Eychaner or Tracy Perez, Bureau of Community Environmental Health, 4052 Bald Cypress Way, Bin #A08, Tallahassee, FL 32399-1710; (850)245-4277

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

DEPARTMENT OF FINANCIAL SERVICES

Division of Worker's Compensation

RULE NO.:	RULE TITLES:
69L-6.025	Conditional Release of Stop Work Order and Periodic Payment Agreement

PURPOSE AND EFFECT: The proposed rule amendment clarifies guidelines and procedures by which employers subject to stop-work orders for having failed to comply with the coverage requirements of Chapter 440, F.S., and are no longer failing to secure the payment the payment of compensation within the meaning of Section 440.107, F.S., may satisfy the Department that they have come into compliance with Chapter 440, F.S. The amendment provides new language which outlines the terms and conditions under which an employer qualifies to enter into a new Payment Agreement Schedule For Periodic Payment of Penalty. The amendment deletes the requirement that subject employers file probationary periodic reports with the Department and amends Form DFS-F4-1601 (Monthly Payment Installment Invoice) to reflect this change. The proposed amendment also renumbers the rule to reflect the new language. The effect of proposed rule amendment is to extend the payment agreement over a greater time horizon to those employers having demonstrated ongoing compliance with the terms and conditions of the Department's periodic payment agreement and to streamline the rule's administration.

SUBJECT AREA TO BE ADDRESSED: Clarifies terms, conditions, and criteria by which employers qualify to reenter into a periodic payment of penalty agreements with the Department. Also, deletes the requirement that subject employers file probationary periodic reports with the Department.

RULEMAKING AUTHORITY: 440.107(9), 440.591 FS.

LAW IMPLEMENTED: 440.107(7) FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: Wednesday, April 15, 2009, 2:00 p.m.

PLACE: 104J Hartman Bldg., 2012 Capital Circle S.E., 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: Tasha Carter, (850)413-1878 or Tasha.Carter@myfloridacfo.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 DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Tasha Carter, Bureau Chief, Bureau of Compliance, Division of Workers' Compensation, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-4228, (850)413-1878

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE ON THE DEPARTMENT'S DIVISION OF WORKERS' COMPENSATION WEBSITE AT: http://www.fldfs.com/wc/.

Section II
Proposed Rules

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."

BOARD OF TRUSTEES OF INTERNAL IMPROVEMENT TRUST FUND

RULE NOS.:	RULE TITLES:
18-21.001	Intent
18-21.002	Scope and Effective Date
18-21.003	Definitions
18-21.004	Management Policies, Standards, and Criteria
18-21.005	Forms of Authorization
18-21.0051	Delegation of Authority
18-21.008	Applications for Lease
18-21.011	Payments and Fees
18-21.020	Aquacultural Activities
18-21.021	Applications for Aquacultural Activities
18-21.022	Payments and Fees for Aquacultural Activities
18-21.900	Forms

PURPOSE AND EFFECT: The proposed rule amendments will revise and update Rule 18-21, F.A.C., to implement statutory changes in Chapter 253, F.S., and establish forms of authorization for aquacultural activities including: aquaculture leases, aquaculture letters of consent and aquaculture management agreements. The effect of the proposed rule amendments will be to clarify DACS' duties and functions related to managing aquacultural activities on sovereignty submerged lands.

SUMMARY: The proposed rule amendments provide for the administrative and management responsibilities of the Board of Trustees of the Internal Improvement Trust Fund and the Department of Agriculture and Consumer Services regarding the use of sovereignty submerged lands for aquacultural purposes.

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: Art. X, Sec. 14, Fla. Const., 253.002, 253.03(7), (11), 253.73 FS.

LAW IMPLEMENTED: 253.001, 253.002, 253.03, 253.04, 263.115, 253.12, 253.141, 253.47, 253.512, 253.52-.54, 253.61, 253.67-.75, 253.77, 597.010 FS.

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

DATE AND TIME: Tuesday, April 28, 2009, 1:00 p.m.

PLACE: Division of Aquaculture, Conference Room, 1203 Governor's Square Blvd., 5th Floor, Tallahassee, FL 32301

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: Mark E. Berrigan (850)488-5471. 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: Mark E. Berrigan, Chief of Aquaculture Development, 1203 Governor's Square Blvd., 5th Floor, Tallahassee, FL 32301

THE FULL TEXT OF THE PROPOSED RULES IS:

18-21.001 Intent.

The intent and purpose of this rule is:

(1) through (3) No change.

(4) To manage and provide maximum protection for all sovereignty lands, especially those important to public drinking water supply, shellfish harvesting, aquaculture, public recreation, and fish and wildlife propagation and management;

(5) through (6) No change.

Rulemaking ~~Specific~~ Authority 253.03(7) FS., Art. X, Sec. 14, Fla. Const. Law Implemented 253.03, 253.12 FS. History–New 3-27-82, Formerly 16Q-21.01, 16Q-21.001, Amended _____.

18-21.002 Scope and Effective Date.

(1) These rules are to implement the administrative and management responsibilities of the B~~b~~oard, the D~~d~~epartment of Environmental Protection and the Department of Agriculture and Consumer Services regarding sovereignty submerged lands. Responsibility for environmental permitting of activities and water quality protection on sovereignty and other lands is vested with the Department of Environmental Protection. The responsibility for managing aquacultural activities on sovereignty lands is vested with the Department of Agriculture and Consumer Services. These rules are considered cumulative. Therefore, a person planning an activity should consult other applicable ~~department rules as well as the~~ rules of the Department of Environmental Protection and the Department of Agriculture and Consumer Services regarding aquacultural activities.

(2) through (5) No change.

Rulemaking ~~Specific~~ Authority 253.03 (7), 253.73 FS. Law Implemented 253.002(1), 253.03, 253.12, 253.68, 253.77 FS. History–New 3-27-82, Amended 8-1-83, 9-4-84, Formerly 16Q-2.02, 16Q-21.002, Amended 12-25-86, 3-15-90, _____.

18-21.003 Definitions.

When used in these rules, the following definitions shall apply unless the context clearly indicates otherwise:

(1) through (9) No change.

(10) "Aquaculture" means the cultivation of aquatic organisms and associated activities, including, but not limited to grading, sorting, transporting, harvesting, holding, storing, growing and planting ~~animal or plant life in an aquatic environment~~.

(11) "Aquaculture Activities" means any activities related to the production of aquacultural products, including, but not limited to, producing, storing, handling, grading, sorting, transporting, harvesting, and aquacultural support docking.

(11) through (15) renumbered (12) through (16) No change.

(17) "DACS" means the Florida Department of Agriculture and Consumer Services for the purposes of aquaculture in Rules 18-21.020, 18-21.021, and 18-21.022, F.A.C.

(18)~~(17)~~ "Department" means the State of Florida Department of Environmental Protection (DEP), as administrator for the B~~b~~oard.

(17) through (26) renumbered (19) through (28) No change.

(27) "High-density lease area" means a contiguous tract of sovereignty submerged lands which allows for an array of multiple aquaculture leases configured to facilitate management and enforcement.

(27) through (68) renumbered (28) through (69) No change.

Rulemaking ~~Specific~~ Authority 253.03(7), 253.73 FS. Law Implemented 253.001, 253.03, 253.68, 253.77 FS. History–New 9-26-77, Formerly 16C-12.01, 16Q-17.01, Amended 3-27-82, 8-1-83, 2-25-85, Formerly 16Q-21.03, 16Q-21.003, Amended 12-25-86, 1-25-87, 3-15-90, 8-18-92, 3-20-94, 10-15-98, 8-1-01, 12-11-01, 10-29-03, 12-16-03, 3-8-04, 1-1-06, 4-14-08, _____.

18-21.004 Management Policies, Standards, and Criteria.

The following management policies, standards, and criteria shall be used in determining whether to approve, approve with conditions or modifications, or deny all requests for activities on sovereignty submerged lands, except activities associated with aquaculture. The management policies, standards, criteria, and fees for aquacultural activities conducted on or over sovereignty submerged lands are provided in Rules 18-21.020 through 18-21.022, F.A.C.

(1) General Proprietary.

(a) through (j) No change.

(k) No application to use sovereignty, submerged land adjacent to or surrounding an unbridged, undeveloped coastal island or undeveloped coastal island segment may be approved by the Board of Trustees unless it meets the following criteria:

1. through 3. No change.

4. The proposed use is for the purpose of allowing access, for public purposes, to publicly owned uplands or submerged lands for recreation, research, conservation, mosquito control, aquaculture or restoration activities only, and is otherwise consistent with the provisions of Rule Chapter 18-18, 18-20, or 18-21, F.A.C.

(l) through (n) No change.

(2) Resource Management.

(a) through (l) No change.

(m) Aquaculture policy, standards and criteria. The Board of Trustees hereby declares the following policies with regard to aquaculture authorizations ~~leases~~ issued pursuant to this rule.

1. It shall be a policy of the State of Florida to foster aquaculture when the aquaculture activity is consistent with state resource management goals, proprietary interest, environmental protection and antidegradation goals. Further such aquaculture shall not displace existing leases, viable commercial or recreational harvesting areas open to the general public but create new areas for the purification or cultivation of marine resources.

2. The Board will not grant consent for activities that would adversely affect existing aquaculture leases by degrading ambient water quality.

3. The Board will oppose the issuance of any permit which would reasonably be expected to degrade water quality at an aquaculture lease site.

~~4. The Board shall review the impact of the aquaculture rule amendment concerning the right of first refusal on the revenues generated by the program by January 1992.~~

~~5. Aquaculture leases result in the exclusion of the general public from sovereign lands, for the benefit of the individual. Consequently, such leases should be issued only after careful review and upon such conditions that protect the public interest.~~

~~6. An aquaculture lease shall contain provisions to ensure adequate marking of the leased area. Such marking shall be sufficient to prevent the aquaculture activity from constituting a nuisance, a hazard to navigation, or a safety hazard.~~

~~7. A coordinated review process will be used by the Division of State Lands to ensure that the proposed sites are suitable for aquaculture activities.~~

~~8. The area to be leased shall comply with the following standards and criteria:~~

~~a. Riparian rights shall not be unreasonably infringed upon. When reviewing an application from a nonriparian applicant the Department shall consider water depth, location of navigation channels, distance from shore and the width of the waterbody. An aquaculture lease area for a nonriparian applicant can be approved greater than or equal to 100 feet waterward of mean or ordinary high water or greater than or equal to 100 feet waterward of existing structures on sovereignty lands only if the applicant obtains a letter of permission from the upland owner, a greater setback may be required to protect riparian rights.~~

~~b. A setback 25 feet from the riparian lines of adjacent property owners shall be required.~~

~~c. Setbacks from other activities, channels or structures shall also be required to ensure safety, facilitate enforcement abilities or ensure resource management.~~

~~d. The leased area shall not be closer than 100 feet from a marked channel.~~

~~e. The lease shall not be approved for a parcel larger than ten acres for oysters or five acres for clams unless the lease is a voluntary conversion. Exceptions to a ten acre maximum aquaculture lease area may be approved by the Board upon a recommendation from the Division of Marine Resources concerning the ability of the applicant to develop the lease.~~

~~f. The relay or the culture of indigenous or hybridized plants or animals may be approved as an aquaculture activity.~~

~~g. The activity shall not be contrary to the public interest or, if within aquatic preserves, that the activity be consistent with aquatic preserve management plans and rules as determined by the coordinated review required in subparagraph 18-21.005(1)(c)2., F.A.C.~~

~~h. A clam lease shall not be granted in areas where, at the time of inspection by the Division of Marine Resources, it would preempt public access to significant harvestable resources.~~

~~i. An oyster lease shall not be granted in an area where it would preempt public access to significant harvestable resources.~~

~~j. Experimental leases shall be limited to research institutions for noncommercial activities.~~

~~k. No lease, other than an experimental lease, shall be issued for a parcel that is within a state park boundary.~~

(n) through (o) No change.

(3) through (6) No change.

(7) General Conditions for Authorizations. All authorizations granted by rule or in writing under Rule 18-21.005, F.A.C., except those for ~~aquaculture activities and~~ geophysical testing, shall be subject to the general conditions as set forth in paragraphs (a) through (i) below. The general conditions shall be part of all authorizations under this chapter, shall be binding upon the grantee, and shall be enforceable under Chapter 253 or 258, Part II, F.S.

(a) through (i) No change.

(8) No change.

Rulemaking ~~Specific~~ Authority 253.03(7), 253.73 FS. Law Implemented 253.001, 253.03, 253.141, 253.68, 253.72, 253.74, 253.75, 253.77 FS. History–New 3-27-82, Amended 8-1-83, Formerly 16Q-21.04, 16Q-21.004, Amended 12-25-86, 1-25-87, 3-15-90, 8-18-92, 10-15-98, 12-11-01, 10-29-03, 12-16-03, 3-8-04, 10-27-05, 4-14-08, _____.

18-21.005 Forms of Authorization.

(1) The appropriate form of authorization, for activities that meet the applicable rules and statutes of the Board, shall be determined based on consideration of all of the provisions of this rule ~~section~~. It is the intent of the Board that the form of authorization shall grant the least amount of interest in the sovereignty submerged land necessary for the activity. The forms of authorization for aquacultural activities, which shall include aquaculture leases, aquaculture letters of consent, and aquaculture management agreements, are provided in subsection 18-21.020(2), F.A.C. For activities not specifically listed, the Board will consider the extent of interest needed and the nature of the proposed activity to determine which form of authorization is appropriate. Co-located activities can be authorized, provided that the activities are compatible and the form of authorization for each activity is determined by the provisions of this rule ~~section~~.

(a) through (d) No change.

~~(e) An aquaculture lease or an existing clam or oyster lease is required for the relay of shellfish from polluted waters for purification or the culture of plant and animal life within the bottom or water column of sovereignty lands which preempts the recreational or commercial use by the general public.~~

~~1. The Division of State Lands shall coordinate, or require the applicant to provide the items incidental to, the review process and agenda preparation for applications to lease submerged lands which can include the water column for aquaculture in order to determine that proposed sites are suitable for aquaculture activities. State Lands shall also coordinate the agenda preparation for voluntary conversions of shellfish leases to aquaculture leases after the Division of Marine Resources has provided the results of a coordinated review for such conversions to State Lands.~~

~~2. The review procedures to be followed for new applications and renewals include:~~

~~a. A positive recommendation from the Division of Marine Resources concerning;~~

~~(I) The desirability of the proposed aquaculture from a resource management perspective;~~

~~(II) The size of area requested for lease being appropriate to the use;~~

~~(III) The suitability of the site for leasing;~~

~~(IV) Recommended special lease conditions; and~~

~~(V) The ability of the applicant to perform the work.~~

~~b. Department of Environmental Protection review of the application, when appropriate, to assess the effect of the proposal on water quality and habitat.~~

~~c. The Army Corps of Engineers review and comment on the effect of the lease on navigation and boating safety.~~

~~d. A recommendation by the Fish and Wildlife Conservation Commission for any application to conduct freshwater aquaculture, concerning impacts on natural resource management.~~

~~e. The Division of Recreation and Parks has been given thirty days to comment on the consistency of the proposal with management goals and objectives if the application is within an aquatic preserve or a state park boundary.~~

~~f. The county commission has been given thirty days to review the project application pursuant to Section 253.68, F.S.~~

~~g. The municipality has been given thirty days to review the rule based on any applicable local plans and ordinances and to recommend, by resolution, that the Board approve or deny the application. No response shall be considered as no objection.~~

(f) through (g) renumbered (e) through (f) No change.

(2) No change.

(3) Requests for sales, exchanges, leases, aquaculture leases, and easements on sovereignty submerged lands shall be processed in accordance with the notice and hearing requirements of Section 253.115, F.S., except easements that qualify for a general permit or a noticed general permit under Chapter 373, F.S., provided that the proposed activity is not of heightened public concern. When noticing is required under Section 253.115, F.S., the applicant shall provide a list of names and addresses from the latest county tax assessment roll, of all property owners within a 500-foot radius of the proposed lease or easement boundary in mailing label format. In lieu of the Board providing notice of application for lease or easement, an applicant may elect to send the notice, provided the notice is sent by certified mail, with the return-receipt card addressed to the Department or to DACS, as applicable.

Rulemaking ~~Specific~~ Authority 253.03(7), 253.73 FS. Law Implemented 253.001, 253.68, 253.77 FS. History–New 9-26-77, Formerly 16C-12.01, 16Q-17.01, Amended 3-27-82, 8-1-83, Formerly 16Q-21.05, 16Q-21.005, Amended 1-25-87, 3-15-90, 10-15-98, 3-8-04, _____.

18-21.0051 Delegation of Authority.

(1) The purpose of this section is to delegate certain review and decision-making authority of the Board, regarding the use of sovereignty submerged lands, to the Secretary of the Department of Environmental Protection, the Commissioner of Agriculture, and the Governing Boards of the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District, as applicable.

(2) No change.

(3) The Commissioner of Agriculture is delegated the authority to review and take final agency action on behalf of the Board on applications to use Board-owned submerged lands and water columns for any activity for which the Department of Agriculture and Consumer Services has responsibility pursuant to Sections 253.67-.75, F.S., and Section 597.010, F.S., except the Board shall retain authority to grant the following:

(a) Establishing any areas for leasing, new leases, expanding existing lease areas, or changing the type of lease activity in existing leases; and

(b) Authorizing aquacultural activities in a managed area, such as state parks, aquatic preserves, marine sanctuaries, or research reserves, when the Department of Environmental Protection has determined that the proposed aquaculture activity is inconsistent with the management goals and objectives of that area.

(4)~~(3)~~ The Secretary of the Department of Environmental Protection and the Governing Boards of the specified Water Management Districts and the Commissioner of Agriculture may further delegate review and decision making authority for ~~of~~ activities authorized under Rule 18-21.002, F.A.C., to staff within their respective agencies.

(5)~~(4)~~ The delegations set forth in subsection (2) and (3) are not applicable to a specific application for a request to use sovereignty submerged lands under Chapter 253 or 258, F.S., where one (1) or more members of the Board, the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or the appropriate water management district determines that such application is reasonably expected to result in a heightened public concern, because of its potential effect on the environment, natural resources, or controversial nature or location.

Rulemaking ~~Specific~~ Authority 253.002, 253.73 FS. Law Implemented 253.002, 253.67-.75, 597.010 FS. History–New 10-12-95, Amended 10-29-03, 10-27-05, _____.

18-21.008 Applications for Lease.

Applications for the following categories of leases are found in this section: standard, extended term, ~~aquaculture,~~ and oil and gas. Special event leases are addressed in Rule 18-21.0082, F.A.C.

(1) through (2) No change.

