

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Adoption of Rule 25-30.060,
 F.A.C., Application for Exemption
 from Regulation.

) DOCKET NO. 910919-WS
) ORDER NO. 25504
) ISSUED: 12/18/91
)

NOTICE OF ADOPTION OF RULE

NOTICE is hereby given that the Commission, pursuant to section 120.54, Florida Statutes, has adopted Rule 25-30.060, F.A.C., relating to application for exemption from regulation as a water and wastewater utility or nonjurisdictional finding.

The rule was filed with the Department of State on December 16, 1991 and will be effective on January 5, 1992. A copy of the relevant portions of the certification filed with the Secretary of State is attached to this Notice.

This docket is closed upon issuance of this notice.

By direction of the Florida Public Service Commission, this
18th day of DECEMBER, 1991.

 STEVE TRIBBLE, Director
 Division of Records & Reporting

(S E A L)

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by: Kay Flynn
 Chief, Bureau of Records

DOCUMENT NUMBER-DATE
 12500 DEC 18 1991

CERTIFICATION OF
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES
FILED WITH THE
DEPARTMENT OF STATE

I do hereby certify:

(1) The time limitations prescribed by paragraph 120.54(11)(a), F.S., have been complied with; and

(2) There is no administrative determination under section 120.54(4), 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 paragraph 120.54(11)(b), F.S. They are filed not less than 28 days after the notice required by subsection 120.54(1), F.S., and;

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

(b) Are filed not more than 90 days after the notice not including days an administrative determination was pending; or

(c) Are filed within 21 days after the adjournment of the final public hearing on the rule; or

(d) Are filed within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(e) Are filed within 21 days after the date the transcript was received by this agency.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the

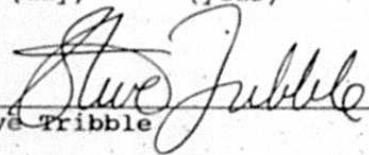
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undersigned agency by and upon their filing with the Department of State.

<u>Rule No.</u>	<u>Rulemaking Authority</u>	<u>Specific Law Being Implemented, Interpreted or Made Specific</u>
25-30.060	367.121(1)	367.021, 367.022, 367.031

Under the provisions of paragraph 120.54(13)(a), 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)



Steve Tribble

Director, Division of Records & Reporting
Title

Number of Pages Certified

(S E A L)

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Rule 25-30.060
Docket No. 910919-WS

SUMMARY OF RULE

Rule 25-30.060 prescribes the requirements for application for exemption from regulation for the provision of certain water and wastewater services or for a finding by the Commission that a water or wastewater activity is not subject to its jurisdiction.

SUMMARY OF HEARINGS ON THE RULE

No hearing was requested and none was held.

FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

It is necessary to adopt a rule codifying the Public Service Commission's (Commission) practice and orders that implement the provisions of sections 367.021(12), 367.022, and 367.031, Florida Statutes. Section 367.022 lists nine water or wastewater services that are exempt from regulation by the Commission, and, under the definition of "utility" in section 367.021(12), a water or wastewater system that provides service without compensation is not subject to regulation by the Commission. Although not subject to PSC regulation, some of these systems must obtain permits from the Department of Environmental Regulation (DER). Section 367.031, F.S. DER requires them to provide evidence that they are not subject to Commission regulation as a utility, or that they have a Commission order recognizing that they are exempt from regulation, or that they have a certificate of authorization from the Commission.

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The Commission has developed a procedure for systems to apply for an exemption under section 367.022 or a finding that they are "nonjurisdictional" under section 367.021(12). Recommended Rule 25-30.060 requires applicants to file the information needed by the Commission to determine whether a water or wastewater system is exempt from regulation or is nonjurisdictional. The proposed filing requirements are the ones currently being utilized to review requests for exemption.

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1 25-30.060 Application for Exemption from Regulation or
2 Nonjurisdictional Finding.

3 (1) Each application for an exemption shall be filed in
4 original and two copies, except that applications filed under
5 Section 367.022(7), Florida Statutes, shall be filed in original
6 and 15 copies, with the Director, Division of Records and
7 Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-
8 0870. Sample application forms may be obtained from the Division
9 of Water and Sewer, Bureau of Certification, 101 East Gaines
10 Street, Tallahassee, Florida 32399-0873.

11 (2) Each application for an exemption from regulation shall
12 contain the following information:

13 (a) The name of the system owner;

14 (b) The physical address of the system;

15 (c) The mailing address of the applicant, if different from
16 the system address;

17 (d) The name, address, and phone number of the primary
18 contact person for the exemption request;

19 (e) The nature of the applicant's business organization,
20 e.g., corporation, partnership, limited partnership, sole
21 proprietorship, association; and

22 (f) A statement that the applicant is aware that pursuant
23 to Section 837.06, Florida Statutes, whoever knowingly makes a
24 false statement in writing with the intent to mislead a public
25 servant in the performance of his official duty shall be guilty

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1 of a misdemeanor of the second degree, punishable as provided in
2 s. 775.082, s. 775.083, or s. 775.084.

