans,
3. Application of medical nutrition therapy for treatment of disease and trauma,
4. Selection, implementation and evaluation of enteral and parenteral nutrition regimens,
5. Counseling and nutrition education of patients on dietary modifications, including techniques that demonstrate integration of theoretical training, psychological and behavioral aspects of interpersonal relationships, documentation of appropriate interventions, and proper decision-making,

6. Performance of basic physical assessments, and
7. Quality assurance.

(b) A minimum of 200 hours in Community Nutrition (generally acquired within a community or public health program or HMO). Examples of Community Nutrition practical experience are as follows:

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1. Screening/assessment of nutritional status of the population or community group, including counseling techniques that demonstrate integration of theoretical training, psychological and behavioral aspects of interpersonal relationships, documentation of appropriate interventions, and proper decision-making.

2. Provision of nutritional care for people of diverse cultures and religions across the lifespan,

3. Development, evaluation or implementation of community – based health promotion program(s),

4. Nutrition surveillance and monitoring of the population or community group,

5. General health assessment, e.g. blood pressure and vital signs,

6. Development and review of educational materials for the target population, and

7. Development of food and nutrition policy for the population or community group.

(c) A minimum of 200 hours in Food Service Systems Management (generally acquired in an institutional or commercial setting). Examples of Food Service Systems Management practical experience are as follows:

1. Menu planning for target populations to meet nutritional guidelines and special dietary needs,

2. Development or modification of recipes or formulas,

3. Purchasing, production and delivery of food in the institutional or commercial setting,

4. Food safety and sanitation,

5. Budgeting,

6. Performance improvement and quality control; customer satisfaction,

7. Marketing,

8. Selection, operation and care of equipment; design and re-design of work units, and

9. Employee training and supervision; human resource functions.

(4) The supervisor/preceptor of the supervised practice experience shall be a dietitian/nutritionist licensed under Part X, Chapter 468, F.S., or equivalently prepared, if supervised practice was in another jurisdiction. Although many dietetics and nutrition programs include the 900 hour component in their baccalaureate or post graduate training, the Council will recognize an individual preceptorship when the following requirements are met:

(a) The student has met the academic requirements of Section 468.509(2)(a)1., (b)1., or (b)2., F.S.;

(b) The supervisor/preceptor meets the requirement of this rule;

(c) The supervisor/preceptor shall provide written objectives and a planned experience component that meets the requirements of this rule prior to the student beginning the preceptorship;

(d) The preceptor shall be available to the student at all time the student is performing dietetics and nutrition services for patients.

(5) The examination to be used for licensure is the Registration Examination for Dietitians from the Commission on Dietetic Registration. The number of test questions each examinee answers correctly shall be transferred to a scale that ranges from 1 to 50 with a minimum passing score being a scaled score of 25.

(6) When the Council certifies the applicant to sit for the examination or for re-examination, it is the applicant's responsibility to complete the examination process with the national vendor. In compliance with the Americans for Disabilities Act, any applicant requesting special accommodations shall comply with the Department of Health's Rule 64B-1.005, F.A.C.

64B8-44.002 Fraudulent, False, Deceptive or Misleading Advertising

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Following discussion, the Council took the following action.

Ms. Cooper moved to open rule 64B8-44.002 for development. Ms. Rarback seconded the motion, which carried 5/0.

Ms. Cooper made a motion to send rule 64B8-44.002 to the Board of Medicine for approval. Ms. Gammon seconded the motion, which carried 5/0.

These votes are the approval of this language.

The language reads as follow:

~~(1) The Board permits the dissemination to the public of legitimate information, in accordance with the Board's rules, regarding dietetics and nutrition practice, and where and from whom such services may be obtained so long as information is in no way fraudulent, false, deceptive or misleading.~~

(2) "Advertisement" or "advertising" shall mean any written or oral statements to or before the public with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services.

(3) Any advertisement or advertising shall be deemed by the Board to be fraudulent, false, deceptive, or misleading if it:

(a) Contains a misrepresentation of facts; or

(b) Makes only a partial disclosure of relevant facts; or

(c) Creates false or unjustified expectations of beneficial assistance; or

(d) Represents that professional services can or will be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or

(e) Appears in any classified directory, listing, or compendium under a heading, which when considered together with the advertisement, has the capacity or tendency to be deceptive or misleading with respect to the profession or professional status of the licensee; or

(f) Contains any representation of a special area of practice by the licensee which implies that the licensee requires a superior license or formal recognition by the Board to that granted other dietitian/nutritionists or nutrition counselors who meet the licensing requirements of the Dietetics and Nutrition Practice Act; or