~~(3) Aquaculture Lease.~~

~~(a) Applications for aquaculture leases shall include the following:~~

~~1. Name, address and phone number of the applicant.~~

~~2. Legal description and acreage of the parcel sought subsequent to final approval of the application but prior to issuance of the lease.~~

~~3. Two prints of a survey subsequent to final approval of the application but prior to issuance of the lease of the parcel sought prepared, signed, and sealed by a person properly licensed by the Florida State Board of Land Surveyors when required by Chapter 472, F.S., or an agent of the federal government acceptable to the department. Preliminary site approval can be based upon marking off the general configuration of the parcel sought, including the acreage of the parcel and LORAN or latitude and longitude coordinates for the corners of the parcel identified on a USGS 7.5 minute topographic map or a navigation chart if a topographic map is not printed for the lease area.~~

~~4. Description of the aquaculture activities to be conducted, including whether such activities are to be experimental or commercial, and an assessment of the current capability of the applicant to conduct such activities.~~

~~5. Statement explaining why the lease is not contrary to the public interest, or within aquatic preserves, why the lease is in the public interest.~~

~~6. Names and addresses, as shown on the latest county tax assessment roll, of each owner of property lying within 1,000 feet of the parcel sought, certified by the county property appraiser.~~

~~7. Statement of the significant impact of the proposed use of the parcel sought on the ecology of the area.~~

~~8. A $200 nonrefundable processing fee.~~

~~9. A statement by all nonriparian applicants wishing to lease areas, not designated by the state, whether they wish to negotiate the fixed lease fee or to bid the lease for the first ten year lease term.~~

~~10. Copies of comments received from the review of the application required by subparagraph 18-21.005(1)(c)2., F.A.C.~~

~~11. Proof of publication and notification required pursuant to Section 253.70, F.S.~~

~~12. Experimental leases shall be limited to research institutions for noncommercial activities.~~

~~(b) The Department may hold a public hearing in response to concerns raised in response to the public notice requirement prior to making any staff recommendation concerning the lease.~~

~~(c) If staff determines that the application is complete and complies with the standards and criteria of the rule then they will agenda the application for approval to lease the parcel sought. The lease fee amount shall be determined by competitive bid or negotiation. The Department shall require the applicant to cause notice of such lease proposal to be published in a newspaper in the county in which the parcel is situated once a week for three consecutive weeks. If bidding is required, the bid amount, representing the first years lease fee shall be submitted prior to the advertised closing date and time. A copy of the notice shall also be sent to the county commission and the municipal government if applicable by certified mail prior to the appearance of the first newspaper notice. Such notice shall contain the following:~~

~~1. Preliminary location description and acreage of parcel sought.~~

~~2. Terms of the lease acceptable to the Board and a description of the aquaculture activity being proposed.~~

~~3. Deadline, time, and date for the receipt of all bids.~~

~~4. Address to which all bids shall be sent.~~

~~5. The date, time, and place of the opening of bids.~~

~~(d) A lease shall not be approved by the Board when a resolution of objection, adopted by a majority of the county commissioners of the county in which the parcel sought is situated, has been filed with the Department within 30 days of the date of first publication of the notice of lease.~~

~~(e) Determination of the annual fixed rate lease fee for aquaculture leases shall be determined by negotiation or bidding.~~

~~1. The use of negotiation or bidding shall be determined:~~

~~a. By negotiation between the Department and the riparian upland owner when said owner is the applicant, pursuant to subparagraph 18-21.004(2)(l)8., F.A.C., up to the ten acre maximum.~~

~~b. By negotiation between the Department and nonriparian applicants for the first lease term when the applicant nominates the site.~~

~~c. By competitive bid:~~

~~(I) When the Department designates sites for lease,~~

~~(II) After the first lease term for all nonriparian leases, or,~~

~~(III) At the option of the nonriparian applicant when the applicant nominates a site.~~

~~2. Any financial data determined to be necessary by the Department for the purposes of negotiations shall be supplied by the applicant upon the Department's request.~~

~~3. Competitive bids for aquaculture leases shall be written offers which shall include the advertised fee for the first lease year, the amount offered above such fee for said first year being a competitive bid. The consideration offered shall accompany the written offer and shall be returned to the unsuccessful bidders upon award of the lease, rejection of all bids, or the matching of the high bid by the existing leaseholder.~~

~~4. The successful bidder shall reimburse the original applicant for his documented application and advertising fees.~~

~~5. The successful bidder shall reimburse the prior leaseholder for the nondepreciated costs of physical improvement not including the aquatic resource value.~~

~~(f) Each lease document shall as a minimum contain the following:~~

~~1. The term of the lease which shall not exceed ten (10) years.~~

~~2. The amount of fee per acre leased to be paid on or before January 1 each year which shall take the form of a fixed fee to be paid throughout the term of the lease.~~

~~3. The disposition to be made of all improvements and animal and plant life upon the termination or cancellation of the lease.~~

~~4. A statement that the lease may be assigned, transferred in any manner, in whole or in part, only after written approval by the Board. Failure of the lessee to obtain written approval may be grounds for revocation and cancellation of the lease.~~

~~5. A list of approved harvesting techniques that can be used on the lease.~~

~~(g) Failure to perform the aquaculture activities for which the lease was granted shall be grounds for cancellation of the lease and forfeiture to the State of Florida of all the work improvements, animal and plant life in and upon the parcel leased. In addition, a performance bond is required to ensure compliance with the standards of this rule and the specifications and conditions of the lease. The bond requirement shall be met by execution of a bond, an escrow account, or an acceptable letter of credit in favor of the Trustees. The amount of the bond should be based on the cost of removing the structures and restoring the site to predevelopment conditions for leases including the water column. A bond equal to the first year's annual rental per acre shall be sufficient for bottom shellfish culture techniques.~~

~~(h) The parcel leased shall be identified, well marked, and shall have, except when it will interfere with the development of the animal and plant life being cultivated by the lessee, reasonable public access for boating, swimming, and fishing. All limitations on the public use of the parcel leased as set forth in the lease shall be clearly posted in conspicuous places by the lessee. Each parcel leased shall be marked in compliance with the rules and regulations of the Department, U.S. Coast Guard, and the U.S. Army Corps of Engineers.~~

(3)~~(4)~~ No change.

Rulemaking ~~Specific~~ Authority 253.03(7)~~, 253.73~~ FS. Law Implemented 253.03, 253.04, 253.115, 253.12, 253.47, 253.512, 253.52-.54, 253.61, 253.67-.75 FS. History–New 12-20-78, Formerly 16C-12.14, 16Q-17.14, Amended 3-27-82, 8-1-83, 2-25-85, 3-19-85, Formerly 16Q-21.08, 16Q-21.008, Amended 1-25-87, 10-11-98, 12-11-01, 3-8-04, 8-10-05, _____.

18-21.011 Payments and Fees.

(1) through (3) No change.

~~(4) Aquaculture Leases.~~

~~(a) The dollar amount of the fixed rate consideration for aquaculture leases shall be determined as follows:~~

~~1. By negotiation between the Department and the riparian upland owner when said owner is the applicant.~~

~~2. By negotiation between the Department and the nonriparian applicant for the first lease term when the applicant nominates the site.~~

~~3. By competitive bid:~~

~~a. When the Department designates sites for lease,~~

~~b. After the first lease term for all nonriparian leases, or~~

~~c. At the option of the nonriparian applicant when the applicant nominates a site.~~

~~4. An appraisal may be required when deemed appropriate by the Department. The cost of such appraisal shall be borne by the applicant.~~

~~5. Any production data determined to be necessary by the Department for the purposes of negotiation shall be supplied by the applicant upon the Department's request.~~

~~6. Fees for experimental aquaculture leases for public and nonprofit research institutions may be waived by the Board.~~

~~(b) Bids for aquaculture leases shall be written offers with a cash consideration which shall be based on a lease fee per acre per year. The competitive bid submitted to the Department shall include the bid per acre times the number of acres in the lease area offered. The total cash consideration offered shall accompany the written offer and shall be returned to the unsuccessful bidders upon award of the lease, or upon the matching of the high bid by the existing leaseholder upon rejection of all bids. The successful bidder will be required to pay all costs of legal advertisement in connection with this lease sale. All bids must be in a sealed envelope marked SEALED BID – STATE AQUACULTURE LEASE – showing lease number and date of sale, and accompanied by certified or cashier's check made payable to the Department of Environmental Protection, Bureau of State Lands Management, the full amount of the cash consideration offered as the bid.~~

~~1. All applicants including the existing leaseholder must submit a bid to be eligible for a lease when bidding is required.~~

~~a. The bid shall be received by the Department prior to the advertised closing date and time.~~

~~b. The existing leaseholder shall have five days to match the high bid and renew the lease if outbid.~~

~~c. When the existing leaseholder does not bid or does not exercise the right of first refusal the new lessee shall allow the prior leaseholder unencumbered access to the lease in order to harvest the aquaculture crop during the first year of the new lease.~~

~~2. Each bidder shall include as part of the bid a certified statement as to any submerged land lease holdings which have been granted by the State. Such statement shall also include the lease number and legal description for all such leases issued.~~

~~3. After the first year, the amount bid per acre shall be paid by the successful bidder on or before the first day of the month in which the lease was granted as a fee to be paid throughout the term of the lease.~~

~~4. The annual lease fee shall not be less than a fixed rate of $15 per acre for a bottom lease and $30 per acre when the lease is to include the water column. The annual fee shall be fixed by bidding or negotiation and adjusted annually pursuant to subparagraph 18-21.011(1)(b)6., F.A.C., to ensure the fixed rate is not reduced by inflation.~~

~~5. Existing shellfish leaseholders may convert to an aquaculture lease if they wish to include the water column in the leased area. Converted leaseholders that are not riparian owners shall have the first right of refusal if they are outbid.~~

~~6. When the water quality designation that is necessary for the particular activity is lost due to degradation of water quality the leaseholder shall have the option of:~~

~~a. Returning the lease to the state,~~

~~b. Conducting an aquaculture activity that is consistent with the change in water quality upon written approval by the Board or,~~

~~c. Continuing to retain the lease.~~

(4)~~(5)~~ No change.

Rulemaking ~~Specific~~ Authority 253.03(7), (11)~~, 253.73~~ FS. Law Implemented 253.03, 253.71 FS. History–New 3-27-82, Amended 5-18-82, 8-1-83, 9-5-84, 10-20-85, Formerly 16Q-21.11, 16Q-21.011, Amended 1-25-87, 9-6-87, 3-15-90, 10-11-98, 10-15-98, 10-29-03, 3-8-04, 1-1-06, 4-14-08, _____.

18-21.020 Aquacultural Activities.

(1) Intent – It is in the state's economic, resource enhancement, and food production interest to promote aquacultural production of food and non-food aquatic species by facilitating the review and approval processes for authorizing the use of sovereignty submerged lands and water columns for aquacultural purposes. Aquaculture development should be fostered when the aquaculture activity is consistent with state resource management goals, proprietary interest, environmental protection, the state aquaculture plan, and the public interest, as expressed in Section 258.42, F.S.

(2) Forms of authorization – For the purpose of Rules 18-21.020, 18-21.021 and 18-21.022, F.A.C., conducting aquacultural activities on sovereignty submerged lands and in

the water column shall be authorized by an aquaculture lease, an aquaculture letter of consent, or an aquaculture management agreement.

(a) An aquaculture lease is required for all revenue-generating aquacultural activities conducted on or over sovereignty submerged lands, except those aquacultural activities associated with an aquaculture facility that qualifies for an aquaculture letter of consent pursuant to subsection 18-21.020(5), F.A.C., or an aquaculture management agreement pursuant to subsection 18-21.020(6), F.A.C.

(b) A letter of consent shall be issued for aquaculture activities that meet the requirements of subsection 18-21.020(5) and Chapter 5L-3, F.A.C.

(c) An aquaculture management agreement shall be issued for public and private entities to conduct certain aquacultural activities for educational, scientific, demonstration and experimental purposes when such activities meet the requirements of subsection 18-21.020(6), F.A.C., and education is the primary objective.

(3) Aquaculture general standards and criteria – The following standards and criteria shall be used in determining whether to authorize, authorize with conditions or modifications, or deny all requests to conduct aquacultural activities on sovereignty submerged lands.

(a) Aquacultural activities on sovereignty submerged lands or water columns shall be authorized only when the proposed activity has been determined to be a water dependent aquaculture activity and upon such conditions that protect the public interest.

(b) DACS shall consider location of the site, water body, water depth, navigation and safety hazards, channels, distance from shore, presence of fish and wildlife habitat, presence of submerged resources, threatened and endangered species, presence of threatened and endangered species habitat, user conflicts, and resource management when reviewing a request for an aquaculture lease, an aquaculture letter of consent, or an aquaculture management agreement.

(c) Aquacultural activities shall not prevent ingress and egress of vessels in marked channels, or in unmarked channels that provide the only means of passage.

(d) All aquaculture leases, aquaculture letters of consent, or aquaculture management agreements for aquacultural activities on sovereignty submerged lands shall contain such terms, conditions and restrictions as deemed necessary by the Board to protect and manage sovereignty lands.

(e) The management policies provided in paragraphs 18-21.004(1)(e), (g), (h), and (k), F.A.C., shall be applied when considering whether to authorize aquacultural activities on sovereignty submerged lands. However, paragraph 18-21.004(1)(k), F.A.C., shall not apply to applications for aquaculture activities which request the exclusive use of the water bottom for cultivation adjacent to unbridged, undeveloped coastal islands.

(f) The management policies provided in paragraphs 18-21.004(2)(e), (f), (g), and (h), F.A.C., involving filling, shoreline stabilization, or severance of material shall be applied when considering whether to authorize aquacultural activities on sovereignty submerged lands.

(g) Aquacultural activities on sovereignty submerged lands shall be designed to minimize or eliminate adverse impacts on fish and wildlife habitat, including: sea grasses, endangered and threatened species, wetland vegetation, and water quality.

(h) Authorizations under this rule shall prohibit the cultivation of non-indigenous, or hybrids of non-indigenous, plants and animals.

(i) Riparian rights shall be protected pursuant to subsection 18-21.004(3), F.A.C.

(j) Authorization of aquacultural activities on sovereignty submerged lands, including aquatic preserves, shall be consistent with Chapters 18-18 and 18-20, F.A.C., and Section 258.42, F.S., when applicable.

(k) Upon issuance of an aquaculture lease or an aquaculture management agreement, DACS shall send a copy of the document and accompanying survey to the Title and Land Records Section, Division of State Lands in the Department of Environmental Protection for filing in the permanent title records of the Board.

(l) No authorization, other than a management agreement, shall be issued for a parcel within a state park boundary.

(m) Aquacultural activities that are conducted in accordance with best management practices adopted under Chapter 5L-3, F.A.C., are exempt from the provisions of Rule 18-21.00401, F.A.C. Activities for which best management practices have not been adopted pursuant to Chapter 5L-3, F.A.C., and require a permit under Part IV of Chapter 373, F.S. shall be subject to concurrent review in accordance with Rule 18-21.00401, F.A.C., and provided that DACS and the Department of Environmental Protection shall issue a joint recommended consolidated intent. Application for an aquaculture authorization will be submitted to DACS and the joint application for an environmental resource permit shall be submitted to the Department of Environmental Protection as required.

(n) Applications for aquaculture docks in the Florida Keys shall comply with the provisions in Rule 18-21.0041, F.A.C.

(4) Specific standards and criteria for aquaculture leases. Leased areas shall comply with the following:

(a) An aquaculture lease is only to be used to conduct aquacultural activities on sovereignty submerged lands and the overlying water column, or for activities associated with an on-shore aquaculture facility. Allowable aquaculture activities on an on-shore aquaculture facility or aquaculture dock include hatchery and nursery cultivation systems, intake and discharge pipes, pumps, loading and off-loading aquaculture products,

and the mooring of vessels used by aquaculture producers in planting, growing, harvesting, and transporting aquacultural products.

(b) Aquaculture lease applications shall require coordinated review pursuant to Rule 18-21.021, F.A.C., to ensure that the proposed sites are suitable for aquacultural activities.

(c) When the leased area is within an aquatic preserve, research reserve, marine sanctuary, or state park, the activity shall be compatible with the managed area's management plan, or prevailing management policies when a management plan has not been developed, and consistent with Sections 258.42 and 373.406, F.S., as determined by the coordinated review required in subparagraph 18-21.021(1)(f)2., F.A.C.

(d) DACS shall recommend that the Board create a high-density lease area when it receives ten or more individual lease applications in the same water body within a six month period to encourage regional aquacultural and economic development, facilitate resource management, reduce potential adverse environmental impacts, and reduce user conflicts.

(e) Riparian rights shall not be infringed upon. An aquaculture lease area for a nonriparian applicant shall not be approved when the distance is less than or equal to 100 feet waterward of mean or ordinary high water or less than or equal to 100 feet waterward of existing structures and permitted activities on sovereignty lands, unless the applicant obtains a letter of concurrence from the upland riparian owner. The Board shall establish greater setbacks to protect riparian rights when upland uses, ingress and egress, or activities on or over sovereignty submerged lands would be limited by the proposed aquaculture activity.

(f) Aquaculture leases shall contain provisions to ensure that the lease area is marked and that markers are maintained for the term of the lease. Such marking shall be adequate to inform the public of the activity and assist the leaseholder in identifying potential navigation and safety hazards.

(g) The leased area in aquaculture leases shall comply with the following:

1. A setback of 25 feet from the riparian lines of adjacent properties shall be required unless a letter of concurrence from the adjacent property owners waives the setback requirement.

2. Setbacks from other activities, channels or structures shall also be required, as needed, to ensure safety, facilitate enforcement abilities and ensure resource management.

3. The leased area shall not be approved for a parcel larger than ten acres for oysters or five acres for clams, unless the lease is a voluntary conversion of a shellfish lease issued under Section 597.010, F.S. The Board shall approve a larger lease size if it determines, based on the applicant's business plan and ability to develop a larger parcel, that additional area can be supported by the applicant.

(h) An aquaculture lease, an aquaculture management agreement, or a shellfish lease is required for the relay of shellfish from polluted waters for purification, unless a site is specifically designated by DACS for such purposes. Relaying activities on leased areas shall be conducted pursuant to subsection 597.010(19), F.S.

(i) An aquaculture lease for culturing hard clams or oysters shall not be granted in areas where, at the time of inspection, DACS determines that the lease would preempt public access to harvestable resources of hard clams or oysters; harvestable resources shall be established as:

1. More than five legal-size clams per square meter over more than fifty percent of the proposed lease area; or

2. A natural oyster reef covering more than 100 square feet within the proposed lease area.

(j) The Board shall impose additional standards and criteria for aquaculture leases when necessary to enhance resource management, as provided in subsection 18-21.004(2), F.A.C., and to protect riparian rights and public safety.

(k) Aquaculture leases for docks shall be placed in sovereignty submerged lands designated as Resource Protection Area 3 when such areas are available and will not result in substantial reductions in proposed operations. Construction of docks and associated aquacultural operations on sovereignty submerged lands designated as Resource Protection Area 2 shall be authorized according to special conditions which minimize adverse environmental impacts. Construction of docks and associated aquacultural operations on sovereignty submerged lands designated as Resource Protection Area 1 shall be avoided, except under special circumstances as stated in this chapter. Docks shall not terminate in a Resource Protection Area 1 or 2, however main access docks will be allowed to pass through Resource Protection Areas 1 and 2 to reach an acceptable Resource Protection Area 3 when reasonable assurances are provided that such crossing will not generate significant adverse environmental impacts. Resource Protection Areas are defined in Rule 18-20.003, F.A.C. Special lease conditions shall be approved by the Board before a dock is authorized on an aquaculture lease located in a Resource Protection Area 1 or 2; the Board shall consider special circumstances such as: lack of practicable alternatives, compatibility with the aquatic preserve management plans, and compliance with special lease conditions.

(5) Specific standards and criteria for an aquaculture letter of consent.

(a) Use of sovereignty submerged lands for aquacultural activities associated with on-shore aquaculture facilities that are not included in an aquaculture lease, aquaculture dock lease, or state lands lease, and which are used by aquaculture producers in planting, growing, harvesting, and transporting aquacultural products, on or over sovereignty submerged lands, shall be authorized by a letter of consent. Such activities

include hatchery and nursery cultivation, intake and discharge pipes and pumps, areas in which loading and off-loading of aquacultural products occur, and mooring of not more than four vessels. To qualify for a letter of consent, such facilities must conform to the following criteria:

1. Be constructed and operated, as appropriate, in compliance with Chapters 18-18, 18-20, 18-21, and 5L-3, F.A.C., and the applicable permits issued by the Department of Environmental Protection under Chapter 373, F.S.; and the applicant has obtained and maintains a valid aquaculture certification pursuant to Chapter 597, F.S.

2. Occupy no more than 2,000 square feet of sovereignty submerged lands.

3. Be constructed so as to result in minimal adverse impacts on fish and wildlife habitat.

4. Follow the setback required in this section to protect riparian rights, unless the applicant obtains a letter of concurrence from the neighboring upland property owner.

(b) No more than one letter of consent shall be authorized for a single individual, company or corporation for contiguous parcels, structures, or activities, if such action is determined to circumvent the requirements in this section.

(c) Any use of sovereignty submerged lands for aquacultural activities that do not conform to these criteria shall obtain an aquaculture lease, a standard sovereignty submerged lands lease, or an easement, as appropriate under this chapter.

(d) If an area subject to a consent of use is within an aquatic preserve, research reserve, marine sanctuary, or state park, the activity shall be compatible with the managed area's management plan, or prevailing management policies when a management plan has not been developed, and consistent with Sections 258.42 and 373.406, F.S.

(e) The Board shall approve changes to the specific standards and criteria for a letter of consent only if the Board determines that such changes are necessary to enhance resource management, as provided in subsection 18-21.004(2), F.A.C., and protect riparian rights and public safety.

(6) Specific standards and criteria for an aquaculture management agreement – The use of sovereignty submerged lands authorized by an aquaculture management agreement shall comply with the following:

(a) Be for educational, scientific, demonstration, and experimental activities related to aquaculture when commercial production is not the primary purpose.

(b) Be limited to state agencies, local governments, educational institutions, or research institutions when the proposed aquacultural activity or use of sovereignty submerged lands is consistent with the public purposes of the applicant organization and is not an adjunct to a commercial endeavor. Public-private partnerships for demonstration and pilot scale aquaculture programs that provide general public benefit are also eligible to obtain aquaculture management agreements.

(c) If within an aquatic preserve, research reserve, marine sanctuary, or state park, the activity shall be compatible with the managed area's management plan, or with applicable management policies when a management plan has not been developed, and consistent with Sections 258.42 and 373.406, F.S. Applications for aquaculture management agreements in managed areas shall be reviewed by the Department of Environmental Protection, as determined by the coordinated review required in paragraph 18-21.021(1)(f), F.A.C.

(d) Riparian rights shall not be infringed upon.

(e) The area subject to an aquaculture management agreement shall be marked, and the markers maintained for the term of the agreement. Such marking shall be adequate to inform the public of the activity and alert the public of potential navigation or safety hazards.