3 (3) Each application must specifically state which type of
4 exemption is being applied for and contain one of the following:

5 (a) For an exemption pursuant to Section 367.022(1),
6 Florida Statutes, a statement from the owner of the system that
7 the system is used solely to provide bottled water and that water
8 is not provided to customers through a water main or service
9 pipe;

10 (b) For an exemption pursuant to Section 367.022(2),
11 Florida Statutes, a statement from the governmental authority
12 specifying the statutory authority for the governmental
13 authority; that the system is owned, operated, managed, or
14 controlled by the governmental authority; stating whether it
15 provides water service, wastewater service or both; and
16 specifying the service area. The applicant shall describe with
17 particularity the nature of the ownership, operation, management,
18 and control of the system;

19 (c) For an exemption pursuant to Section 367.022(3),
20 Florida Statutes, a statement from the manufacturer that service
21 is provided solely in connection with its operations; stating
22 whether it provides water service, wastewater service or both;
23 and specifying the service area;

24 (d) For an exemption pursuant to Section 367.022(4),
25 Florida Statutes, a statement from the public lodging

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1 establishment that service is provided solely in connection with
2 service to its guests; stating whether it provides water service,
3 wastewater service or both; and specifying the service area;

4 (e) For an exemption pursuant to Section 367.022(5),
5 Florida Statutes, a statement from the landlord that it provides
6 service solely to tenants; that charges for service are non-
7 specifically contained in rental charges; stating whether it
8 provides water service, wastewater service or both; and
9 specifying the service area. A copy of the landlord's most
10 recent version of a standard lease or rental agreement, stating
11 that there is no separate charge for water service, wastewater
12 service, or both, shall be submitted with the application;

13 (f) For an exemption pursuant to Section 367.022(6),
14 Florida Statutes, a statement from the owner of the system that
15 the system has or will have the capacity to serve 100 or fewer
16 persons; stating whether it provides water service, wastewater
17 service or both; and specifying the service area. The applicant
18 shall submit documentation verifying the capacity of the
19 system(s). For a wastewater system, the capacity of both the
20 treatment and disposal facilities shall be documented;

21 (g) For an exemption pursuant to Section 367.022(7),
22 Florida Statutes, a statement from the corporation, association,
23 or cooperative that it is nonprofit; that it provides service
24 solely to members who own and control it; stating whether it
25 provides water service, wastewater service or both; specifying

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1 who will do the billing for such service; and specifying the
2 service area. The applicant must submit its articles of
3 incorporation as filed with the Secretary of State and its
4 bylaws, which documents must clearly show the requirements for
5 membership, that the members' voting rights are one vote per unit
6 of ownership, and the circumstances under which control of the
7 corporation passes to the non-developer members. Control of the
8 corporation must pass: 1) at 51 percent ownership by the non-
9 developer members or, 2) at some greater percentage delimited by
10 a time period not to exceed 5 years from the date of
11 incorporation. The applicant must provide proof of its ownership
12 of the utility facilities and the land upon which the facilities
13 will be located or other proof of its right to continued use of
14 the land, such as a 99-year lease;

15 (h) For an exemption pursuant to Section 367.022(8),
16 Florida Statutes, a statement from the reseller that service is
17 provided at a rate or charge that does not exceed the actual
18 purchase price; stating that the reseller is aware of the
19 requirements of Rule 25-30.111, Florida Administrative Code;
20 stating whether it provides water service, wastewater service or
21 both; and specifying the service area. The reseller must also
22 provide the name of the utility providing service to it and that
23 utility's current rates and charges. The reseller must submit a
24 schedule of all of its proposed rates and charges, an explanation
25 of the proposed method of billing customers, separately, for both

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1 water and wastewater, and a schedule showing that the amount
2 billed will not exceed the amount paid for water, wastewater, or
3 both;

4 (i) For an exemption pursuant to Section 367.022(9),
5 Florida Statutes, a statement from the owner of the wastewater
6 system that the system is primarily for the treatment of
7 wastewater other than domestic wastewater, such as runoff and
8 leachate from areas that receive pollutants associated with
9 industrial or commercial storage, handling or processing;
10 identifying the principal source or nature of such wastewater;
11 and specifying the service area;

12 (j) For a nonjurisdictional finding pursuant to Section
13 367.021(12), Florida Statutes, a statement from the system owner
14 stating that it does not charge for providing utility service;
15 specifying how operational costs of providing service are treated
16 or recovered; stating whether it provides water service,
17 wastewater service, or both; and specifying the service area.

18 Specific Authority: 367.121(1), F.S.

19 Law Implemented: 367.021(12), 367.022, 367.031, F.S.

20 History: New, _____.
21

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