(g) States or implies the licensee is a specialist in any aspect of dietetics/nutrition practice or nutrition counseling unless the person has completed post-baccalaureate training in the recognized speciality field including internship, fellowship or alternative training requirements. The licensee may indicate the services offered and may state that the practice is limited to one or more types of services when this is the case; or

(h) States or implies that the licensee has been certified as a specialist in any aspect of the practice of nutrition unless he or she has received such certification, meets the training requirements, includes the name of the certifying agency in any statement or advertisement claiming certification, and the certifying agency meets the following criteria:

1. The organization has been granted Section 501(c) status under the Internal Revenue Code.

2. The organization shall have full time administrative staff, housed in dedicated office space which is appropriate for the organization's program.

3. The organization shall have bylaws, a code of ethics to guide the practice to its members, an internal review and control process, including budgetary practices and quality assurance

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management to ensure effective education, training or testing standards.

4. The organization shall be national in scope with a central purpose being protecting the health and safety of the public.

5. The certifying organization shall be able to demonstrate adequate procedures to ensure that its examination is of sufficient breadth and scope to cover the speciality field; that the exams and answers are adequately secured; that prior to testing it established a standard grading system with pass/fail standards of acceptable psychometric validity and reliability; that exam proctoring shall be done by independent proctors, at a minimum, members of the certification board not related to, in practice or association with, or having a financial interest in the applicant being tested; and that the grant or denial of certification is based on objective performance, skill, knowledge and merit of the candidate.

6. The organization has an interest in the continuing proficiency of its members by requiring periodic recertification and documentation of continuing professional education hours as well as continued practice in the field of certification. These speciality fields include the American Diabetic Association Certified Diabetic Educators, persons certified by the American Society of Parenteral and Enteral Nutrition; and a fellow of the American Society of Clinical Nutrition.

(i) Makes false, unproven, or misleading claims about the validity, safety, or effectiveness of any dietetic or nutrition related service, product or test; or

(j) Fails to conspicuously identify the licensee by name in the advertisement; or

(k) Contains any other representation, statement, or claim which misleads or deceives.

(4) Any licensee who advertises in the electronic media must insure that an exact copy of the audio tape or video tape, as applicable, is maintained and preserved for at least 90 days from the date the actual advertisement is aired on or shown through the electronic media.

64B8-44.003 Disciplinary Guidelines

Following discussion, the Council took the following action.

Ms. Cooper move to open rule 64B8-44.003 for development. Ms. Rarback seconded the motion, which carried 5/0.

Ms. Cooper made a motion to delete rule 64B-44.003(6) and (7) and to send language to the Board of Medicine for approval. Ms. Shank seconded the motion with carried 5/0.

These votes are the approval of this language.

The language reads as follow:

(1) through (5) no change.

~~(6) Letters of Guidance. The provisions of this rule cannot and shall not be construed to limit the authority of the probable cause panel of the Board to direct the Department to send a letter of guidance, in any case for which it finds such action appropriate. A letter of guidance may be issued to a licensee in lieu of a finding of probable cause, pursuant to Section 456.073(4), F.S.; however, the Department shall not recommend a letter of guidance in lieu of finding probable cause if the subject has already been issued a letter of guidance for a related offense.~~

~~(7) Other Action. The provisions of this rule are not intended to and shall not be construed to limit the ability of the Board to pursue or recommend that the Department pursue collateral civil or criminal actions when appropriate. A letter of guidance may be issued to a licensee in lieu of a finding of probable cause, pursuant to Section 456.073(4), F.S.; however, the Department shall not recommend a letter of guidance in lieu of finding probable cause if the subject has~~

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~~already been issued a letter of guidance for a related offense.~~

64B8-44.006 HIV/AIDS: Knowledge of Antibody Status, Action to be Taken

Following discussion, the Council took the following action.

Ms. Cooper move to repeal rule 64B8-44.006 and forward the language to the Board of Medicine for approval. Ms. Rarback seconded the motion, which carried 5/0.

These votes are the approval of this language.

The language reads as follow:

~~The Board of Medicine strongly urges all licensees under its jurisdiction who are involved in invasive procedures to undergo testing to determine their HIV status. In the event a licensee tests positive, the licensee must enter and comply with the requirements of the Professionals Resource Network.~~

64B8-44.007 Standards of Practice

Following discussion, the Council took the following action.

Ms. Cooper move to open rule 64B8-44.007 for development. Ms. Rarback seconded the motion, which carried 5/0.