(f) Establish setbacks from other activities or structures as required to ensure safety, facilitate enforcement abilities and ensure resource management.

(g) Ensure that the cultivation of indigenous, or hybrids of indigenous, plants or animals is consistent with Chapter 597, F.S. Relaying activities shall be conducted pursuant to subsection 597.010(19), F.S.

(h) Aquaculture management agreements must be approved by the Board.

(7) Leaseholders possessing oyster and clam leases granted under provisions of former chapter 370, F. S., prior to 1985, shall convert to an aquaculture lease if they wish to include the water column in the leased area. Lease conversions shall be subject to the applicable provisions of Rules 18-21.020, 18-21.021, and 18-21.022, F.A.C., when the requested modification requires changing the proposed use or expanding the lateral extent of the existing lease area.

(8) When the water quality designation, including the shellfish harvesting area designation, that is necessary for the particular activity is lost due to degradation of water quality, and water quality degradation is not due to the aquacultural activity, the leaseholder shall have the option of:

(a) Canceling the lease;

(b) Conducting an aquaculture activity that is consistent with the change in water quality with prior written approval of the Board; or

(c) Retaining the lease.

Rulemaking Authority 253.03(7), 253.73 FS. Law Implemented 253.002, 253.67-75, 253.77 FS. History–New .

18-21.021 Applications for Aquacultural Activities.

(1) Aquaculture lease application and review process.

(a) An aquaculture lease to conduct aquacultural activities on sovereignty submerged lands or the overlying water column shall meet the criteria for an aquaculture lease in Rule 18-21.020, F.A.C.

(b) Applications for aquaculture leases shall be obtained from and submitted to the Division of Aquaculture at the address listed in subsection 18-21.021(7), F.A.C. The Application for a State Owned Sovereignty Submerged Land Aquaculture Lease (DACS 15102, Rev. 02/09) is hereby adopted and incorporated by reference and may be obtained on the Internet at http://www.floridaaquaculture.com or by writing to the Division of Aquaculture at 1203 Governor's Square Boulevard, Fifth Floor, Tallahassee, Florida 32301.

(c) Applications for aquaculture leases shall include the following:

1. Name, address and phone number of the applicant.

2. Description of the aquaculture activities to be conducted, including whether such activities are to be experimental or commercial.

3. A statement describing the applicant's capabilities to conduct the proposed activities.

4. Location of the proposed activity including: county; section, township and range; water body; and a vicinity map.

5. Satisfactory evidence of sufficient upland interest to the extent required by paragraph 18-21.004(3)(b), F.A.C.

6. Names and addresses, as shown on the latest county tax assessment roll, of each owner of property lying within 500 feet of the parcel sought, prepared from current records of the county property appraiser.

7. A statement describing the potential impacts of the proposed use on the ecology of the area, including sea grasses, fish habitat, threatened and endangered species, and other natural resources present on the parcel sought.

8. A statement explaining why the lease is not contrary to the public interest, or within aquatic preserves, why the lease is in the public interest.

9. An application fee as specified in Rule 18-21.022, F.A.C.

10. A statement by applicants wishing to lease areas not designated by the state, whether they wish to negotiate the fixed lease fee or to bid the lease for the first ten-year lease term.

11. Proof of publication and notification required pursuant to Section 253.70, F.S.

(d) In addition to these requirements, applications for docks or other aquaculture-related structures connected to upland which require use of the water column shall include the following, as applicable:

1. Satisfactory evidence of sufficient upland interest in the riparian upland property to the extent required by paragraph 18-21.004(3)(b), F.A.C.

2. A detailed statement describing the proposed activities, including the project design and description of all operations.

3. A detailed and dimensioned site plan drawing showing:

a. The approximate mean or ordinary high water line;

b. The location of wetland, shoreline and aquatic vegetation and other submerged resources, if existing;

c. The location of any manatee protection zones;

d. The location of the proposed structures and any existing structures;

e. The location of intake and discharge pipelines, pumps, culture units, and tanks;

f. The applicant's upland parcel property lines and zoning restrictions;

g. The names and addresses, as shown on the latest county tax assessment roll in mailing label form, of each owner of property lying within 500 feet of the parcel sought, prepared from current records of the county property appraiser; and

h. The location of the nearest natural or artificial navigation channel.

(e) When DACS identifies tracts of sovereignty submerged lands or water columns designated as high-density lease areas involving multiple lease parcels for aquacultural development, and there is no established priority for selecting qualified applicants, then DACS shall make recommendations to the Board and request consideration concerning the method to be used to select qualified applicants and to determine the amount of lease fees, in accordance with this section.

(f) In the event that the lessee wishes to conduct activities on the aquaculture dock or other structures that are not directly related to the aquacultural activities identified in the lease agreement, the lessee shall seek separate authorization from the Board of Trustees through the Department of Environmental Protection pursuant to Chapter 18-21, F.A.C. If the activities are determined to be commercial and unrelated to aquaculture, the lessee shall seek authorization pursuant to paragraph 18-21.005(1)(d), F.A.C., for a commercial dock lease.

(g) In the event that an environmental resource permit or a wetland resource permit under Part IV of Chapter 373, F.S., is required, DACS will require a copy of the permit or notice of intent to issue an environmental resource permit from the Department of Environmental Protection, in accordance with Rule 18-21.00401, F.A.C.

(h) Applicants must obtain applicable federal permits for aquaculture activities in areas that are subject to federal jurisdiction.

(i) Legal description and acreage of the parcel shall be submitted subsequent to final approval of the application but prior to issuance of the lease.

(j) Two prints of a survey, which shall constitute the field survey, shall be submitted subsequent to final approval of the application but prior to issuance of the lease of the parcel sought; prepared, signed, and sealed by a person properly

licensed by the Florida Board of Professional Surveyors and Mappers when required by Chapter 472, F.S., or an agent of the federal government authorized to do such surveys under federal law. Preliminary site approval can be based upon marking off the general configuration of the parcel sought, including the acreage of the parcel, latitude and longitude coordinates for the corners of the parcel identified using a Global Position System on a topographic map or a navigation chart.

(k) DACS shall coordinate the application review process for applications to lease sovereignty submerged lands for aquaculture, including those for use of the water column, in order to determine that proposed sites are suitable for aquaculture activities.

(l) The review procedures to be followed for new applications and renewals include:

1. Review by DACS to determine:

a. That the proposed aquaculture activity is water dependent;

b. That the proposed project and operation is directly related to aquaculture;

c. The desirability of the proposed aquaculture from a resource management perspective;

d. The presence of substantial harvestable wild clams or oysters on the proposed area;

e. That the size of area requested for lease is appropriate to the use;

f. The suitability of the site for leasing;

g. The effect on public health, safety, welfare, or property of others; that the proposed construction or operations do not constitute a hazard to navigation or interfere with a riparian property owner's access to navigable water;

h. That the proposed project will not adversely affect historical or archaeological resources;

i. The need for special lease conditions that will ensure compliance with Chapters 253 and 258, F.S., and,

j. The ability of the applicant to perform the work.

2. Review by the Department of Environmental Protection to assess the effect of the proposed aquacultural activity on water quality and submerged resources and to comment on the consistency of the application with management goals and objectives for managed areas, including state parks, aquatic preserves, marine sanctuaries, or research reserves, as expressed in the management plan applicable to the managed area, or prevailing management practice. The review process for aquaculture leases located in aquatic preserves which include docks and aquaculture-related structures in the water column shall also include the following:

a. An assessment of design and operational specifications that will be established to avoid or minimize adverse environmental impacts to marine habitat, threatened and endangered species habitat, adjacent wetlands, and water quality, including, but not limited to, designs and operations that minimize shading by increasing light transmittance, and that incorporate the installation and maintenance of appropriate manatee protection and resource information signs.

b. A determination of the type of resource protection area, as defined in Rule 18-20.003, F.A.C., affected by the proposed project.

3. Review by the Fish and Wildlife Conservation Commission to comment on the application relative to such factors as an assessment of the probable effect of the proposed lease on the conservation of fish or wildlife, threatened and endangered species, compliance with manatee protection plans, or other programs under the constitutional or statutory authority of the Commission.

4. Review by the Department of State when there is evidence of or the likelihood of the existence of historical or archaeological resources on the proposed site.

5. Review by the county commission of the county in which the lease is situated, pursuant to Section 253.68, F.S.

6. Review by the Army Corps of Engineers to assess the effect of the proposed lease on navigation and boating safety.

(m) After the coordinated review of the application, DACS shall compile the findings of the review and develop recommendations concerning the use of sovereignty submerged lands and water columns for consideration by the Board. Documents containing the comments received from the review required in this subsection shall become part of the application.

(n) All requests for aquaculture leases on sovereignty submerged lands shall be processed in accordance with the notice and hearing requirements of Section 253.115, F.S. For purposes of notification of adjacent property owners, requests for revisions to existing leases that increase the preempted area or change the use (such as one that requires a different form of authorization or application of different rule criteria) will be treated as new applications under this chapter.

(o) The Board shall require the applicant to cause notice of receipt of the lease application to be published in a newspaper of general circulation in the county in which the parcel is situated once a week for three consecutive weeks. A copy of the notice shall be sent to the county commission, and the municipal government if applicable, by certified mail prior to the appearance of the first newspaper notice. Such notice shall be made on the Notice of Aquaculture Lease Application (DACS 15118, Rev. 02/09) which is hereby adopted and incorporated by reference and may be obtained on the Internet at http://www.floridaaquaculture.com or by writing to the Division of Aquaculture at 1203 Governor’s Square Boulevard, Fifth Floor, Tallahassee, Florida, 32301. The application shall contain the following:

1. Preliminary location description and acreage of parcel sought; and

2. A description of the aquaculture activity being proposed.

(p) DACS will hold a public hearing in response to heightened public concern prior to seeking consideration by the Board , if such concern is raised in response to the public notice.

(q) If DACS determines that the application is complete and complies with the standards and criteria in Chapter 253, F.S., and this rule chapter, DACS shall initiate the agenda process to bring the application and recommendations before the Board for consideration at its next regularly scheduled public meeting. The application may be approved, approved with modifications, or denied. The lease fee shall be determined by the Board in accordance with the provisions in subsection 253.71(2), F.S.

(r) DACS shall also coordinate the review process and agenda preparation for applications for voluntary conversions of shellfish leases to aquaculture leases.

(s) All leases are renewable, modifiable, and assignable, subject to Board approval and compliance with the terms of subparagraph 18-21.008(1)(b)3., F.A.C. Requests to renew leases shall be made on the Affidavit to Renew an Aquaculture Lease (DACS 15127, Rev. 02/09). Applications to sublease shall be made on the Application for Sublease of Sovereignty Submerged Land Aquaculture Lease (DACS 15114, Rev. 02/09). Applications for transferring leases shall be made on Assignment and Assumption of Lease (DACS 15113, Rev. 02/09). The applications listed in this paragraph are hereby adopted and incorporated by reference and may be obtained on the Internet at http://www.floridaaquaculture.com or by writing to the Division of Aquaculture at 1203 Governor's Square Boulevard, Fifth Floor, Tallahassee, Florida 32301.

(2) Aquaculture lease authorization.

(a) Each lease document shall as a minimum contain the following:

1. The term of the lease which shall not exceed ten years.

2. A provision stating that the lease shall be renewable for one automatic successive term upon agreement of both parties.

3. The amount of fee per acre, or fraction thereof, leased, which shall take the form of a fixed annual fee to be paid throughout the term of the lease.

4. A requirement that the leaseholder obtain and maintain a valid aquaculture certification issued by DACS. As a condition of the aquaculture certification the lessee shall comply with any special lease conditions, applicable best management practices for the specific aquacultural activity, and any permit issued pursuant to Chapter 373, F.S.

5. A provision requiring the disposition of all improvements and aquaculture products upon the termination or cancellation of the lease.

6. A statement that the lease may not be assigned, sublet or transferred in any manner, in whole or in part, without the prior written approval of the Board. Failure of the lessee to obtain prior written approval shall be grounds for revocation by the Board.

7. A provision stating that failure of the lessee to comply with the terms and conditions of the lease shall be grounds for revocation of the lease.

8. A description of approved culture and harvesting techniques that can be used on the lease.

(b) The parcel leased shall be identified, well marked, and shall have, except when it will interfere with the development of the animal and plant life being cultivated by the lessee, reasonable public access for boating, swimming, and fishing. All limitations on the public use of the parcel leased, such as docking, mooring, anchoring, and other activities that would interfere with the approved aquacultural activity shall be set forth in the lease agreement and such restrictions shall be clearly posted in conspicuous places on site by the lessee. Each parcel leased shall be marked in compliance with the provisions of the lease agreement.

(c) Failure to perform the aquaculture activities for which the aquaculture lease was granted or to comply with the terms and conditions of the lease agreement shall be grounds for revocation of the lease, a requirement for corrective action, or enforcement by DACS or the Board, in accordance with Section 253.04, F.S., Chapter 18-14, F.A.C., and the terms of the lease agreement. DACS shall notify the Department of Environmental Protection and the applicable water management district of any revocation, corrective action or enforcement related to a change in use which is not authorized in the lease agreement. Revocation of the lease may result in forfeiture to the State of Florida of all works, improvements, and aquaculture products in and upon the parcel leased.

(3) Aquaculture letter of consent application and review process.

(a) Aquaculture activities meeting the criteria specified in subsection 18-21.020(5), F.A.C., on or over sovereignty submerged lands shall be authorized by a letter of consent.

(b) The applicant shall provide the items required in this subsection demonstrating that the proposed site meets the criteria established in subsection 18-21.020(5), F.A.C., and is suitable for the proposed aquacultural activities. Applications for a letter of consent shall include the following.

1. Name, address and telephone number of applicant and applicant's authorized agent, if applicable.

2. Location and address of the proposed activity, using the most comprehensive information available, including: street, route, city, county; section, township and range; coordinates established with Global Positioning System, affected water body; and a vicinity map, preferably a reproduction of the appropriate portion of United States Geological Survey quadrangle map.

3. Satisfactory evidence of sufficient upland interest in the riparian upland property to the extent required by paragraph 18-21.004(3)(b), F.A.C.

4. A detailed statement describing the proposed activity.

5. A detailed and dimensioned site plan drawing showing:

a. The approximate mean or ordinary high water line;

b. The location of the shoreline and aquatic vegetation and/or other submerged resources, if any;

c. The location of the proposed structures and any existing structures;

d. The location of intake and discharge pipelines, pumps, culture units, and tanks;

e. The applicant's upland parcel property lines and zoning restrictions; and

f. The location of the nearest natural or artificial navigation channel.

(c) Application for Sovereignty Submerged Land Aquaculture Letter of Consent (DACS 15138, Rev. 02/09), which is hereby adopted and incorporated by reference, shall be submitted to the Division of Aquaculture at the address listed in subsection 18-21.021(7), F.A.C. The application may be obtained on the Internet at http://www.floridaaquaculture.com or by writing to the Division of Aquaculture at 1203 Governor's Square Boulevard, Fifth Floor, Tallahassee, Florida 32301.

(d) Applications for letters of consent shall be reviewed by DACS to ensure that the proposed sites are suitable for the proposed aquacultural activity and meet the criteria in subsection 18-21.020(5), F.A.C.

(4) Aquaculture letter of consent authorization.

(a) If DACS determines that the proposed activity complies with subsection (3) above, has an Aquaculture Certificate, is in compliance with the best management practices adopted by rule for that activity, and meets the requirements of subsection 18-21.020(5), F.A.C. DACS shall issue a letter of consent.

(b) Failure to perform the aquaculture activities for which the letter of consent was issued, failure to comply with the terms and conditions of the letter of consent, or conducting activities other than those approved in the letter of consent shall be grounds for action on the letter of consent, including revocation, a requirement for corrective action or enforcement by DACS or the Board in accordance with Section 253.04, F.S., Chapter 18-14, F.A.C., and the terms of the letter of consent.

(5) Aquaculture management agreement applications and review process.

(a) An aquaculture management agreement is required for the use of sovereignty submerged lands or the water column for educational, scientific, demonstration or experimental activities related to aquaculture.

(b) Applicants for aquaculture management agreements shall provide the items required in this subsection and information demonstrating that the proposed activity complies with the criteria in subsection 18-21.020(6), F.A.C., and is suitable for aquacultural activities. Applications for an aquaculture management agreement shall include the following.

1. Name, address and telephone number of applicant and applicant's authorized agent, if applicable.

2. Location of the proposed activity, including: county; section, township and range; water body; and a vicinity map.

3. A detailed statement describing the proposed activity, including educational and scientific objectives.

4. A detailed site plan drawing showing:

a. Location of aquatic vegetation and fisheries habitat, if existing;

b. Location of proposed structures and any existing structures; and

c. Location of intake and discharge pipelines, pumps, culture units, and tanks.

d. The appropriate application fee.

(c) Satisfactory evidence of sufficient upland interest in the riparian upland property when the riparian property owner is the applicant.

(d) Applications for aquaculture management agreements shall be submitted, using the Application for Sovereignty Submerged Lands Aquaculture Lease (DACS 15102, Rev. 02/09) listed in paragraph 18-21.021(1)(b), F.A.C., to the Division of Aquaculture at the address listed in subsection 18-21.021(7), F.A.C.

(e) Applications for management agreements shall be reviewed by DACS to ensure that the proposed sites are suitable for the proposed aquacultural activity and that the activity complies with the criteria in subsection 18-21.020(6), F.A.C.

(f) If DACS determines that the application is complete and complies with the standards and criteria of Rules 18-21.020, 18-21.021, and 18-21.022, F.A.C., copies of the application will be sent to the Department of Environmental Protection and the Fish and Wildlife Conservation Commission for their review and recommendations.

(6) Aquaculture management agreement authorization.

(a) The Board shall authorize management agreements that meet the requirements of paragraphs 18-21.021(5)(a) through (c), F.A.C.

(b) The management agreement authorizes specific aquaculture activities on sovereignty submerged lands and water columns without conveying any interest in real property.

(c) Authorization of an aquaculture management agreement shall require that qualified applicants comply with the standards and criteria in subsection 18-21.020(6), F.A.C.

(d) The management agreement shall require the grantee obtain and maintain a valid aquaculture certification issued by DACS prior to the initiation of any activities authorized by the agreement. As a condition of the aquaculture certification, the grantee shall comply with special conditions, applicable best management practices, or with the condition of a permit issued pursuant to Chapter 373, F.S.

(e) The management agreement shall include a provision requiring the disposition of all improvements and aquaculture products upon the termination or cancellation of the management agreement.

(f) Failure to perform the aquaculture activities for which the management agreement was granted, failure to comply with the terms and conditions of the management agreement, or conducting activities other than those approved in the management agreement shall be grounds for action on the management agreement, including revocation, a requirement for corrective action, or enforcement by DACS or the Board, in accordance with Section 253.04, F.S., Chapter 18-14, F.A.C., and the terms of the aquaculture management agreement.

(7) Applications for authorizations to use sovereignty submerged lands for aquacultural purposes shall be submitted to the Florida Department of Agriculture and Consumer Services, Division of Aquaculture, 1203 Governor's Square Boulevard, Fifth Floor, Tallahassee, Florida 32301, Telephone: (850)488-5471.

Rulemaking Authority 253.03(7) FS. Law Implemented 253.002, 253.04, 253.67-75, 253.77, 597.010 FS. History–New_____.

18-21.022 Payments and Fees for Aquacultural Activities.

(1) The application fee for an aquaculture lease is $200.00, and is non-refundable.

(2) The fee for assignment, sublease or transfer of an aquaculture lease is $50.00.

(3) The annual rental fees for aquaculture authorizations shall be the dollar amount of the fixed rate consideration as determined by the Board in accordance with subsection 253.71(2), F.S., but not less than $15.00 per acre, or fraction thereof, for a bottom lease and $30 per acre, or fraction thereof, when the lease includes the water column: bottom leases are considered to include six inches of the water column above the bottom.

(4) The annual fee shall be revised March 1 of each year and increased or decreased based on the average change over time in the price paid by all urban consumers for a market basket of consumer goods and services. In determining the change, the Board will annually consult the Consumer Price Index figures established for the previous five years by the Bureau of Labor Statistics, computed as provided in the BLS Publication "Handbook of Methods," Chapter 17, June 2007, and found on the BLS website at http://www.bls.gov/opub/homch17.pdf. There shall be a 10 percent cap on any annual increase.

(5) An annual surcharge of $10.00 per acre, or any fraction of an acre, shall be levied on each aquaculture lease pursuant to paragraph 253.71(2)(a), F.S., and subsection 597.010(7), F.S.

(6) Invoices will be sent to each leaseholder 60 days before the payment is due, stating the amount of the annual lease fee and surcharge. If the lease fee and surcharge are not received within sixty days of the payment date specified in the lease agreement, DACS shall revoke the lease.

(7) Any financial or production data related to the proposed aquacultural activity necessary for purposes of negotiation shall be supplied by the applicant upon DACS' request.

(8) Fees for experimental aquacultural activities on aquaculture leases or aquaculture management agreement areas for state agencies, public, and nonprofit research institutions shall be waived by the Board upon proof of public or nonprofit status.

Rulemaking Authority 253.03(7),(11), 253.73 FS. Law Implemented 253.002, 253.04, 253.67-.75, 253.77, 597.010 FS. History–New_____.

18-21.900 Forms.

Applications for activities, other than for aquaculture, on sovereignty submerged lands shall be made on the Joint Application for Environmental Resource Permit/Authorization to Use Sovereignty Submerged Lands/Federal Dredge and Fill Permit Form 62-343.900(1), F.A.C., except in the area under the jurisdiction of the DEP Northwest Florida District Office, where application shall be made using the forms provided in subsection 62-312.900(1), F.A.C. In both cases, the required forms shall be submitted together with the additional information required in Rules 18-21.007-.010, F.A.C., as applicable. Other forms used by the Board are adopted and incorporated by reference in this section. The forms are listed by rule number, which also is the form number, and with the subject title and effective date. Copies of forms may be obtained on the Internet at http://www.dep.state.fl.us or by writing to the Department of Environmental Protection, Division of Water Resource Management, Bureau of Beaches and Wetland Resources, 2600 Blair Stone Road – MS 2500, Tallahassee, Florida 32399-2400, or any local district or branch office of the Department or water management district.

(1) through (2) No change.

(3) The required forms used by the Board for aquacultural activities are adopted and incorporated by reference in this chapter and may be obtained on the Internet at http://www.floridaaquaculture.com or from the DACS by writing to the Division of Aquaculture, 1203 Governor's Square Boulevard, Fifth Floor, Tallahassee, Florida 32301.

Rulemaking ~~Specific~~ Authority 253.03(7), 253.73 FS. Law Implemented 253.03(11), 253.77, 597.010 FS. History–New 10-15-98, Amended 12-11-01,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Sherman Wilhelm, Director, Division of Aquaculture
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor and Cabinet sitting as the Board of Trustees for the Internal Improvement Trust Fund
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 10, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 7, 2008

AGENCY FOR HEALTH CARE ADMINISTRATION

Cost Management and Control

RULE NOS.:	RULE TITLES:
59B-9.010	Purpose of Ambulatory Patient Data Reporting
59B-9.011	Submission of Ambulatory Patient Data
59B-9.013	Definitions
59B-9.014	Schedule for Submission of Ambulatory Patient Data and Extensions
59B-9.015	Reporting Instructions
59B-9.016	Notice of Reporting Deficiencies and Response
59B-9.017	Certification and Audit Procedures
59B-9.018	Ambulatory Patient Data Format – Data Elements, Codes and Standards
59B-9.022	Penalties for Ambulatory Patient Data Reporting Deficiencies
59B-9.023	Ambulatory Patient Data Release
59B-9.030	Purpose of Ambulatory and Emergency Department Patient Data Reporting
59B-9.031	Definitions
59B-9.032	Ambulatory and Emergency Department Data Reporting and Audit Procedures
59B-9.033	Schedule for Submission of Ambulatory and Emergency Department Patient Data and Extensions
59B-9.034	Reporting Instructions
59B-9.035	Certification, Audits, and Resubmission Procedures
59B-9.036	Penalties for Ambulatory Patient Data Reporting and Deficiencies
59B-9.037	Header Record
59B-9.038	Ambulatory Data Elements, Codes and Standards
59B-9.039	Public Records

PURPOSE AND EFFECT: The purpose of amending Chapter 59B-9, F.A.C., is to standardize this rule with Chapter 59E-7, F.A.C., requirements and align current data elements collected to the uniform bill for institutional facilities (UB-04), as approved by the National uniform Billing Committee (NUBC) effective October 1, 2007. Additional clarification is necessary to refine ambulatory services, inclusion of report deadlines, define resubmission requirements, patient data release, and coincide terminology to national standards.
SUMMARY: Amendment to Chapter 59B-9, F.A.C., will enable standardization between both data sets for requirements that were omitted and/or conflicting with Chapter 59E-7, F.A.C. It will facilitate direct data elements correlation from the UB-04 source document and therefore decrease potential errors introduced by having to re-map elements from the UB-04 to the expired UB-92 source document format. The rule contains report deadlines based on an outdated collection system where facility reports were submitted on mailed diskettes. Current electronic data submission applications expedite the collection process time negating the need for extended time frames. Shortened deadlines will afford quicker data availability to meet the growing demand by researchers and consumers who desire current data access on the consumer website and available for purchase.
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), 408.061, 408.08 FS.
LAW IMPLEMENTED: 408.061, 408.062, 408.063, 408.07, 408.08(1), (5), (14), 408.15(11), 119.07, 120.53(2)(a) 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: Parick Kennedy at (850)922-5531

THE FULL TEXT OF THE PROPOSED RULES IS:

AMBULATORY AND EMERGENCY DEPARTMENT DATA COLLECTION

59B-9.010 Purpose of Ambulatory Patient Data Reporting.
Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063 FS. History–New 9-6-93, Formerly 59B-7.010, Amended 6-29-95, Amended 12-28-98, 2-25-02, 4-18-04, Repealed 1-1-10.

59B-9.011 Submission of Ambulatory Patient Data.
Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063, 408.07, 408.08 FS. History–New 9-6-93, Formerly 59B-7.011, Amended 6-29-95, 12-28-98, 7-11-01, 2-25-02, Repealed 1-1-10.

59B-9.013 Definitions.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063 FS. History–New 9-6-93, Formerly 59B-7.013, Amended 6-29-95, 12-28-98, 7-11-01, 2-25-02, 4-18-04, Repealed 1-1-10.

59B-9.014 Schedule for Submission of Ambulatory Patient Data and Extensions.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.061, 408.15(11) FS. History–New 9-6-93, Formerly 59B-7.014, Amended 6-29-95, 4-18-04, Repealed 1-1-10.

59B-9.015 Reporting Instructions.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063 FS. History–New 9-6-93, Formerly 59B-7.015, ~~–~~Amended 6-29-95, 12-28-98, 1-4-00, 7-11-01, 2-25-02, 4-18-04, Repealed 1-1-10.

59B-9.016 Notice of Reporting Deficiencies and Response.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.006(5), 408.061 FS. History–New 9-6-93, Formerly 59B-7.016, Amended 6-29-95, 7-11-01, Repealed 1-1-10.

59B-9.017 Certification and Audit Procedures.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.061, 408.08(1), 408.08(5), 408.15(11) FS. History–New 9-6-93, Formerly 59B-7.017, Amended 6-29-95, 7-11-01, Repealed 1-1-10.

59B-9.018 Ambulatory Patient Data Format – Data Elements, Codes and Standards.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063 FS. History–New 9-6-93, Formerly 59B-7.018, Amended 6-29-95, 12-28-98, 7-11-01, 2-25-02, 4-18-04, Repealed 1-1-10.

59B-9.022 Penalties for Ambulatory Patient Data Reporting Deficiencies.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented ~~408.006(5),~~ 408.061~~, 408.08(14)~~ FS. History–New 9-6-93, Formerly 59B-7.022, Amended 6-29-95, Repealed 1-1-10.

59B-9.023 Ambulatory Patient Data Release.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 119.07, 120.53(2)(a), 408.061 FS. History–New 9-6-93, Formerly 59B-7.023, Amended 6-29-95, Repealed 1-1-10.

59B-9.030 Purpose of Ambulatory and Emergency Department Patient Data Reporting.

The reporting of ambulatory patient data will provide a statewide integrated database that includes hospital based and free standing ambulatory surgery centers, and hospital emergency department services for the assessment of variations in utilization, disease surveillance, access to care and cost trends. The amendments appearing herein are effective with the reporting period starting January 1, 2010.

Proposed Effective Date is January 1, 2010.

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

Editorial note: see former rule 59B-9.010.

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 facility.

(2) “Ambulatory Surgical Center" means a facility licensed as an ambulatory surgical center under Chapter 395, F.S.

(3) “CPT” means Current Procedural Terminology and refers to a coding system established by the American Medical Association to describe physician services which is published annually in Physicians’ Current Procedural Terminology manual which is incorporated by reference.

(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) “Executive Officer” means a reporting facility’s chief executive officer, chief financial officer, chief operating officer, president, or vice president of the facility in charge of a principal business unit, division or function (administration or finance).

(6) “HCPCS” means Health Care Common Procedure Coding System which is published annually by the United States Department of Health and Human Services and is required by the Federal Government for Medicare reporting purposes.

(7) “Inpatient” means a patient who has an admission order given by a licensed physician or other individual who has been granted admitting privileges by the hospital.

(8) "NUBC" means National Uniform Billing Committee. A national body that defines the data elements that are reported on the Uniform Bill UB-04 and annually publishes an Official UB-04 Data Specifications Manual.

(9) "NUCC" means the National Uniform Claims Committee. A national body that define the data fields that are reported on the HCFA 1500 which is published annually.

(10) "NPI" means National Provider Identification. A NPI is an unique identification number assigned to a provider by the Centers for Medicare & Medicaid Services.

(11) "Short-Term Acute Care Hospital" means a hospital as defined in Section 395.002(12), F.S.

(12) "Visit" means a face to face encounter between a health care provider and a patient who is not formally admitted as an inpatient in an acute care hospital setting at the time of the encounter or who is not admitted to the same facility's acute care hospital setting immediately following the encounter as described in subsections 59B-9.032(1) and 59B-9.032(3), F.A.C. Visits which require the patient to appear in an ambulatory setting prior to the actual procedure (even if this occurs one or more days before the procedure) shall be counted as one visit. The admit date in these instances should be the day of the procedure.

(13) ISO 3166 – International Standard for Organization is a standardized list of country names and codes first published in 1974 and updated 2008. ISO 3166 is available at: http://www.iso.org/iso/english_country_names_and_code_elements.

Proposed Effective Date is January 1, 2010.

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

Editorial note: see former rule 59B-9.013.

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) All licensed short-term acute care hospitals licensed under Chapter 395, F.S.;

(b) All licensed ambulatory surgical centers as defined in Section 395.002(3), F.S.;

(c) All lithotripsy centers defined in Section 408.07, F.S.;

(d) All cardiac catheterization laboratories defined in Section 408.07, F.S.

(2) Each facility in paragraph (1)(a) above shall submit a separate report for each location per Rule 59A-3.203, F.A.C. Each facility in paragraph (1)(b) above shall submit a separate report for each location per Rule 59A-5.003, F.A.C. Each facility in paragraph (1)(a) or (1)(b) above shall submit a separate report for each separate location.

(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 which has a total of 200 or more patient visits per Rule 59B-9.033, F.A.C., for the reporting period is required to report data as set forth in Rules 59B-9.037 and 59B-9.038, F.A.C.

(5) Ambulatory Surgical Centers with fewer than 200 patient visits in a quarter, must have the entity's chief executive officer or director to certify to the Agency in writing, that the ambulatory center has fewer than 200 patient visits per Rule 59B-9.033, F.A.C., for the reporting period, and the certification is to be received at the Agency office in Tallahassee on or prior to the deadline for submission of the report. This is not a onetime letter, but must be submitted for each quarter where there were fewer than 200 visits.

(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 is January 1, 2010.

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.

Editorial note: see former rule 59B-9.011.

59B-9.033 Schedule for Submission of Ambulatory and Emergency Department Patient Data and Extensions.

(1) Beginning with the ambulatory data reporting for the 1st quarter of the year 2010, Ambulatory Centers and Emergency Departments shall report patient data according to the provisions in Rules 59B-9.030 through 59B-9.039, F.A.C.

(a) Each report covering patient visits ending between January 1 and March 31, inclusive of each year, shall be submitted no later than June 10 of the calendar year during which the visit occurred. This is considered to be the first quarter, regardless of the facility fiscal year. First quarter reports must be certified by August 31 of the same calendar year.

(b) Each report covering patient visits ending between April 1 and June 30, inclusive of each year, shall be submitted no later than September 10 of the calendar year during which the visit occurred. This is considered to be the second quarter, regardless of the facility fiscal year. Second quarter reports must be certified by November 30 of the same calendar year.

(c) Each report covering patient visits ending between July 1 and September 30, inclusive of each year, shall be submitted no later than December 10 of the calendar year during which the visit occurred. This is considered to be the third quarter, regardless of the facility fiscal year. Third quarter reports must be certified by February 28 of the following calendar year.

(d) Each report covering patient visits ending between October 1 and December 31, inclusive of each year, shall be submitted no later than March 10 of the calendar year following the year in which the visit occurred. This is considered to be the fourth quarter, regardless of the facility fiscal year. Fourth quarter reports must be certified by May 31 of the next calendar year.

(2) Extensions to the initial due dates in subsection 59B-9.033(1), F.A.C., above shall be granted by the Agency Administrator, Office of Data Collection and Quality Assurance Unit or Agency designee for a maximum of thirty (30) days from the initial submission due date in response to a written request signed by the hospital's chief executive officer, ambulatory center director or authorized executive officer designee if received prior to the initial due date, and provided that the delay is due to unforeseen factors beyond the control of the reporting facility. These factors must be specified in the letter requesting the extension together with documentation of efforts undertaken to meet the filing requirements. Extensions shall not be granted verbally.

(3) Failure to file the report on or before the initial submission due date as specified in paragraphs 59B-9.033(1)(a)-(d), F.A.C., without an extension, and failure to correct a report which has been filed but contains errors or deficiencies by the certification deadline is punishable by fine pursuant to Rule 59B-9.036, F.A.C. The agency shall send a notification of errors or deficiencies by certified mail, electronic mail, or fax. Rejected reports must be corrected, resubmitted and certified by the certification due date.

Proposed Effective Date is January 1, 2010.

Rulemaking Authority 408.15(8) FS. Law Implemented 408.061, 408.08(1)(2),408.15(11) FS. History–New 1-1-10.

Editorial note: see former rule 59B-9.014.

59B-9.034 Reporting Instructions.

(1) Ambulatory centers shall report data for:

(a) All non-emergency visits for surgical procedures or services performed in the operating room, ambulatory surgical care, cardiology (cardiac catheterization and percutaneous transluminal coronary angioplasty (PTCA)), gastro intestinal, extra-corporeal shock wave treatment (lithotripsy) surgery, and endoscopy corresponding to the following Current Procedural Terminology (CPT) and corresponding HCPCS Codes.

1. 10021 through 69999. Includes, but not limited to, surgery, cardiac catheterization, endoscopy procedures, and lithotripsy.

2. 92980 through 92998 and 93500 through 93599. Includes percutaneous transluminal coronary angioplasty (PTCA) and Cardiac Catheterization.

3. Exclude visits where the primary reason for the visit is venipuncture for laboratory services.

(2) Emergency Departments shall report 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) An ED visit occurs even if the only service provided to a registered patient is triage or screening. If a registered patient leaves prior to being seen by a physician, report the discharge status as "07" "AMA/discontinued care" and charges if incurred. Report zero if charges are are not incurred.

(c) Do not include visits for registrations that occur in the Emergency Department when the hospital central registration department is closed unless emergency services are provided.

(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 Rule 59A-3.203, F.A.C. 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(13), F.A.C.

(4) For each patient visit, ambulatory centers shall report all services provided using procedural codes specified in subsections 59B-9.037 and 59B-9.038, F.A.C.

(5) Beginning with the Ambulatory data report for the 1st quarter of the year 2010, reporting facilities must submit a zipped outpatient XML file by Internet according to the specifications in paragraphs (a) through (c) below unless reporting by CD-ROM is approved by the Agency in a case of extraordinary or hardship circumstances.

(a) Internet Transmission. The Internet address for receipt of ambulatory patient data is https://ahcaxnet.fdhc.state.fl.us/patientdata.

(b) Reports sent to the Internet address shall be electronically transmitted with the zipped ambulatory data in a XML file using the Ambulatory Patient Data XML Schema available at http://ahca.myflorida.com/xmlschemas/asc22.xsd.

(c) The Ambulatory Patient Data XML Schema is incorporated by reference. The data in the XML file shall contain the data elements, codes and standards required in Rules 59B-9.037 and 59B-9.038, F.A.C.

Proposed Effective Date is January 1, 2010.

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

Editorial note: see former rule 59B-9.015.

59B-9.035 Certification, Audits, and Resubmission Procedures.

(1) All ambulatory centers submitting data in compliance with Rules 59B-9.030 through 59B-9.039, F.A.C., shall certify that the data submitted for each quarter period is accurate, complete and verifiable using Certification Form for Ambulatory Patient Data AHCA Form APD1, dated 7/1/95 and incorporated by reference. The completed certification form shall be submitted to the Agency for Health Care Administration, 2727 Mahan Drive, MS #16, Tallahassee, Florida 32308. Attention: Florida Center for Health Information and Policy Analysis or by facsimile to the Agency's office, or a scanned certification submitted by electronic mail.

(2) Beginning with the ambulatory data reporting for the 1st quarter of the year 2010, facilities not certified within five (5) calendar months following the last day of the reporting quarter shall be subject to penalties pursuant to Rule 59B-9.036, F.A.C. Extensions to this five (5) month period may be granted by the Agency Administrator, Office of Data Collection and Quality Assurance Unit or the Agency designee, for a maximum of 30 days following the certification due date in response to a written request signed by the facilities chief executive officer, ambulatory center director or authorized executive officer designee. A facility will not be penalized for delays caused by AHCA which is documented by the reporting facility to include on-line reporting system downtime or delays in receipt of reports from AHCA.

(3) Changes or corrections to certified data will be accepted from facilities to improve their data quality for a period of eighteen (18) months following the initial submission due date. The Administrator, Office of Data Collection and Quality Assurance or designee may grant approval for resubmitting previously certified data in response to a written request signed by the facility's chief executive officer, Ambulatory Center director or authorized executive officer designee. The written request must specify the reason for the corrections or changes, explain the cause contributing to the inaccurate reporting, describe a corrective action plan to prevent future errors, the total number of records affected by quarters and years, the data type and the date that the replacement file will be submitted to the Agency. Any changes to a facility's data after this eighteen-month period shall be subject to penalties pursuant to Rule 59B-9.036, F.A.C. Resubmission of previously certified data must be certified within thirty (30) days following receipt of the data file from the facility.

Proposed Effective Date is January 1, 2010.

Rulemaking Authority 408.08(1)(e), 408.15(8) FS. Law Implemented 408.061, 408.08, 408.15(11) FS. History–New 1-1-10.

Editorial note: see former rule 59B-9.017.

59B-9.036 Penalties for Ambulatory Patient Data Reporting and Deficiencies.

(1) For purposes of this rule, a report or other information is "incomplete" when it does not contain all data required by the Agency in this rule and in forms incorporated by reference or when it contains inaccurate data. The Agency shall to the extent practical, apply the same audit standards and use the same audit procedures for all facility's or audit a random sample of facility's. The Agency will notify each facility of any possible errors discovered by audit and request that the facility either correct the data or verify that the data is complete and correct. A report or other information is "false" if done or made with the knowledge of the preparer or an administrator that it contains information or data which is not true or accurate.

(2) An ambulatory center which refuses to file, fails to timely file or files false or incomplete reports or other information required to be filed under the provisions of Section 408.08, F.S. other Florida Law, or a rule adopted there under, shall be subject to administrative fines pursuant to Section 408.08, F.S. Failure to comply with reporting requirements will also result in the referral of a facility to the Agency's Bureau of Health Facility Regulation.

(3) Notifications will be sent to reporting facilities who do not submit their data file by the initial due date as specified in Rule 59B-9.033, F.A.C.

(4) The penalty period will begin on the first calendar day following the initial due date and the first calendar day following the certification due date for purposes of penalty assessments.

(5) Any ambulatory center which is delinquent for a reporting deficiency other than submission of a false report shall be subject to a fine of $100 per day of violation for the first violation, $350 per day of violation for the second violation, and $1,000 per day of violation for the third or subsequent violations to be fixed, imposed, and collected by the Agency. Any ambulatory center which files a false report with the Agency or provides false information to the Agency shall be subject to a fine of $1,000 per day to be fixed, imposed and collected by the Agency. Violations will be considered those activities which necessitate the issuance of an administrative complaint by the Agency unless the administrative complaint is withdrawn or final order dismissing the administrative complaint is entered. All fines are to be fixed, imposed and collected by the Agency. Any ambulatory center which files a false report with the Agency or provides false information to the Agency shall be subject to a fine of $1000 per day, in addition to any other fine imposed hereunder. The fine shall be fixed, imposed and collected by the Agency.

Proposed Effective Date is January 1, 2010.

Rulemaking Authority 408.15(8) FS. Law Implemented 408.08, 408.061 FS. History–New 1-1-10.

Editorial note: see former rule 59B-9.022 and 59B-9.016.

59B-9.037 Header Record.

Beginning with the ambulatory data reporting for the 1st quarter of the year 2010, the first record in the data file shall be a header record, containing the information described below.