Ms. Cooper made a motion to send rule 64B-44.007 to the Board of Medicine for approval. Ms. Gammon seconded the motion, which carried 5/0.

These votes are the approval of this language.

The language reads as follow:

Licensees, under Chapter 468, Part X, F.S., shall comply with the following standards in their professional practice and conduct, ~~which reflect the ethical principles of the dietetic/nutrition professional and outline obligations of the licensee to self, client, society and the profession.~~

~~(1) The licensee shall provide professional service with objectivity and with respect for the unique needs and values of individuals.~~

~~(2) The licensee shall avoid discrimination against individuals on the basis of race, creed, religion, sex, age, national origin or handicap.~~

~~(3) The licensee shall practice dietetics and nutrition counseling without treating or undertaking to treat human ailments by means other than by dietetics and nutrition practice.~~

~~(4) The licensee shall assume responsibility and accountability for personal competence in practice.~~

~~(5) The licensee shall inform the public and colleagues of services by use of factual information and shall not advertise in a misleading manner or in violation of the requirements of Section 456.072(1)(t), F.S.~~

~~(6) The licensee shall promote or endorse products only in a manner that is true and not misleading.~~

~~(7) The licensee shall not make any false or misleading claims about the efficacy of any dietetic/nutrition, nutrition counseling services, or weight control services.~~

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~~(1) (8)~~ The licensee shall maintain confidentiality of information.

~~(2) (9)~~ The licensee shall recognize and exercise professional judgement within the limits of the licensee's qualifications and seek counsel or make referrals as appropriate.

~~(3) (10)~~ The licensee shall take reasonable action to inform a patient's physician or encourage the patient to consult the physician where a patient's nutritional status indicated a change in health status or new information about the health status has surfaced. This shall be documented in the patient's record.

~~(11)~~ The licensee shall provide sufficient information to enable patients to make their own informed decisions.

~~(12)~~ The licensee shall present substantiated information and interpret controversial information without personal bias, recognizing that legitimate differences of opinion exist.

~~(4)~~ The licensee shall accurately present professional qualifications and credentials. ~~-(a)~~ The licensee shall use "LD", "LN", or "LNC" only when licensure is current and authorized by the Council Board, and Department.

~~(b)~~ The licensee or applicant shall provide accurate information and comply with all requirements of the Council, Board, or Department when seeking initial or continued licensure.

~~(c)~~ The licensee shall not provide false or misleading information to an employer, the public, or a patient regarding the status of licensure, professional qualifications, or educational credentials.

~~(14)~~ The licensee shall not aid another person in violating any Florida laws or rules relating to dietetics or nutrition practice, aid another person in representing that person as an "LD", "LN", or "LNC" when the person is not licensed by this Council, or impersonate or act as proxy for an applicant in any examination for registration, licensure, or specialization.

~~(5) (15)~~ The licensee shall permit use of that licensee's name to certify that professional services have been rendered only if the licensee has provided or supervised those services.

~~(6)~~ The licensee shall be responsible for all delegated acts performed by persons under either direct or indirect supervision. Direct supervision means the licensee oversees the activities of those persons and gives final approval to any procedures by non-licensed supportive personnel. Direct supervision means on-site supervision.

~~(7)~~ Licensees shall not maintain clinical laboratories or collect or order analysis of any human specimen sample unless they also hold licensure as designated practitioners defined by Section 483.035(1) or 483.041(6), F.S.

~~(8)~~ Any modality such as naturopathy or colonic irrigation shall be performed only if the individual is properly licensed by the Department. These practices are not within the scope of dietetics/nutrition practice.

~~(16)~~ When providing direct supervision to a student, trainee, temporary licensee, or person aiding the practice of dietetics/ nutrition, the licensee shall assume responsibility for the supervision in a manner which protects the public.

~~(17)~~ The licensee shall comply with any final order relating to the licensee which is issued by the Council of the Board.

~~(18)~~ The licensee shall not interfere with an investigation of disciplinary proceeding by willful misrepresentation of facts to the Council, Board, or Department or by the use of threats or harassment against any person.

~~(19)~~ The licensee should voluntarily withdraw from professional practice and notify the Council under the following circumstances:

~~(a)~~ The licensee has engaged in any substance abuse that could affect practice in a manner that could harm the patient.

~~(b)~~ The licensee has been adjudged by a court to be mentally incompetent.

~~(c)~~ The licensee has an emotional, physical or mental disability that affects practice in a

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manner that could harm the patient.