(1) Transaction Code. Enter Q for a calendar quarter report. A required field.

(2) Report Year. Enter the year of the data in the format YYYY.

(3) Report Quarter. Enter the quarter of the data, 1, 2, 3 or 4, where 1 corresponds to the first quarter of the calendar year, 2 corresponds to the second quarter of the calendar year, 3 corresponds to the third quarter of the calendar year, and 4 corresponds to the fourth quarter of the calendar year.

(4) Data Type. Enter AS10-1 for Ambulatory Data and Emergency Department Data.

(5) Submission Type. Enter I or R where I indicates an initial submission of a data file or resubmission of a data file prior to certification and R indicates a replacement submission of previously certified patient data where resubmission has been requested or authorized by the Agency. A required entry.

(6) Processing Date. Enter the date that the data file was created in the format YYYY-MM-DD where MM represents numbered months of the year from 1 to 12, DD represents numbered days of the month from 1 to 31, and YYYY represents the year in four digits.

(7) AHCA Facility Number. Enter the identification number of the ambulatory center as assigned by AHCA for reporting purposes. A valid identification number must contain at least eight digits and no more than 10 digits.

(8) Medicare Number. Enter the Medicare number of the facility as assigned by Centers for Medicare & Medicaid Services (CMS). A valid identification number must contain seven (7) numeric digits. A required field.

(9) Organization Name. Enter the name of the ambulatory center that performed the ambulatory services represented by the data, and which is responsible for reporting the data. All questions regarding data accuracy and integrity will be referred to this entity. Up to a forty character field.

(10) Contact Person Name. Enter the name of the contact person at the ambulatory center. Submit name in the Last, First format. Up to a twenty-five character field.

(11) Contact Person Telephone Number. The area code, business telephone number, and if applicable, extension for the contact person. Enter the contact person telephone number in the numeric format (AAA)XXX-XXXX-EEEEE where AAA is the area code, and EEEEE is the extension. Blank fill if no extension.

(12) Contact Person E-Mail Address. The e-mail address of the contact person.

(13) Contact Person Street or P. O. Box Address. Enter the Street or Post Office Box address of the contact person. Up to a forty character field.

(14) Mailing Address City. Enter the city of the address of the contact person. Up to a twenty-five character field.

(15) Mailing Address State. Enter the state of the address of the contact person using the U.S. Postal Service state abbreviation in the format XX. Use the abbreviation FL for Florida.

(16) Mailing Address Zip Code. Enter the numeric zip code of the address of the contact person in the format XXXXX-XXXX. Blank fill if no extension.

Proposed Effective Date is January 1, 2010.

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

Editorial note: see former rule 59B-9.018.

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

Beginning with the ambulatory data reporting for the 1st quarter of the year 2010, all data elements and data element codes listed below shall be reported. All facilities submitting data in compliance with Rules 59B-9.030 through 59B-9.039, F.A.C., shall report the following required data elements as stipulated by the Agency and described in the Official Data Specifications Manual published by the NUBC and NUCC.

(1) AHCA Facility Number. An identification number assigned by AHCA for reporting purposes. The number must match the facility number recorded on the header record. A valid identification number must contain at least eight digits and no more than 10 digits. A required entry.

(2) Patient Control Number. An alpha-numeric code containing standard letters or numbers assigned by the facility as a unique identifier for each record submitted in the reporting period to facilitate retrieval of individual's account of services (accounts receivable) containing the financial billing records and any postings of payment. 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.

(3) Medical or Health Record Number. An alpha-numeric code assigned to the patient's medical or health record by the facility. The medical/health record number references a file that contains the history of treatment. It should not be substituted for the Patient Control Number which is the financial record associated with a visit. Up to twenty four (24) characters. A required field.

(4) Patient Social Security Number. The social security number (SSN) of the patient. A nine digit field to facilitate retrieval of individual case records, to be used to track multiple

patient visits, and for medical research. Reporting 777777777 is acceptable for those patients where efforts to obtain the SSN have been unsuccessful or the patient is under two (2) years of age and does not have a SSN or for patients who are non-U.S. citizens who have not been issued SSNs. If only the last four digits of a patients SSN are known, report 77777XXXX where XXXX represent the last known four digits of the patient SSN. A required entry.

(5) Patient Ethnicity. Self-designated by the patient, patient's parent or guardian. Use "Unknown" where efforts to obtain the information from the patient or from the patient's parent or guardian have been unsuccessful. The patient's ethnic background shall be reported as one choice from the following list of alternatives. A required entry. Must be a two (2) digit code as follows:

a. E1 = Hispanic or Latino. A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

b. E2 = Non-Hispanic or Latino. A person not of any Spanish culture or origin.

c. E7 = Unknown.

(6) Patient Race. Self-designated by the patient, patient's parent or guardian. Use "Unknown" where efforts to obtain the information from the patient or from the patient's parent or guardian have been unsuccessful. The patient's racial background shall be reported as one choice from the following list of alternatives. A required entry. Must be a one (1) digit code as follows:

(a) 1 – American Indian or Alaskan Native. A person having origins in any of the original peoples of North and South America (including Central America) America, and who maintains cultural identification through tribal affiliation or community recognition.

(b) 2 – Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent. This area includes, for example, Cambodia, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(c) 3 – Black or African American. A person having origins in any of the black racial groups of Africa.

(d) 4 – Native Hawaiian or other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(e) 5 – White. A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

(f) 6 – Other. Any other possible options not covered in the above categories, including a patient who has more than one race.

(g) 7 – Unknown. Use if the patient refuses or fails to disclose.

(7) Patient Birth Date. The date of birth of the patient. A ten character field in the format YYYY-MM-DD where MM represents the numbered months of the year from 1 to 12, DD represents numbered days of the month from 1 to 31, and YYYY represents the year in four digits. Unknown birthdates should use the default of 1880-01-01 where efforts to obtain the patient's birth date have been unsuccessful. A birth date after the patient visit ending date is not permitted. A required entry.

(8) Patient Sex – The patient sex at the time of admission. A required entry. Alpha characters must be in upper case. Must be a one (1) digit code as follows:

1. M – Male.

2. F – Female.

3. U – Unknown. Use where efforts to obtain the information have been unsuccessful or where the patient's sex cannot be determined due to a medical condition.

(9) Patient Zip Code. The five digit United States Postal Service ZIP Code of the patient's address. Use 00009 for foreign residences. Use 00007 for homeless patients. Use 00000 where efforts to obtain the information have been unsuccessful. A required entry.

(10) Patient Country Code. The country code of residence. A two (2) digit upper case alpha code from the Code for Representation of Names of Countries, ISO 3166 or latest release. 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".

(11) Type of Service Code. A code designating the type of service, either ambulatory surgery or emergency department visit. A required entry. Must be a one (1) digit code as follows:

(a) 1 – Ambulatory surgery, as described in subsection 59B-9.034(1), F.A.C.

(b) 2 – Emergency department visit, as described in subsection 59B-9.034(2), F.A.C.

(12) Source or Point of Origin of Admission. Must be a one (1) character alpha code or two (2) digit numeric code indicating the direct source or point of patient origin for this visit. A required entry if type of service is "2". Zero fill if type of service is "1". Alpha characters must use upper case.

(a) 01 – Non-health care facility source of origin – Include 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. The patient was referred to this facility for outpatient or referenced diagnostic procedures.

(c) 04 – Transfer from a hospital. The patient was transferred to this facility as an outpatient from an acute care facility. Transfer must be from a different hospital.

(d) 05 – Transfer from a Skilled Nursing Facility (SNF) or Intermediate Care Facility (ICF). The patient was referred to this facility as a transfer from a SNF or ICF where the patient was a resident.

(e) 06 – Transfer from another health care facility. The patient was referred to this facility for services by (a physician of) another health care facility not defined elsewhere in this code list where he or she was an inpatient or outpatient.

(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) 08 – Court/Law Enforcement. The patient was referenced to this facility upon the direction of a court of law, or upon the request of a law enforcement agency representative for outpatient or referenced diagnostic services. Includes transfers from incarceration facilities.

(h) 09 – Information Not Available. The means by which the patient was referred to this hospital's outpatient department is not known.

(i) D – Transfer from one distinct unit of the hospital to another distinct unit of the same hospital resulting in a separate claim. The patient received outpatient services in this facility as a transfer from within this hospital resulting in a separate claim to the payer.

(j) E – Transfer from Ambulatory Surgery Center. The patient was referred to this facility for outpatient or referenced diagnostic services from an ambulatory surgery center.

(k) F – Transfer from hospice and under a hospice plan of care or enrolled in a hospice program. The patient was referred to this facility for outpatient or referenced diagnostic services from a hospice.

(13) Principal Payer Code. Describes the primary source of expected reimbursement for services rendered based on the patient's status at the time of reporting. A required entry. Must be a one (1) character alpha field using upper case as follows:

(a) A – Medicare. Patients covered by Medicare where Centers for Medicare & Medicaid Services is the direct payer.

(b) B – Medicare Managed Care. Patients covered by Medicare Advantage plans, Medicare HMO, Medicare PPO, Medicare Private Fee for Service or any other type of Medicare plan where Centers for Medicare & Medicaid Services is not the direct payer.

(c) C – Medicaid. Patients covered by state administered, non-managed Florida Medicaid. This would include those Medicaid recipients enrolled in MediPass.

(d) D – Medicaid Managed Care. Patients covered by Medicaid HMOs, Medicaid provider sponsored networks (PSNs) or other Medicaid funded plans that are licensed in the state of Florida. This would include any type of program where the patient qualifies for Medicaid but payment is not directly from the State of Florida Medicaid program regardless of whether the hospital has a contract with that plan.

(e) E – Commercial Health Insurance. Patients covered by any type of private coverage, including HMO, PPO or self-insured plans.

(f) H – Workers Compensation. Patients covered by any type of workers compensation plan, including self insured plans, managed care plans or the State of Florida sponsored workers compensation plan.

(g) I – TriCare or Other Federal Government. Patients covered by any federal government program for active and retired military and their families; Black Lung, Section 1011; the Federal Prison System; or any other federal program.

(h) J – VA. Patients covered by the Veteran's Administration.

(i) K – Other State/Local Government. Patients covered by a state program or local government that does not fall into any of the payer categories listed. This would include those covered by the Florida Department of Corrections or any county or local corrections department, patients covered by county or local government indigent care programs if the reimbursement is at the patient level; any out-of-state Medicaid programs and county health departments or clinics.

(j) L – Self Pay. Patients with no insurance coverage.

(k) M – Other. This would include patients covered by any other type of payer not meeting the descriptions in a-k above or m-n below.

(l) N – Non-Payment. Includes charity, professional courtesy, no charge, research/clinical trial, refusal to pay/bad debt, Hill Burton free care, research/donor that is known at the time of reporting.

(m) O – KidCare. Includes Healthy Kids, MediKids and Children's Medical Services.

(n) P – Unknown. Unknown shall be reported if principal payer information is not available and type of service is "2" and patient status is "07".

(o) Q – Commercial Liability Coverage. Patients whose health care is covered under a liability policy, such as automobile, homeowners or general business.

(14) Principal Diagnosis Code. The code representing the diagnosis chiefly responsible for the services performed during the visit. 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 type of service is "2" indicating an emergency department visit unless patient status is "07" indicating that the patient left against medical advice or discontinued care. A blank field is permitted if type of service is "2" and patient status is "07." If not space filled, must contain a valid ICD-9-CM diagnosis code or valid ICD-10-CM diagnosis code for the reporting period. A diagnosis code cannot be used more than once as a principal or other diagnosis for each visit reported. The code must be entered with 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. Alpha characters must be in upper case.

(15) Other Diagnosis Code (1), Other Diagnosis (2), Other Diagnosis (3), Other Diagnosis (4), Other Diagnosis (5), Other Diagnosis (6), Other Diagnosis (7), Other Diagnosis (8), Other Diagnosis (9). A code representing a diagnosis related to the services provided during the visit. If no principal diagnosis code is reported, another diagnosis code must not be reported unless the patient discharge status is "07" indicating that the patient left against medical advice or discontinued care. No more than nine other diagnosis codes may be reported. Less than nine entries is permitted. If not space filled, must contain a valid ICD-9-CM code or valid ICD-10-CM code for the reporting period. A diagnosis code cannot be used more than once as a principal or other diagnosis for each visit reported. 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. Alpha characters must be in upper case.

(16) Evaluation and Management Code (1), Evaluation and Management Code (2), Evaluation and Management Code (3), Evaluation and Management Code (4), Evaluation and Management Code (5). A code representative of the patient acuity level for the services provided. If type of service is "2", must contain a valid Evaluation and Management (EM) Code range 99281-99285; 99288; 99291-99292; and G0380-G0384, even if the only service provided to a registered patient is triage or screening. If patient discharge status is "07" meaning the patient left against medical advice or discontinued care, or where a visit occurs resulting in zero charges, enter default code 99999 to indicate that the patient was not evaluated by a physician. No more than five EM codes may be reported. Less than five entries is permitted . A required field.

(17) Other CPT or HCPCS Procedure Code (1), Other CPT or HCPCS Procedure Code (2), Other CPT or HCPCS Procedure Code (3), Other CPT or HCPCS Procedure Code (4), Other CPT or HCPCS Procedure Code (5), Other CPT or HCPCS Procedure Code (6), Other CPT or HCPCS Procedure Code (7), Other CPT or HCPCS Procedure Code (8), Other CPT or HCPCS Procedure Code (9), Other CPT or HCPCS Procedure Code (10), Other CPT or HCPCS Procedure Code (11), Other CPT or HCPCS Procedure Code (12), Other CPT or HCPCS Procedure Code (13), Other CPT or HCPCS Procedure Code (14), Other CPT or HCPCS Procedure Code (15), Other CPT or HCPCS Procedure Code (16), Other CPT or HCPCS Procedure Code (17), Other CPT or HCPCS Procedure Code (18), Other CPT or HCPCS Procedure Code (19), Other CPT or HCPCS Procedure Code (20), Other CPT or HCPCS Procedure Code (21), Other CPT or HCPCS Procedure Code (22), Other CPT or HCPCS Procedure Code (23), Other CPT or HCPCS Procedure Code (24), Other CPT or HCPCS Procedure Code (25), Other CPT or HCPCS Procedure Code (26), Other CPT or HCPCS Procedure Code (27), Other CPT or HCPCS Procedure Code (28), Other CPT or HCPCS Procedure Code (29), Other CPT or HCPCS Procedure Code (30). A code representing a procedure or service provided during the patient visit. If not space filled, must be a valid CPT or HCPCS code for the reporting period. Alpha characters must be in upper case. No more than thirty (30) other CPT or HCPCS procedure codes may be reported. Less than thirty (30) entries or no entry is permitted.

(18) Attending Practitioner Identification Number. The Florida license number of the medical doctor, osteopathic physician, dentist, podiatrist, chiropractor or advanced registered nurse practitioner who had primary responsibility for the patient's care during the visit. An alpha-numeric field of up to eleven characters, alpha characters must be in upper case. For military physicians not licensed in Florida, use US999999999. Use NA if the patient was not treated by a medical doctor, osteopathic physician, dentist, podiatrist, chiropractor, or advanced registered nurse practitioner. A required entry.

(19) Attending Practitioner National Provider Identification (NPI). An unique ten (10) character identification number assigned to a provider. A required entry for providers in the US or its territories and providers not in the US or its territories upon mandated HIPAA NPI implementation date. For military physicians, medical residents, or individuals not required to obtain a NPI number, use 9999999999.

(20) Operating or Performing Practitioner Identification Number. The Florida license number of the medical doctor, osteopathic physician, dentist, podiatrist, chiropractor or advanced registered nurse practitioner who had primary responsibility for the principal procedure performed. The operating or performing practitioner may be the attending practitioner. An alpha-numeric field of up to eleven characters, alpha characters must be in upper case. For military physicians not licensed in Florida, use US999999999. Use NA if the patient was not treated by a medical doctor, osteopathic physician, dentist, podiatrist, chiropractor, or advanced registered nurse practitioner. A required entry. A blank or no entry is permitted if a principal procedure is not reported.

(21) Operating or Performing Practitioner National Provider Identification (NPI). An unique ten (10) character identification number assigned to a provider. A required entry for providers in the US or its territories and providers not in US or its territories upon mandated HIPAA NPI implementation date. For military physicians, medical residents, or individuals not required to obtain a NPI number, use 9999999999.

(22) Other Operating or Performing Practitioner Identification Number. The Florida license number of a different operating or performing practitioner. Report a medical doctor, osteopathic physician, dentist, podiatrist, chiropractor or advanced registered nurse practitioner who

rendered care to the patient other than the person reported in paragraph (19) or (21) above. An alpha-numeric field of up to eleven characters, alpha characters must be in upper case. For military physicians not licensed in Florida, use US999999999. A blank or no entry is permitted.

(23) Other Operating or Performing Practitioner National Provider Identification (NPI). An unique ten (10) character identification number assigned to a provider. A required entry for providers in the US or its territories and providers not in US or its territories upon mandated HIPAA NPI implementation date. For military physicians, medical residents, or individuals not required to obtain a NPI number, use 9999999999.

(24) Pharmacy Charges. Charges for medication. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report 0 (zero) if there are no pharmacy charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(25) Medical and Surgical Supply Charges. Charges for supply items required for patient care. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report 0 (zero) if there are no medical and surgical supply charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(26) Laboratory Charges. Charges for the performance of diagnostic and routine clinical laboratory tests. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report 0 (zero) if there are no laboratory charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(27) Radiology and Other Imaging Charges. Charges for the performance of diagnostic and therapeutic radiology services including computed tomography, mammography, magnetic resonance imaging, nuclear medicine, and chemotherapy administration of radioactive substances. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report 0 (zero) if there are no radiology or computed tomography charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(28) Cardiology Charges (Cardiac Cath). Charges for cardiac procedures rendered such as heart catheterization. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report 0 (zero) if there are no cardiology charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(29) Operating Room Charges. Charges for the use of the operating room. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report 0 (zero) if there are no operating room charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(30) Anesthesia Charges. Charges for anesthesia services by the facility. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report 0 (zero) if there are no anesthesia charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(31) Recovery Room Charges. Charges for the use of the recovery room. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report 0 (zero) if there are no recovery room charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(32) Emergency Room Charges. Charges for medical examinations and emergency treatment. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report 0 (zero) if there are no emergency room charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(33) Trauma Response Charges. Charges for a trauma team activation at a State of Florida licensed Trauma Center. Report charges for revenue code 68X used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no trauma response charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(34) Treatment or Observation Room Charges. Charges for use of a treatment room or for the room charge associated with observation services. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report 0 (zero) if there are no treatment or observation room charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(35) Gastro-Intestinal (GI) services. Charges for gastro-intestinal procedures rendered such as colonoscopy and endoscopy services. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report 0 (zero) if there are no GI charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(36) Extra-Corporeal Shock Wave Therapy (Lithotripsy). Charges for Extra-Corporeal Shock Wave Therapy (Lithotripsy) procedures. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report 0 (zero) if there are no Lithotripsy charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(37) Other Charges. Other facility charges not included in paragraphs (24) to (36) above. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report 0 (zero) if there are no other charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(38) Total Gross Charges. The total of undiscounted charges for services rendered by the reporting entity. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Include charges for services rendered by the ambulatory center excluding professional fees. Negative amounts are not permitted unless verified separately by the reporting entity. The sum of pharmacy charges, medical and surgical supply charges, laboratory charges, radiology and other imaging charges, cardiology charges, operating room charges, anesthesia charges, recovery room charges, emergency room charges, treatment or observation room charges, Gastro-Intestinal (GI) services, Extra-Corporeal Shock Wave Therapy (Lithotripsy), and other charges must equal total charges, plus or minus 13. A required entry.

(39) Patient Visit Beginning Date. The date at the beginning of the patient's visit for ambulatory surgery or the date at the time of registration in the emergency department. A ten (10) character field in the format YYYY-MM-DD where MM represents the numbered months of the year from 1 to 12, DD represents numbered days of the month from 1 to 31, and YYYY represents the year in four digits. Patient visit beginning date must equal or precede the patient visit ending date. A required entry.

(40) Patient Visit Ending Date. The date at the end of the patient's visit. A ten (10) character field in the format YYYY-MM-DD where MM represents the numbered months of the year from 1 to 12, DD represents numbered days of the month from 1 to 31, and YYYY represents the year in four digits. Patient visit ending date must equal or follow the patient visit beginning 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) Hour of Arrival. The hour on a 24-hour clock during which the patient's visit for ambulatory surgery began or during which registration in the emergency department occurred. A required entry. Use 99 where efforts to obtain the information have been unsuccessful. Must be two digits as follows:

AM HOURS

1. 00 – 12:00 midnight to 12:59:59
2. 01 – 01:00 to 01:59:59
3. 02 – 02:00 to 02:59:59
4. 03 – 03:00 to 03:59:59
5. 04 – 04:00 to 04:59:59
6. 05 – 05:00 to 05:59:59
7. 06 – 06:00 to 06:59:59
8. 07 – 07:00 to 07:59:59
9. 08 – 08:00 to 08:59:59
10. 09 – 09:00 to 09:59:59
11. 10 – 10:00 to 10:59:59
12. 11 – 11:00 to 11:59:59

PM HOURS

13. 12 – 12:00 noon to 12:59:59
14. 13 – 01:00 to 01:59:59
15. 14 – 02:00 to 02:59:59
16. 15 – 03:00 to 03:59:59
17. 16 – 04:00 to 04:59:59
18. 17 – 05:00 to 05:59:59
19. 18 – 06:00 to 06:59:59
20. 19 – 07:00 to 07:59:59
21. 20 – 08:00 to 08:59:59
22. 21 – 09:00 to 09:59:59
23. 22 – 10:00 to 10:59:59
24. 23 – 11:00 to 11:59:59
25. 99 – Unknown.

(42) ED Hour of Discharge. The hour on a 24-hour clock during which the patient left the emergency department. A required entry. Use 99 where efforts to obtain the information have been unsuccessful or type of service is "1". Must be two digits as follows:

AM HOURS

1. 00 – 12:00 midnight to 12:59:59
2. 01 – 01:00 to 01:59:59
3. 02 – 02:00 to 02:59:59
4. 03 – 03:00 to 03:59:59
5. 04 – 04:00 to 04:59:59
6. 05 – 05:00 to 05:59:59
7. 06 – 06:00 to 06:59:59
8. 07 – 07:00 to 07:59:59
9. 08 – 08:00 to 08:59:59
10. 09 – 09:00 to 09:59:59
11. 10 – 10:00 to 10:59:59
12. 11 – 11:00 to 11:59:59

PM HOURS

13. 12 – 12:00 noon to 12:59:59
14. 13 – 01:00 to 01:59:59
15. 14 – 02:00 to 02:59:59
16. 15 – 03:00 to 03:59:59
17. 16 – 04:00 to 04:59:59
18. 17 – 05:00 to 05:59:59
19. 18 – 06:00 to 06:59:59
20. 19 – 07:00 to 07:59:59
21. 20 – 08:00 to 08:59:59
22. 21 – 09:00 to 09:59:59

23. 22 – 10:00 to 10:59:59

24. 23 – 11:00 to 11:59:59

25. 99 – Unknown.

(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. 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. If not space filled, must contain a valid ICD-9-CM or ICD-10-CM diagnosis code. 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. Space fill if type of service is "1" indicating ambulatory surgery. Alpha characters must be in upper case.

(44) Principal ICD-CM Procedure Code. The code representing the procedure or service most related to the principal diagnosis. A blank field is permitted if type of service is "1" indicating ambulatory surgery. A blank or no entry is permitted consistent with the records of the reporting entity if type of service is "2" indicating an emergency department visit. 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), Other ICD-CM Procedure Code (2), Other ICD-CM Procedure Code (3), Other ICD-CM Procedure Code (4) – A code representing a procedure or service provided during the visit. If no principal ICD-CM procedure is reported, another ICD-CM procedure code must not be reported unless the patient status is "07" indicating the patient left against medical advice or discontinued care. No more than four other ICD-CM procedure codes may be reported. A blank or no entry is permitted if type of service is "1." Less than four or no entry is permitted if type of service is "2." 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. External Cause of Injury Code (1), External Cause of Injury Code (2) and External Cause of Injury Code (3). A code representing circumstances or conditions as the cause of the injury, poisoning or other adverse effects recorded as a diagnosis. Assign the appropriate E-code for all initial encounters or treatments, but not for subsequent occurences. A Place of Occurence E-code (E849.X) should be included to describe where the event occurred if documented in the patient medical history. No more than three (3) external cause of injury codes may be reported. Less than three (3) or no entry is permitted. If not space filled, must be a valid ICD-9-CM or ICD-10-CM cause of injury code for the reporting period. An external cause of injury code cannot be used more than once for each encounter reported. 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. Alpha characters must be in upper case.

(47) Service Location. A code designating services performed at an offsite emergency department location at facilities whose license includes a "offsite" emergency department. For type of service "2", enter an upper case "A" for services performed at the offsite emergency department location. No entry is permitted if type of service is "1" or for hospitals without an offsite emergency department location.

(48) Patient disposition at end of visit. – Patient Status. A required entry. Must be a two (2) digit code as follows:

(a) 01 – Discharged to home or self care (routine discharge).

(b) 02 – Transferred to a short-term general hospital for inpatient care.

(c) 03 – Transferred to a skilled nursing facility with Medicare certification in anticipation of skilled care.

(d) 04 – Transferred to an intermediate care facility.

(e) 05 – Transferred to a designated cancer center or Children's Hospital.

(f) 06 – Discharged to home under care of home health care organization service in anticipation of covered skilled care.

(g) 07 – Left against medical advice or discontinued care.

(h) 20 – Expired.

(i) 50 – Discharged to hospice – home.

(j) 51 – Transferred to hospice. Hospice medical facility (certified) providing hospice level of care.

(k) 62 – Transferred to an Inpatient Rehabilitation Facility (IRF) including rehabilitation distinct part units of a hospital.

(l) 63 – Discharged or transferred to a Medicare certified long term care hospital.

(m) 64 – Discharged or transferred to a Nursing Facility certified under Medicaid but not certified under Medicare.

(n) 65 – Discharged or transferred to a psychiatric hospital including psychiatric distinct part units of a hospital.

(o) 66 – Discharged or transferred to a Critical Access hospital.

(p) 70 – Discharged or transferred to another type of health care institution not defined elsewhere in this code list.

(49) Trailer Record: The last record in the data file shall be a trailer record and must accompany each data set. Report only the total number of patient data records contained in the file, excluding header and trailer records. The number entered must equal the number of records processed. Do not include leading zero's.

Proposed Effective Date is January 1, 2010.

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

Editorial note: see former rule 59B-9.018.

59B-9.039 Public Records.

(1) Agency records, public records under Chapter 119, F.S., (Florida's Public Records Law), are available for public inspection during normal business hours. Copies of such records may be obtained upon request and upon payment of the cost of copying.

(2) Patient-specific records collected by the Agency pursuant to Rules 59B-9.030 through 59B-9.039, F.A.C., are exempt from disclosure pursuant to Section 408.061(7), F.S., and shall not be released unless modified to protect patient confidentiality as described in paragraph (2)(a) below and released in the manner described in paragraphs (2)(c) and (2)(d).

(a) The patient-specific record shall be modified to protect patient confidentiality as follows:

1. Patient Control Number	Delete or Substitute Sequential Number
2. Patient Social Security Number	Delete or Substitute a Record Linkage Number
3. Patient Birth Date	Substitute Age in years and an indicator of Age <29 Days except for persons 100 and older, substitute Age > 100 years
4. Visit Date	Substitute Quarter Indicator (1-4)
5. Medical or Health Record Number	Substitute Sequential Number

(b) A record linkage number shall be assigned which does not identify an individual patient and cannot reasonably be used to identify individual patients through use of data available through the Agency.

(c) The modified data records described in paragraph (2)(a) shall be released as a set of all records occurring in one calendar quarterly period based on date of visit.

(d) The modified data described in paragraph (2)(a) shall be released in accordance with the Limited Data Set requirements of the federal Health Insurance Portability and Accountability Act and shall be made available on or after quarterly data has been certified as accurate by the facility as required by Section 408.061(1)(a), F.S.

(3) Aggregate reports derived from patient-specific records collected pursuant to Rules 59B-9.030 through 59B-9.038, F.A.C., are public records and shall be released as described in subsections (1) and (4) of this rule, provided the aggregate reports do not include patient control number, patient birth date, visit date, patient social security number, medical or health record number or provided the aggregate reports contain the combination of five or more records for any data disclosed.

(4) Requests shall be submitted by users sufficiently in advance to permit the staff to respond without disruption of its duties as provided in Section 119.07(1)(b), F.S.

Proposed Effective Date is January 1, 2010.

Rulemaking Authority 408.15(8) FS. Law Implemented 119.07, 120.53(2)(a), 408.061 FS. History–New 1-1-10.

Editorial note: see former rule 59B-9.023.

NAME OF PERSON ORIGINATING PROPOSED RULE: Patrick Kennedy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Holly Benson, AHCA Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 13, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 6, 2009

AGENCY FOR HEALTH CARE ADMINISTRATION

Hospital and Nursing Home Reporting Systems and Other Provisions Relating to Hospitals

RULE NOS.:	RULE TITLES:
59E-7.011	Definitions
59E-7.012	Inpatient Data Reporting and Audit Procedures
59E-7.013	Penalties for Hospital Inpatient Discharge Data Reporting Discrepancies
59E-7.014	Inpatient Data Format – Data Elements, Codes and Standards
59E-7.015	Public Records
59E-7.016	General Provisions
59E-7.020	Purpose of Inpatient Data Reporting
59E-7.021	Definitions
59E-7.022	Inpatient Data Reporting and Audit Procedures
59E-7.023	Schedule for Submission of Inpatient Data and Extensions
59E-7.024	Reporting Instructions
59E-7.025	Certification, Audits and Resubmission Procedures
59E-7.026	Penalties for Hospital Inpatient Discharge Data Reporting Discrepancies
59E-7.027	Header Record
59E-7.028	Inpatient Data Elements, Codes and Standards
59E-7.029	Public Records
59E-7.030	General Provisions
59E-7.201	Submission of Comprehensive Inpatient Rehabilitation Hospital Patient Data

59E-7.202	Schedule for Submission of Patient Data and Extensions
59E-7.203	Reporting Instructions
59E-7.204	Certification Procedures
59E-7.205	Patient Data Format – Data Elements and Codes
59E-7.206	Patient Data Format – Record Layout
59E-7.207	Data Standards
59E-7.208	Notice of Potential Future Additional Data Requirements

PURPOSE AND EFFECT: The purpose of amending Chapter 59E-7, F.A.C., is to align the current data elements collected to the uniform bill for institutional facilities (UB-04), as approved by the National uniform Billing Committee (NUBC) effective October 1, 2007. Additional revision is necessary to incorporate collection of rehabilitative discharges, shorten report deadlines, define resubmission requirements, patient data release, clarifications, and conform terminology to national standards.

SUMMARY: Amending Chapter 59E-7, F.A.C., will facilitate direct data elements correlation from the UB-04 source document and therefore decrease potential errors introduced by having to re-map elements from the UB-04 to the expired UB-92 source document format. Inclusion of the rehabilitative discharge data, currently collected through a separate application, will allow a uniform collection process for all institutional data and staff resources. The rule contains report deadlines based on an outdated collection system where facility reports were submitted on mailed diskettes. Current electronic data submission applications expedite the collection process time negating the need for extended time frames. Shortened deadlines will afford quicker data availability to meet the growing demand by researchers and consumers who desire current data access on the consumer website and available for purchase.

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), 408.061, 408.08, 408.061(1)(e), 408.08(1)(e) FS.

LAW IMPLEMENTED: 408.061, 408.062, 408.063, 408.07, 408.08(1), (2), (3), (4), (5), 119.07(1)(a), (2)(a), 120.53(2)(a), 408.05 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: Patrick Kennedy, Administrator at (850)922-5531

THE FULL TEXT OF THE PROPOSED RULES IS:

INPATIENT AND COMPREHENSIVE REHABILITATIVE DATA COLLECTION

59E-7.011 Definitions.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.061(1)(e), 408.15(8) FS. Law Implemented 408.061 FS. History–New 12-15-96, Amended 7-11-01, Repealed 1-1-10.

59E-7.012 Inpatient Data Reporting and Audit Procedures.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.08(1)(e), 408.15(8) FS. Law Implemented 408.061, 408.08(1), (2), 408.15(11) FS. History–New 12-15-96, Amended 1-4-00, 7-11-01, 7-12-05, 5-22-07, Repealed 1-1-10.

59E-7.013 Penalties for Hospital Inpatient Discharge Data Reporting Discrepancies.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.061(1)(e), 408.15(8) FS. Law Implemented ~~408.08(13), (16)~~ FS. History–New 12-15-96, Repealed 1-1-10.

59E-7.014 Inpatient Data Format – Data Elements, Codes and Standards.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.061(1)(e), 408.15(8) FS. Law Implemented 408.061 FS. History–New 12-15-96, Amended 7-11-01. 7-12-05, 5-22-07, Repealed 1-1-10.

59E-7.015 Public Records.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.061(1)(e), 408.15(8) FS. Law Implemented 119.07(1)(a), (2)(a), 408.061(8) FS. History–New 12-15-96, Amended 7-12-05, Repealed 1-1-10.

59E-7.016 General Provisions.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.061(1)(e), 408.15(8) FS. Law Implemented 408.061 FS. History–New 12-15-96, Amended 7-11-01, 7-12-05, Repealed 1-1-10.

59E-7.020 Purpose of Inpatient Data Reporting.

The reporting of inpatient patient data will provide a statewide integrated database that includes acute care hospitals, psychiatric hospitals, rehabilitation hospitals and long term care hospital services for the assessment of variations in utilization, disease surveillance, access to care and cost trends. The amendments appearing herein are effective with the reporting period starting January 1, 2010.

Proposed Effective Date is January 1, 2010.

Rulemaking Authority 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063, 408.05, 408.07, 408.08 FS. History–New 1-1-10.

59E-7.021 Definitions.

As used in Rules 59E-7.021 through 59E-7.030, F.A.C., beginning with the inpatient data reporting for the 1st quarter of the year 2010:

(1) "Acute Care" means inpatient general routine care provided to patients who are in an acute phase of illness, which includes the concentrated and continuous observation and care provided in the intensive care units of an institution.

(2) "Comprehensive Rehabilitation" means services provided in a Specialty Rehabilitation Hospital licensed under Chapter 395, F.S. or services provided in a hospital rehabilitation distinct part unit.

(3) "Distinct Part Unit" means a unique unit or level of care at a hospital requiring the issuance of a separate claim to a payer.

(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) "Executive Officer" means a reporting facility's chief executive officer, chief financial officer, chief operating officer, president, or any vice president of the hospital in charge of a principal business unit, division or function (administration or finance).

(6) "Inpatient" means a patient who has an admission order given by a licensed physician or other individual who has been granted admitting privileges by the hospital. Observation patients are excluded.

(7) "Newborn" means a baby born within the hospital or the initial admission of an infant to any hospital within 24 hours of birth. Excludes babies born in a different hospital and transferred to the reporting hospital.

(8) "NPI" means National Provider Identification. An NPI is a unique identification number assigned to a provider by the Centers for Medicare & Medicaid Services.

(9) "NUBC" means National Uniform Billing Committee. A national body that defines the data elements that are reported on the Uniform Bill UB-04 and annually publishes an Official UB-04 Data Specifications Manual.

(10) ISO 3166 – The International Standard for Organization is a standardized list of country names and codes first published in 1974 and updated 2008. ISO 3166 is available at: http://www.iso.org/iso/english country names and code elements.

Proposed Effective Date is January 1, 2010.

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

Editorial note: see former rule 59E-7.011.

59E-7.022 Inpatient Data Reporting and Audit Procedures.

(1) Hospitals licensed under Chapter 395, F.S., except state-operated hospitals, in operation for all or any of the reporting periods described in subsection 59E-7.023(1), F.A.C., below, shall submit hospital inpatient discharge data to the Agency according to the provisions in Rules 59E-7.021 through 59E-7.029, F.A.C. The amendments appearing herein are effective with the report period starting January 1, 2010.

(2) Each hospital shall submit a separate report for each location per paragraph 59A-3.066(2)(i), F.A.C.

(3) All acute, intensive care, long term acute care, short term and long term psychiatric, substance abuse and comprehensive rehabilitation live discharges and deaths, including newborn live discharges and deaths, shall be reported. Submit one record per inpatient discharge, to include all newborn admissions, transfers and deaths. Patients receiving rehabilitation services while in the acute care setting (not discharged or transferred to a distinct part unit) are included in the inpatient reporting for service type 1. Report all rehabilitation services provided in either a rehabilitation hospital or in a non-acute distinct part unit in the inpatient reporting for service type 2.

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

Proposed Effective Date is January 1, 2010.

Rulemaking Authority 408.08(1)(e), 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063, 408.05, 408.07, 408.08(1), (2), 408.15(11) FS. History–New 1-1-10.

Editorial note: see former rule 59E-7.012.

59E-7.023 Schedule for Submission of Inpatient Data and Extensions.

(1) All hospitals reporting their inpatient discharge data shall report according to the following schedule commencing with 1st quarter data 2010.

(a) Each report submitted for the 1st quarter covering inpatient discharges occurring between January 1 and March 31, inclusive, of each year, shall be submitted no later than June 1 of the calendar year during which the discharge occurred. This is considered to be the first quarter, regardless of the hospital's fiscal year. First quarter reports must be certified by August 31 of the same calendar year.

(b) Each report submitted for the 2nd quarter covering inpatient discharges occurring between April 1 and June 30, inclusive, of each year, shall be submitted no later than September 1 of the calendar year during which the discharge occurred. This is considered to be the second quarter, regardless of the hospital's fiscal year. Second quarter reports must be certified by November 30 of the same calendar year.

(c) Each report submitted for the 3rd quarter covering inpatient discharges occurring between July 1 and September 30, inclusive, of each year, shall be submitted no later than December 1 of the calendar year during which the discharge occurred. This is considered to be the third quarter, regardless of the hospital's fiscal year. Third quarter reports must be certified by February 28 of the following calendar year.

(d) Each report submitted for the 4th quarter covering inpatient discharges occurring between October 1 and December 31, inclusive, of each year, shall be submitted no later than March 1 of the calendar year following the year in which the discharge occurred. This is considered to be the fourth quarter, regardless of the hospital's fiscal year. Fourth quarter reports must be certified by May 31 of the next calendar year.

(2) Extensions to the due dates in subsection 59E-7.023(1), F.A.C., will be granted by the Agency Administrator, Office of Data Collection and Quality Assurance Unit or the Agency designee for a maximum of 30 days from the initial submission due date in response to a written request signed by the hospital's chief executive officer or chief financial officer or authorized executive officer designee. The request must be received prior to the initial submission due date and the delay must be due to unforeseen factors beyond the control of the reporting hospital. These factors must be specified in the written request for the extension along with documentation of efforts undertaken to meet the filing requirements. Extensions shall not be granted verbally.

(3) Failure to file the report on or before the initial submission due date as specified in paragraphs 59E-7.023(1)(a)-(d), F.A.C., without an extension, and failure to correct a report which has been filed but contains errors or deficiencies by the certification deadline is punishable by fine pursuant to Rule 59E-7.026, F.A.C. The Agency shall send notification of errors or deficiencies by certified mail, electronic mail, or fax. Rejected reports must be corrected, resubmitted and certified by the certification due date.

Proposed Effective Date is January 1, 2010.

Rulemaking Authority 408.08(1)(e), 408.15(8), FS. Law Implemented 408.061, 408.062, 408.063, 408.05, 408.07, 408.08(1), (2), 408.15(11) FS. History–New 1-1-10.

Editorial note: see former rule 59E-7.012.

59E-7.024 Reporting Instructions.

(1) Beginning with the inpatient data report for the 1st quarter of the year 2010, reporting facilities shall submit a zipped inpatient discharge data file by Internet according to the specifications in paragraphs (a) through (c) below unless reporting by CD-ROM is approved by the Agency in the case of extraordinary or hardship circumstances.

(a) The Internet address for the receipt of inpatient data is https://ahcaxnet.fdhc.state.fl.us/patientdata.

(b) Data submitted to the Internet address shall be electronically transmitted with the zipped inpatient data in a XML file using the Inpatient Data XML Schema available at: http://ahca.myflorida.com/xmlschemas/inppoa22.xsd. The Inpatient Data XML Schema is incorporated by reference.

(c) The data in the XML file shall contain the data elements, codes and standards required in Rules 59E-7.027, 59E-7.028, and 59E-7.030, F.A.C.

Proposed Effective Date is January 1, 2010.

Rulemaking Authority 408.08(1)(e), 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063, 408.05, 408.07, 408.08(1), (2), 408.15(11) FS. History–New 1-1-10.

Editorial note: see former rule 59E-7.012.

59E-7.025 Certification, Audits and Resubmission Procedures.

(1) All hospitals submitting data in compliance with Rules 59E-7.021 through 59E-7.030, F.A.C., shall certify that the data submitted for each quarter is accurate, complete and verifiable using Certification Form for Inpatient Discharge Data, AHCA Form 4200-002, dated 10/93 and incorporated by reference. The completed Certification Form for Inpatient Discharge Data shall be submitted to the Agency for Health Care Administration, 2727 Mahan Drive, MS #16, Tallahassee, Florida 32308, Attention: Florida Center for Health Information and Policy Analysis or by facsimile to the Agency's office, or a scanned certification submitted by electronic mail.