~~(20) The licensee complies with all applicable laws and regulations concerning the profession. The licensee should voluntarily withdraw from professional practice, notify the Council, Board or Department and be subject to disciplinary actions under the following circumstances:~~

~~(a) The licensee has been convicted of a crime under the laws of the United States which is a felony or a misdemeanor, an essential element of which is dishonesty and which is related to the practice of the profession.~~

~~(b) The licensee has been disciplined by a state and at least one of the grounds for the discipline is the same or substantially equivalent to these rules.~~

~~(c) The licensee has committed an act of misfeasance, or malfeasance which is directly related to the practice of the profession as determined by a court of competent jurisdiction, a licensing board, or an agency of a governmental body.~~

(9) ~~(21)~~ The licensee's initial nutritional assessment of a patient must be done in a face-to-face setting, and may not be done by telephone, fax, or internet, except through use of a two point or multiple point video-conferencing system to provide each participant with a video camera, microphone and speakers which allow video and audio communication between all participants as if they were virtually seated in the same room. Communication between the patient and the licensee subsequent to the initial nutritional assessment may be accomplished either face-to-face or by other means, in the reasonable clinical judgment of the licensee. Federal programs that are federally funded are exempt from this subsection, so long as the administration of the program follows the dictates of the federal statutes and rules applicable to the program.

64B8-44.008 Performance of Delegated Tasks to Non-Licensed Personnel

Following discussion, the Council took the following action.

Ms. Cooper move to repeal rules 64B8-44.008 and 64B8-44.009 and forward to the Board of Medicine for approval. Ms. Shank seconded the motion, which carried 5/0.

These votes are the approval of these languages.

The language reads as follow:

~~(1) The licensee shall be responsible for all delegated acts performed by persons under either direct or indirect supervision.~~

~~(2) Direct supervision means the licensee oversees the activities of those persons and gives final approval to any procedures by non-licensed supportive personnel. Direct supervision means on-site supervision.~~

64B8-44.009 Unauthorized Treatments

~~(1) Licensees shall not maintain clinical laboratories or collect or order analysis of any human specimen sample unless they also hold licensure as designated practitioners defined by Section 483.035(1) or 483.041(6), F.S.~~

~~(2) Any modality such as naturopathy or colonic irrigation shall be performed only if the individual is properly licensed by the Department. These practices are not within the scope of dietetics/nutrition practice.~~

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TAB 2 Annual Regulatory Plan

Section 120.74 requires that each Board/Council file an Annual Plan Regulatory. The Statute was amended by House Bill 7023 and became effective June 1, 2015. One effect of the amendment was to index the plan according to “law implemented” rather than by “rule” as it was last year.

Dietetics and Nutrition Practice Council 2015-2016 Annual Regulatory Plan

Section 120.74(1)(a)

Law enacted or amended on or after October 1, 2014 which creates or modifies the duties or authority of the Dietetics and Nutrition Practice Council	Must agency adopt rules to implement the law?	If rulemaking is necessary, has Notice of Rule Development been published? If yes, provide the Florida Administrative Register citation	The date by which the Notice of Proposed Rule is intended to be published	If rulemaking is not necessary, provide a concise explanation
468.503(5)	Yes	Vol. 41/167	10/30/2015	N/A
468.505(4)	No			Further elaboration of statutory language not necessary
468.509(3)	Yes	Vol. 41/104	07/07/2015	
468.516(3)	Yes	Vol. 41/104	10/30/2015	

Section 120.74(1)(b)

Laws not listed pursuant to section 120.74(1)(a) for which the Dietetics and Nutrition Practice Council expects to implement by rulemaking by July 1, 2016, except emergency rulemaking.	Intent of the rulemaking.
None	

Section 120.74(1)(c)

Laws identified in the Dietetics and Nutrition Practice Council’s last year’s annual regulatory plan as requiring rulemaking for which Notice of Proposed Rule has not been issued.	Has a Notice of Rule Development been published? If yes, provide the Florida Administrative Register citation.	If agency subsequently determined that rulemaking is not necessary, provide a concise explanation.
None		

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Following discussion, the Council took the following action.

Ms. Cooper moved to approve the Annual Regulatory Plan. Ms. Gammon seconded the motion, which carried 5/0.

Ms. Cooper moved that the amendment and repeals for the rules of this meeting would not have an adverse impact on small business. Ms. Cooper moved that the proposed changes would not be likely to directly or indirectly increase regulatory cost to any entity (including government) in excess of \$200,000 in the aggregate in Florida within 1 year after implementation of the rules. Ms. Shank seconded the motion, which carried 5/0.

The meeting adjourned at 10:30 a.m.

Participants in this public meeting should be aware that these proceedings are being recorded and that an audio file of the meeting will be posted to the council's website.