(2) Beginning with the inpatient data reporting for the 1st quarter of the year 2010, hospitals whose data is not certified within five (5) calendar months following the last day of the reporting quarter shall be subject to penalties pursuant to Rule 59E-7.026, F.A.C. Extensions to this five (5) month period may be granted by the Agency Administrator, Office of Data Collection and Quality Assurance Unit or the Agency designee for a maximum of 30 days following the certification due date in response to a written request signed by the hospital's chief executive officer, chief financial officer, or authorized executive officer designee. A facility will not be penalized for delays caused by AHCA which is documented by the reporting facility to include on-line reporting system downtime or delays in receipt of reports from AHCA.

(3) Changes or corrections to certified hospital data will be accepted from hospitals to improve their data quality for a period of eighteen (18) months following the initial submission due date. The Administrator, Office of Data Collection and Quality Assurance, or Agency designee, may grant approval for resubmitting previously certified data in response to a written request signed by the hospital's chief executive officer or chief financial officer, or authorized executive officer designee. The written request must specify the reason for the corrections or changes, explain the cause contributing to the inaccurate reporting, describe a corrective action plan to prevent future errors, the total number of records affected by quarters and years, the data type and the date that the replacement file will be submitted to the Agency. Any changes to a hospital's data after this eighteen-month period shall be subject to penalties pursuant to Rule 59E-7.026, F.A.C. Resubmission of previously certified data must be certified within thirty (30) days following receipt of the data file from the facility.

Proposed Effective Date is January 1, 2010.

Rulemaking Authority 408.08(1)(e), 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063, 408.05, 408.07, 408.08(1),(2), 408.15(11) 408.08(1), (2) FS. History–New 1-1-10.

Editorial note: see former rule 59E-7.012.

59E-7.026 Penalties for Hospital Inpatient Discharge Data Reporting Discrepancies.

(1) For purposes of this rule, a report or other information is "incomplete" when it does not contain all data required by the Agency in this rule and in forms incorporated by reference or when it contains inaccurate data. The Agency shall to the extent practical, apply the same audit standards and use the same audit procedures for all hospitals or audit a random sample of hospitals. The Agency will notify each hospital of any possible errors discovered by audit and request that the hospital either correct the data or verify that the data is complete and correct. A report or other information is "false" if done or made with the knowledge of the preparer or an administrator that it contains information or data which is not true or accurate.

(2) A hospital which refuses to file, fails to timely file, or files false or incomplete reports or other information required to be filed under the provisions of Section 408.08, F.S., other Florida Law, or rules adopted thereunder, shall be subject to administrative fines. Failure to comply with reporting requirements will also result in the referral of a hospital to the Agency's Bureau of Health Facility Regulation.

(3) Notifications will be sent to reporting facilities who do not submit their data file by the initial due date as specified in Rule 59E-7.023, F.A.C.

(4) The penalty period will begin on the first calendar day following the initial due date and the first calendar day following the certification due date for purposes of penalty assessments.

(5) Any hospital which is delinquent for a certification deadline as specified in Rule 59E-7.023 F.A.C., shall be subject to a fine of $100 per day of violation for the first violation, $350 per day of violation for the second violation, and $1,000 per day of violation for the third and all subsequent violations. Violations will be considered those activities which necessitate the issuance of an administrative complaint by the Agency unless the administrative complaint is withdrawn or final order dismissing the administrative complaint is entered. All fines are to be fixed, imposed, and collected by the Agency. Any hospital which files false information to the Agency shall be subject to a fine of $1,000 per day, in addition to any other fine imposed hereunder. The fine shall be fixed, imposed and collected by the Agency.

Proposed Effective Date is January 1, 2010.

Rulemaking Authority 408.061(1)(e), 408.15(8) FS. Law Implemented 408.08(2)(3)(4)(5) FS. History–New 1-1-10.

Editorial note: see former rule 59E-7.013.

59E-7.027 Header Record.

Beginning with the inpatient data reporting for the 1st quarter of the year 2010, the first record in the data file shall be a header record containing the information described below.

(1) Transaction Code. Enter Q for a calendar quarter report. A required field.

(2) Report Year. Enter the year of the data in the format YYYY where YYYY represents the year in four (4) digits. A required field.

(3) Report Quarter. Enter the quarter of the data, 1, 2, 3 or 4, where 1 corresponds to the first quarter of the calendar year, 2 corresponds to the second quarter of the calendar year, 3 corresponds to the third quarter of the calendar year, and 4 corresponds to the fourth quarter of the calendar year. A required field.

(4) Data Type. Enter PD10-2 for Inpatient Data. A required field.

(5) Submission Type. Enter I or R where I indicates an initial submission of a data file or resubmission of a data file prior to certification, R indicates a replacement submission of previously certified inpatient data where resubmission has been requested or authorized by the Agency. A required field.

(6) Processing Date. Enter the date that the data file was created in the format YYYY-MM-DD where MM represents numbered months of the year from 01 to 12, DD represents numbered days of the month from 01 to 31, and YYYY represents the year in four (4) digits. A required field.

(7) AHCA Facility Number. Enter the identification number of the facility as assigned by AHCA for reporting purposes. A valid identification number must contain at least eight (8) digits and no more than ten (10) digits. A required field.

(8) Medicare Number. Enter the Medicare number of the facility as assigned by Centers for Medicare & Medicaid Services (CMS). A valid identification number must contain seven (7) numeric digits. A required field.

(9) Organization Name. Enter the name of the hospital from which the patient was discharged, and which is responsible for reporting the data. All questions regarding data accuracy and integrity will be referred to this entity. Up to a forty-character field. A required field.

(10) Contact Person Name. Enter the name of the contact person for the hospital. Submit name in the Last, First format. Up to a twenty-five-character field. A required field.

(11) Contact Phone Number. The area code, business telephone number, and if applicable, extension for the contact person. Enter the contact person's telephone number in the numeric format (AAA)XXXXXXXEEEE where AAA is the area code, XXXXXXX represents the seven (7) digit phone number and EEEE represents the extension. Zero fill if no extension. A required field.

(12) Contact Person E-Mail Address. Enter the e-mail address of the contact person.

(13) Contact Person Street or P. O. Box Address. Enter the street or post office box address of the contact person's mailing address. Up to a forty-character field. A required field.

(14) Mailing Address City. Enter the city of the contact person's address. Up to a twenty-five character field. A required field.

(15) Mailing Address State. Enter the state of the contact person's address using the U.S. Postal Service state abbreviation in the format XX. Use the abbreviation FL for Florida. A required field.

(16) Mailing Address Zip Code. Enter the numeric zip code of the contact person's address in the format XXXXX-XXXX.

Proposed Effective Date is January 1, 2010.

Rulemaking Authority 408.061(1)(e), 408.15(8) FS. Law Implemented 408.061, 408.05, 408.062, 408.063, 408.07 FS. History–New 1-1-10.

Editorial note: see former rule 59E-7.014.

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

Beginning with the inpatient data reporting for the 1st quarter of the year 2010, all hospitals submitting data in compliance with Rules 59E-7.021 through 59E-7.030, F.A.C., shall report the required data elements and data element codes listed below as stipulated by the Agency and described in the National Uniform Billing Committee Official UB-04 Data Specifications Manual.

(1) AHCA Facility Number. Enter the identification number of the hospital as assigned by AHCA for reporting purposes. A valid identification number must contain at least eight (8) digits and no more than ten (10) digits. A required field.

(2) Patient Control Number. An alpha-numeric code containing standard letters or numbers assigned by the facility as a unique identifier for each record submitted in the reporting period to facilitate retrieval of the individual's account of services (accounts receivable) containing the financial billing records and any postings of payment. Up to twenty four (24) characters. Duplicate patient control numbers are not permitted. A required field. The hospital must maintain a key list to locate actual records upon request by AHCA.

(3) Medical or Health Record Number. An alpha-numeric code assigned to the patient's medical or health record by the facility. The medical or health record number references a file that contains the history of treatment. It should not be substituted for the Patient Control Number. Up to twenty four (24) characters. A required field.

(4) Patient Social Security Number. The social security number (SSN) of the patient. The SSN is a nine (9) digit number issued by the Social Security Administration used to facilitate retrieval of individual case records, track multiple patient discharges and for medical research. Reporting 777777777 is acceptable for those patients where efforts to obtain the SSN have been unsuccessful or the patient is under two (2) years of age and does not have a SSN or for patients who are non-U.S. citizens who have not been issued SSNs. If only the last four digits of a patients SSN are known, report 77777XXXX where XXXX represent the last known four digits of the patient SSN. A required entry.

(5) Patient Ethnicity. Self-designated by the patient or patient's parent or guardian. Use "Unknown" where efforts to obtain the information from the patient or from the patient's parent or guardian have been unsuccessful. The patient's ethnic background shall be reported as one choice from the following list of alternatives. A required entry. Must be a two (2) digit code as follows:

a. E1 = Hispanic or Latino. A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

b. E2 = Non-Hispanic or Latino. A person not of any Spanish culture or origin.

c. E7 = Unknown.

(6) Patient Race. Self-designated by the patient, patient's parent or guardian. Use "Unknown" where efforts to obtain the information from the patient or from the patient's parent or guardian have been unsuccessful. The patient's racial

background shall be reported as one choice from the following list of alternatives. A required entry. Must be a one (1) digit code as follows:

(a) 1– American Indian or Alaska Native. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains cultural identification through tribal affiliation or community recognition.

(b) 2 – Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent. This area includes, for example, Cambodia, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(c) 3 – Black or African American. A person having origins in any of the black racial groups of Africa.

(d) 4 – Native Hawaiian or other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(e) 5 – White. A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

(f) 6 – Other. Any other possible options not covered in the above categories, including a patient who has more than one race.

(g) 7 – Unknown. Use if the patient refuses or fails to disclose.

(7) Patient Birth Date. The date of birth of the patient. A ten (10) character field in the format YYYY-MM-DD where MM represents the numbered months of the year from 01 to 12, DD represents numbered days of the month from 01 to 31, and YYYY represents the year in four (4) digits. Unknown birthdates should use the default of 1880-01-01. A birth date after the discharge date is not permitted. A required entry.

(8) Patient Sex. The patient sex at the time of admission. A required entry. Must be a one (1) alpha character in upper case as follows:

1. M – Male

2. F – Female

3. U – Unknown – Use where efforts to obtain the information have been unsuccessful or where the patient's sex cannot be determined due to a medical condition.

(9) Patient Zip Code. The numeric five (5) digit United States Postal Service ZIP Code of the patient's address. Use 00009 for foreign residences. Use 00007 for homeless patients. Use 00000 where efforts to obtain the information have been unsuccessful. A required entry.

(10) Patient Country Code. The country code of residence. A two (2) digit upper case alpha code from the International Standard for Organization country code list, ISO 3166 or latest release. A required entry. Use 99 where the country of residence is unknown or where efforts to obtain the information have been unsuccessful.

(11) Type of Service Code. A code designating the type of discharges as either acute inpatient, long term care, short term and long term psychiatric, or comprehensive rehabilitation. A required entry. Must be a one digit code as follows:

(a) 1 – Inpatient, as described in Rule 59E-7.022, F.A.C.

(b) 2 – Comprehensive Rehabilitation, as described in paragraph 59E-7.021(2), F.A.C.

(12) Priority of Admission. The scheduling priority of the initial admission. A required entry. Must be a one (1) digit code as follows:

(a) 1 – Emergency. The patient requires immediate medical intervention as a result of severe, life-threatening or potentially disabling conditions.

(b) 2 – Urgent. The patient requires attention for the care and treatment of a physical or mental disorder.

(c) 3– Elective. The patient's condition permits adequate time to schedule the services.

(d) 4 – Newborn. A baby born within the facility or the initial admission of an extramural birth infant to an acute care facility within 24 hours of birth, as described in subsection 59E-7.021(7), F.A.C. Use of this code requires the use of a special Point of Origin for Admission code.

(e) 5 – Trauma. A patient treated as a trauma patient with or without trauma activation at a State of Florida designated trauma center.

(13) Source or Point of Origin for Admission. Must be a one (1) character alpha code or two (2) digit numeric code indicating the direct source of patient origin for the admission or visit. Codes 10 or 13 are to be used only for newborn admissions. A required entry. Alpha characters must use upper case.

(a) 01 – Non-health care facility 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. The patient was admitted to this facility as a transfer or referral from a freestanding or non-freestanding clinic.

(c) 04 – Transfer from a hospital. The patient was admitted to this facility as a transfer from an acute care facility where the patient was an inpatient. Transfer must be from a different hospital. Excludes transfers from hospital inpatients in the same facility.

(d) 05 – Transfer from a Skilled Nursing Facility (SNF) or Intermediate Care Facility (ICF). The patient was admitted to this facility from a SNF or ICF where the patient was a resident.

(e) 06 – Transfer from another health care facility. The patient was admitted to this facility as a transfer from another type of health care facility not defined elsewhere in this code list.

(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) 08 – Court/Law Enforcement. The patient was admitted upon the direction of a court of law, or upon the request of a law enforcement Agency representative. Includes transfers from incarceration facilities.

(h) 09 – Information Not Available. The means by which the patient was admitted to this hospital is not known.

(i) D – Transfer from one distinct unit of the hospital to another distinct unit of the same hospital resulting in a separate claim. The patient was admitted to this facility as a transfer from hospital inpatient within this hospital resulting in a separate claim to the payer. For purposes of this code, "Distinct Unit" is defined as a unique unit or level of care at the hospital requiring the issuance of a separate claim to the payer.

(j) E – Transfer from an Ambulatory Surgery Center.

(k) F – Transfer from a hospice facility and under a hospice plan of care or enrolled in a hospice program.

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

(l) 10 – Born inside this hospital.

(m) 13 – Born outside this hospital.

(14) Admission Date. The date the patient was admitted to the initial reporting facility. A ten (10) character field in the format YYYY-MM-DD where MM represents the numbered months of the year from 01 to 12, DD represents numbered days of the month from 01 to 31, and YYYY represents the year in four (4) digits. Admission date must equal or precede the discharge date. A required entry.

(15) Inpatient Admission Time. The hour on a 24-hour clock during which the patient's initial inpatient admission to the hospital occurred. A required entry. Use 99 where efforts to obtain the information have been unsuccessful. Must be two digits as follows:

AM HOURS

1. 00 – 12:00 midnight to 12:59:59
2. 01 – 01:00 to 01:59:59
3. 02 – 02:00 to 02:59:59
4. 03 – 03:00 to 03:59:59
5. 04 – 04:00 to 04:59:59
6. 05 – 05:00 to 05:59:59
7. 06 – 06:00 to 06:59:59
8. 07 – 07:00 to 07:59:59
9. 08 – 08:00 to 08:59:59
10. 09 – 09:00 to 09:59:59
11. 10 – 10:00 to 10:59:59
12. 11 – 11:00 to 11:59:59

PM HOURS

13. 12 – 12:00 noon to 12:59:59
14. 13 – 01:00 to 01:59:59
15. 14 – 02:00 to 02:59:59
16. 15 – 03:00 to 03:59:59
17. 16 – 04:00 to 04:59:59
18. 17 – 05:00 to 05:59:59
19. 18 – 06:00 to 06:59:59
20. 19 – 07:00 to 07:59:59
21. 20 – 08:00 to 08:59:59
22. 21 – 09:00 to 09:59:59
23. 22 – 10:00 to 10:59:59
24. 23 – 11:00 to 11:59:59
25. 99 – Unknown

(16) Discharge Date. The date the patient was discharged from the reporting facility. A ten (10) character field in the format YYYY-MM-DD where MM represents the numbered months of the year from 01 to 12, DD represents numbered days of the month from 01 to 31, and YYYY represents the year in four (4) digits. Discharge date must equal or follow the admission date, and discharge date must occur within the reporting period as shown on the header record. A required entry.

(17) Discharge Time. The hour on a 24-hour clock in which the patient was discharged from the discharging hospital. A required entry. Use 99 where efforts to obtain the information have been unsuccessful. Must be two digits as follows:

1. 00 – 12:00 midnight to 12:59:59
2. 01 – 01:00 to 01:59:59
3. 02 – 02:00 to 02:59:59
4. 03 – 03:00 to 03:59:59
5. 04 – 04:00 to 04:59:59
6. 05 – 05:00 to 05:59:59
7. 06 – 06:00 to 06:59:59
8. 07 – 07:00 to 07:59:59
9. 08 – 08:00 to 08:59:59
10. 09 – 09:00 to 09:59:59
11. 10 – 10:00 to 10:59:59
12. 11 – 11:00 to 11:59:59

PM HOURS

13. 12 – 12:00 noon to 12:59:59
14. 13 – 01:00 to 01:59:59
15. 14 – 02:00 to 02:59:59
16. 15 – 03:00 to 03:59:59
17. 16 – 04:00 to 04:59:59
18. 17 – 05:00 to 05:59:59
19. 18 – 06:00 to 06:59:59
20. 19 – 07:00 to 07:59:59
21. 20 – 08:00 to 08:59:59
22. 21 – 09:00 to 09:59:59
23. 22 – 10:00 to 10:59:59
24. 23 – 11:00 to 11:59:59
25. 99 – Unknown

(18) Patient Discharge Status. Patient disposition at discharge. A required entry. Must be a two (2) digit code as follows:

(a) 01 – Discharged to home or self-care (routine discharge).

(b) 02 – Discharged or transferred to a short-term general hospital for inpatient care.

(c) 03 – Discharged or transferred to a skilled nursing facility with Medicare certification in anticipation of skilled care.

(d) 04 – Discharged or transferred to an intermediate care facility.

(e) 05 – Discharged or transferred to a designated cancer center or Children's Hospital.

(f) 06 – Discharged or transferred to home under care of home health care organization service in anticipation of skilled care.

(g) 07 – Left the hospital against medical advice (AMA) or discontinued care.

(h) 20 – Expired.

(i) 50 – Hospice-Home.

(j) 51 – Hospice Medical Facility (Certified) providing hospice level of care.

(k) 62 – Discharged or transferred to an Inpatient Rehabilitation Facility (IRF) including rehabilitation distinct part units of a hospital.

(l) 63 – Discharged or transferred to a Medicare certified long term care hospital.

(m) 64 – Discharged or transferred to a Nursing Facility certified under Medicaid but not certified under Medicare.

(n) 65 – Discharged or transferred to a psychiatric hospital including psychiatric distinct part units of a hospital.

(o) 66 – Discharged or transferred to a Critical Access hospital.

(p) 70 – Discharged or transferred to another type of health care institution not defined elsewhere in this code list.

(19) Principal Payer Code. Describes the expected primary source of reimbursement for services rendered based on the patient's status at the time of reporting. A required entry. Must be a one (1) character alpha field using upper case as follows:

(a) A – Medicare. Patients covered by Medicare where Centers for Medicare & Medicaid Services is the direct payer.

(b) B – Medicare Managed Care. Patients covered by Medicare Advantage plans, Medicare HMO, Medicare PPO, Medicare Private Fee for Service or any other type of Medicare plan where Centers for Medicare & Medicaid Services is not the direct payer.

(c) C – Medicaid. Patients covered by state administered Florida Medicaid where the payment is directly from the State of Florida Medicaid program.

(d) D – Medicaid Managed Care. Patients covered by Medicaid funded capitated plans. This would include any program where the patient is enrolled in the Medicaid program but the payment is not directly from the state of Florida Medicaid program. This designation is to be used regardless of whether the hospital has a contract with that plan.

(e) E – Commercial Health Insurance. Patients covered by any type of private coverage, including HMO, PPO, self-insured plans.

(f) H – Workers' Compensation. Patients covered by any type of workers compensation plan, including self insured plans, managed care plans or the State of Florida sponsored workers compensation plan.

(g) I – TriCare or Other Federal Government. Patients covered by any federal government program for active and retired military and their families, Black Lung, Section 1011, the Federal Prison System, or any other federal program.

(h) J – VA. Patients covered by the Veteran's Administration.

(i) K – Other State/Local Government. Patients covered by a state program or local government that does not fall into any of the payer categories listed. This would include those covered by the Florida Department of Corrections or any county or local corrections department, patients covered by county or local government indigent care programs if the reimbursement is at the patient level; any out-of-state Medicaid programs and county health departments or clinics.

(j) L – Self Pay. Patients with no insurance coverage.

(k) M – Other. This would include patients covered by any other type of payer not meeting the descriptions in paragraphs (a)-(k) above or paragraphs (m)-(n) below.

(l) N – Non-Payment. Includes charity, professional courtesy, no charge, research/clinical trial, refusal to pay/bad debt, Hill Burton free care, research/donor that is known at the time of reporting.

(m) O – KidCare. Includes Healthy Kids, MediKids and Children's Medical Services.

(n) Q – Commercial Liability Coverage. Patients whose health care is covered under a liability policy, such as automobile, homeowners or general business.

(20) Principal Diagnosis Code. The code representing the diagnosis established, after study, to be chiefly responsible for occasioning the admission. Principal diagnosis code must contain a valid ICD-9-CM or ICD-10-CM code for the reporting period. A diagnosis code cannot be used more than once as a principal or other diagnosis for each hospitalization reported. The code must be entered with 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. A required entry. Alpha characters must be in upper case.

(21) Other Diagnosis Code (1), Other Diagnosis Code (2), Other Diagnosis Code (3), Other Diagnosis Code (4), Other Diagnosis Code (5), Other Diagnosis Code (6), Other

Diagnosis Code (7), Other Diagnosis Code (8), Other Diagnosis Code (9), Other Diagnosis Code (10), Other Diagnosis Code (11), Other Diagnosis Code (12), Other Diagnosis Code (13), Other Diagnosis Code (14), Other Diagnosis Code (15), Other Diagnosis Code (16), Other Diagnosis Code (17), Other Diagnosis Code (18), Other Diagnosis Code (19), Other Diagnosis Code (20), Other Diagnosis Code (21), Other Diagnosis Code (22), Other Diagnosis Code (23), Other Diagnosis Code (24), Other Diagnosis Code (25), Other Diagnosis Code (26), Other Diagnosis Code (27), Other Diagnosis Code (28), Other Diagnosis Code (29), and Other Diagnosis Code (30). A code representing a condition that is related to the services provided during the hospitalization excluding external cause of injury codes. Report external cause of injury codes as described in subsection (61) below. No more than thirty (30) other diagnosis codes may be reported. Less than thirty (30) entries is permitted. If an Other Diagnosis Code is reported, a valid Principal Diagnosis code must be reported. Must contain a valid ICD-9-CM code or valid ICD-10-CM code for the reporting period. An Other Diagnosis Code cannot be used more than once as a principal or other diagnosis for each hospitalization reported. 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. Alpha characters must be in upper case.

(22) Present on Admission Indicator for Principal Diagnosis Code, Present on Admission for Other Diagnosis Code (1), Present on Admission Indicator for Other Diagnosis Code (2), Present on Admission Indicator for Other Diagnosis Code (3), Present on Admission Indicator for Other Diagnosis Code (4), Present on Admission Indicator for Other Diagnosis Code (5), Present on Admission Indicator for Other Diagnosis Code (6), Present on Admission Indicator for Other Diagnosis Code (7), Present on Admission Indicator for Other Diagnosis Code (8), Present on Admission Indicator for Other Diagnosis Code (9), Present on Admission Indicator for Other Diagnosis Code (10), Present on Admission Indicator for Other Diagnosis Code (11), Present on Admission Indicator for Other Diagnosis Code (12), Present on Admission Indicator for Other Diagnosis Code (13), Present on Admission Indicator for Other Diagnosis Code (14), Present on Admission Indicator for Other Diagnosis Code (15), Present on Admission Indicator for Other Diagnosis Code (16), Present on Admission Indicator for Other Diagnosis Code (17), Present on Admission Indicator for Other Diagnosis Code (18), Present on Admission Indicator for Other Diagnosis Code (19), Present on Admission Indicator for Other Diagnosis Code (20), Present on Admission Indicator for Other Diagnosis Code (21), Present on Admission Indicator for Other Diagnosis Code (22), Present on Admission Indicator for Other Diagnosis Code (23), Present on Admission Indicator for Other Diagnosis Code (24), Present on Admission Indicator for Other Diagnosis Code (25), Present on Admission Indicator for Other Diagnosis Code (26), Present on Admission Indicator for Other Diagnosis Code (27), Present on Admission Indicator for Other Diagnosis Code (28), Present on Admission Indicator for Other Diagnosis Code (29), Present on Admission Indicator for Other Diagnosis Code (30), Present on Admission Indicator for External Cause of Injury Code (1), Present on Admission Indicator for External Cause of Injury Code (2), and Present on Admission Indicator for External Cause of Injury Code (3). A code differentiating whether the condition represented by the corresponding Principal Diagnosis Code (20), Other Diagnosis Code (21), (1) through (30), and External Cause of Injury Code (61), (1) through (3), was present on admission or whether the condition developed after admission as determined by the physician, medical record or nature of the condition. A required entry. Present on Admission Indicator must be a one (1) character alpha-numeric upper case code as follows:

1. Y – Yes. Present at the time that the order for inpatient admission occurs.

2. N – No. Not present at the time that the order for inpatient admission occurs.

3. U – Unknown. Documentation is insufficient to determine if condition is present on admission.

4. W – Clinically Undetermined. Provider is unable to clinically determine whether condition was present on admission or not.

5. 1 – Exempt. A condition that is included on the current Centers for Medicare & Medicaid Services ICD-CM "Exempt from Reporting" list.

(23) Principal Procedure Code. The code representing the procedure most related to the principal diagnosis. No entry is permitted consistent with the records of the reporting entity. Must contain a valid ICD-9-CM or ICD-10-CM procedure code for the reporting period. If a principal procedure date is reported, a valid principal procedure code must be reported. 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 date when the principal procedure was performed. If a principal procedure is reported, a principal procedure date must be reported. No entry is permitted if no principal procedure is reported. A ten (10)-character field in the format YYYY-MM-DD where MM represents the numbered months of the year from 01 to 12, DD represents numbered days of the month from 01 to 31, and YYYY represents the year in four (4) digits. The principal procedure date must be less than four (4) days prior to the admission date and not later than the discharge date.

(25) Other Procedure Code (1), Other Procedure Code (2), Other Procedure Code (3), Other Procedure Code (4), Other Procedure Code (5), Other Procedure Code (6), Other Procedure Code (7), Other Procedure Code (8), Other Procedure Code (9), Other Procedure Code (10), Other Procedure Code (11), Other Procedure Code (12), Other Procedure Code (13), Other Procedure Code (14), Other

Procedure Code (15), Other Procedure Code (16), Other Procedure Code (17), Other Procedure Code (18), Other Procedure Code (19), Other Procedure Code (20), Other Procedure Code (21), Other Procedure Code (22), Other Procedure Code (23), Other Procedure Code (24), Other Procedure Code (25), Other Procedure Code (26), Other Procedure Code (27), Other Procedure Code (28), Other Procedure Code (29) and Other Procedure Code (30). A code representing a procedure provided during the hospitalization. If a principal procedure is not reported, an Other Procedure Code must not be reported. No more than thirty (30) other procedure codes may be reported. Less than thirty (30) or no entry is permitted. 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), Other Procedure Code Date (2), Other Procedure Code Date (3), Other Procedure Code Date (4), Other Procedure Code Date (5), Other Procedure Code Date (6), Other Procedure Code Date (7), Other Procedure Code Date (8), Other Procedure Code Date (9), Other Procedure Code Date (10), Other Procedure Code Date (11), Other Procedure Code Date (12), Other Procedure Code Date (13), Other Procedure Code Date (14), Other Procedure Code Date (15), Other Procedure Code Date (16), Other Procedure Code Date (17), Other Procedure Code Date (18), Other Procedure Code Date (19), Other Procedure Code Date (20), Other Procedure Code Date (21), Other Procedure Code Date (22), Other Procedure Code Date (23), Other Procedure Code Date (24), Other Procedure Code Date (25), Other Procedure Code Date (26), Other Procedure Code Date (27), Other Procedure Code Date (28), Other Procedure Code Date (29) and Other Procedure Code Date (30). The date when the procedure was performed. A required entry if a corresponding procedure code (26), (1) through (30) is reported. A ten (10) character field in the format YYYY-MM-DD where MM represents the numbered months of the year from 01 to 12, DD represents numbered days of the month from 01 to 31, and YYYY represents the year in four (4) digits. The procedure date must be less than four (4) days prior to the admission date and not later than the discharge date.

(27) Attending Practitioner Identification Number. The Florida license number of the medical doctor, osteopathic physician, dentist, podiatrist, chiropractor or advanced registered nurse practitioner who had primary responsibility for the patient's medical care and treatment or who certified as to the medical necessity of the services rendered. For military physicians not licensed in Florida, use US999999999. An alpha-numeric field of up to eleven characters. A required entry. Alpha characters must be in upper case.

(28) Attending Practitioner National Provider Identification (NPI). An unique ten (10) character identification number assigned to a provider. A required entry for providers in the US or its territories and providers not in the US or its territories upon mandated HIPAA NPI implementation date. For military physicians, medical residents, or individuals not required to obtain a NPI number, use 9999999999.

(29) Operating or Performing Practitioner Identification Number. The Florida license number of the medical doctor, osteopathic physician, dentist, podiatrist, chiropractor or advanced registered nurse practitioner who had primary responsibility for the principal procedure performed. The operating or performing practitioner may be the attending practitioner. For military physicians not licensed in Florida, use US999999999. No entry is permitted if no principal procedure is reported. Alpha characters must be in upper case.

(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. A required identification number for providers in the US or its territories and providers not in US or its territories upon mandated HIPAA NPI implementation date For military physicians, medical residents, or individuals not required to obtain a NPI number, use 9999999999. No entry is permitted if no principal procedure is reported.

(31) Other Operating or Performing Practitioner Identification Number. The Florida license number of a medical doctor, osteopathic physician, dentist, podiatrist, chiropractor or advanced registered nurse practitioner who assisted the operating or performing practitioner or performed a secondary procedure. The other operating or performing practitioner must not be reported as the operating or performing practitioner. The other operating or performing practitioner may be the attending practitioner. For military physicians not licensed in Florida, use US999999999. No entry is permitted consistent with the records of the reporting entity.

(32) Other 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. A required identification number for providers in the US or its territories and providers not in US or its territories upon mandated HIPAA NPI implementation date. For military physicians, medical residents, or individuals not required to obtain a NPI number, use 9999999999. No entry is permitted if no principal procedure is reported.

(33) Room and Board Charges. Routine service charges incurred for accommodations. Report charges for revenue codes 11X through 16X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or

commas, excluding cents. Report zero (0) if there are no Room and Board Charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(34) Nursery Level I Charges. Accommodation charges for well-baby care services which include sub-ventilation care, intravenous feedings and gavage to neonates. Report charges for revenue code 170 and 171, as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no Nursery Charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(35) Nursery Level II Charges. Accommodation charges for services which include provision of ventilator services. Report charges for revenue code 172 as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no Level II Nursery Charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(36) Nursery Level III Charges. Accommodation charges for services which include continuos cardiopulmonary support services, complex pediatric surgery, neonatal cardiovascular surgery, pediatric neurology and neurosurgery, and pediatric cardiac catheterization. Report charges for revenue code 173 (Level III) as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no Level III Nursery Charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(37) Intensive Care Charges. Routine service charges for medical or surgical care provided to patients who require a more intensive level of care than is rendered in the general medical or surgical unit. Exclude neonatal intensive care charges reported as a Level III Nursery Charge. Report charges for revenue code 20X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no intensive care charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(38) Coronary Care Charges. Routine service charges for medical care provided to patients with coronary illness who require a more intensive level of care than is rendered in the general medical unit. Report charges for revenue code 21X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no coronary care charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(39) Pharmacy Charges. Charges for medication. Report charges for revenue codes 25X and 63X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no pharmacy charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(40) Medical and Surgical Supply Charges. Charges for supply items required for patient care. Report charges for revenue codes 27X and 62X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no medical and surgical supply charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(41) Laboratory Charges. Charges for the performance of diagnostic and routine clinical laboratory tests and for diagnostic and routine tests in tissues and culture. Report charges for revenue codes 30X and 31X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no laboratory charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(42) Radiology or Other Imaging Charges. Charges for the performance of diagnostic and therapeutic radiology services including computed tomography, mammography, magnetic resonance imaging, nuclear medicine, and chemotherapy administration of radioactive substances. Report charges for revenue codes 32X through 35X, 40X and 61X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no radiology or other imaging charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(43) Cardiology Charges. Facility charges for cardiac procedures rendered such as, but not limited to, heart catheterization or coronary angiography. Report charges for revenue code 48X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no cardiology charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(44) Respiratory Services or Pulmonary Function Charges. Charges for administration of oxygen, other inhalation services, and tests that evaluate the patient's respiratory capacities. Report charges for revenue codes 41X and 46X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no respiratory service or pulmonary function charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(45) Operating Room Charges. Charges for the use of the operating room. Report charges for revenue code 36X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report

zero (0) if there are no operating room charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(46) Anesthesia Charges. Charges for anesthesia services by the facility. Report charges for revenue code 37X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no anesthesia charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(47) Recovery Room Charges. Charges for the use of the recovery room. Report charges for revenue code 71X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no recovery room charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(48) Labor Room Charges. Charges for labor and delivery room services. Report charges for revenue code 72X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no labor room charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(49) Emergency Room Charges. Charges for medical examinations and emergency treatment. Report charges for revenue code 45X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no emergency room charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(50) Trauma Response Charges. Charges for a trauma team activation at a State of Florida licensed trauma center. Report charges for revenue code 68X used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no trauma response charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(51) Treatment or Observation Room Charges. Charges for use of a treatment room or for the room charge associated with observation services. Report charges for revenue code 76X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no treatment or observation room charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(52) Behavioral Health Charges. Charges for behavioral health treatment and services. Report charges for revenue codes 90X though 91X and 100X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(53) Oncology. Charges for treatment of tumors and related diseases. Excludes therapeutic radiology services reported in radiology and other imaging services in paragraph (42). Report charges for revenue code 28X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no oncology charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(54) Physical Therapy Charges. Charges for physical therapy in revenue codes 42X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(55) Occupational Therapy Charges. Charges for occupational therapy for revenue code 43X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(56) Speech Therapy or Language Pathology Charges. Charges for speech therapy or language pathology therapy for revenue code 44X as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(57) Other Charges. Other facility charges not included in paragraphs (33) to (56) above. Include charges that are not reflected in any of the preceding specific revenue accounts in the UB-04. DO NOT include charges from revenue codes 96X, 97X, 98X, or 99X in the UB-04 for professional fees and personal convenience items. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no other charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(58) Total Gross Charges. The total of undiscounted charges for services rendered by the hospital. Include charges for services rendered by the hospital excluding professional fees. The sum of all charges reported above in paragraphs (33) through (57) must equal total charges, plus or minus thirteen (13) dollars. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Zero (0) or negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(59) Infant Linkage Identifier. The social security number of the patient's birth mother where the patient is less than two (2) years of age. A nine (9) digit field to facilitate retrieval of individual case records, to be used to link infant and mother records, and for medical research. Reporting 777777777 for the mother's SSN is acceptable for those patients where efforts to obtain the mother's SSN have been unsuccessful or the mother is known to be from a country other than the United States. Infants in the custody of the State of Florida or adoptions, use 333333333 if the birth mother's SSN is not available. A required field for patients whose age is less than two (2) years of age at admission. No entry is permitted if the patient is two (2) years of age or older. A required entry.

(60) Admitting Diagnosis. The diagnosis provided by the admitting physician at the time of admission which describes the patient's condition upon admission or purpose of admission. Must contain a valid ICD-9-CM code or valid ICD-10-CM 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. A required entry. Alpha characters must be in upper case.

(61) External Cause of Injury Code (1), External Cause of Injury Code (2) and External Cause of Injury Code (3). A code representing circumstances or conditions as the cause of the injury, poisoning, or other adverse effects recorded as a diagnosis. Assign appropriate E-codes for all initial encounters or treatments, but not for subsequent occurences. A Place of Occurence E-code (E849.X) should be included to describe where the event occurred if documented in the patient medical history. No more than three (3) external cause of injury codes may be reported. Must be a valid ICD-9-CM or ICD-10-CM cause of injury code for the reporting period. An external cause of injury code cannot be used more than once for each hospitalization reported. 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. Alpha characters must be in upper case.

(62) Emergency Date of Arrival. The date the patient registered in the Emergency Department if the visit results in an inpatient admission to the reporting facility. A ten (10) character field in the format YYYY-MM-DD where MM represents the numbered months of the year from 01 to 12, DD represents numbered days of the month from 01 to 31, and YYYY represents the year in four (4) digits. Admission date must equal or precede the discharge date. Use 0000-00-00 for patients not admitted through the Emergency Department. A required entry.

(63) Emergency Department Hour of Arrival. The hour on a 24-hour clock during which the patient's registration in the emergency department occurred. A required entry. Use 99 where the patient was not admitted through the emergency department or where efforts to obtain the information have been unsuccessful. Must be two (2) digits as follows:

AM HOURS

1. 00 – 12:00 midnight to 12:59:59
2. 01 – 01:00 to 01:59:59
3. 02 – 02:00 to 02:59:59
4. 03 – 03:00 to 03:59:59
5. 04 – 04:00 to 04:59:59
6. 05 – 05:00 to 05:59:59
7. 06 – 06:00 to 06:59:59
8. 07 – 07:00 to 07:59:59
9. 08 – 08:00 to 08:59:59
10. 09 – 09:00 to 09:59:59
11. 10 – 10:00 to 10:59:59
12. 11 – 11:00 to 11:59:59

PM HOURS

13. 12 – 12:00 noon to 12:59:59
14. 13 – 01:00 to 01:59:59
15. 14 – 02:00 to 02:59:59
16. 15 – 03:00 to 03:59:59
17. 16 – 04:00 to 04:59:59
18. 17 – 05:00 to 05:59:59
19. 18 – 06:00 to 06:59:59
20. 19 – 07:00 to 07:59:59
21. 20 – 08:00 to 08:59:59
22. 21 – 09:00 to 09:59:59
23. 22 – 10:00 to 10:59:59
24. 23 – 11:00 to 11:59:59
25. 99 – Unknown.

(64) TRAILER RECORD. The last record in the data file shall be a trailer record and must accompany each data set. Report only the total number of patient data records contained in the file, excluding header and trailer records. The number entered must equal the number of records processed. Do not include leading zeros.

Proposed Effective Date is January 1, 2010.

Rulemaking Authority 408.061(1)(e), 408.15(8) FS. Law Implemented 408.061, 408.07, 408.05, 408.062, 408.063 FS. History–New 1-1-10.

Editorial note: see former rule 59E-7.014.

59E-7.029 Public Records.

(1) Agency records, public records under Chapter 119, F.S. (Florida's Public Records Law), are available for public inspection during normal business hours. Copies of such records may be obtained upon request and upon payment of the cost of copying.

(2) Patient-specific records collected by the Agency pursuant to Rules 59E-7.021 through 7.030, F.A.C., are exempt from disclosure pursuant to Section 408.061(7), F.S., and shall

not be released unless modified to protect patient confidentiality as described in paragraph (2)(a) below and released in the manner described in paragraphs (2)(c) and (2)(d).

(a) The patient-specific record shall be modified to protect patient confidentiality as follows:

1. Patient Control Number as assigned by the facility. Substitute sequential number.

2. Patient Social Security Number. Deleted. Indicators of readmission at any Florida reporting hospital within 30 days of discharge will be substituted when available. Readmission data will not be released for any quarter until each subsequent quarter is 100 percent certified.

3. Patient Birth Date. Substitute age in years and an indicator of Age < 29 Days except for persons 100 and older, substitute age > 100 years.

4. Admission Date. Deleted. (admit month cannot be substituted)

5. Discharge Date. Substitute quarters 1-4. (discharge month cannot be substituted).

6. Principal Procedure Date. Days from admission to Principal Procedure will be substituted.

7. Other Procedure Date. Days from admission to Other Procedure will be substituted.

8. Infant Linkage ID. Deleted.

9. Medical or Health Record Number. Substitute sequential number.

10. ED Date of Arrival. Visit Time Hours (VTH) will be substituted. The VTH will calculate the number of hours spent at the ED from registration to discharge.

(b) A record linkage number shall be assigned which does not identify an individual patient and cannot reasonably be used to identify an individual patient through use of data available through the Agency for Health Care Administration, but which can be used for confidential data output for bona fide research purposes.

(c) The modified data records described in paragraph (2)(a) shall be released as a set of all records occurring in one calendar quarter based on date of discharge.

(d) The modified data described in paragraph (2)(a) shall be released in accordance with the Limited Data Set requirements of the federal Health Insurance Portability and Accountability Act and shall be made available on or after quarterly data has been certified as accurate by the hospitals as required by Section 408.061(1)(a), F.S.

(3) Aggregate reports derived from patient-specific hospital records collected pursuant to Rules 59E-7.021 through 7.030, F.A.C., are public records and shall be released as described in this rule, provided that the aggregate reports do not include the patient control number as assigned by the facility, patient social security number, record linkage number, patient birth date, admission date, discharge date, principal procedure date, other procedure date, infant linkage identifier or medical or health record number and provided the aggregate reports contain the combination of five or more records for any data disclosed.

(4) Requests for inpatient data shall be submitted by users sufficiently in advance of the desired delivery date to permit the Agency staff to respond without disruption of their duties.

Proposed Effective Date is January 1, 2010.

Rulemaking Authority 408.061(1)(e), 408.15(8) FS. Law Implemented 119.07(1)(a), (2)(a), 408.061(7) FS. History–New 1-1-10.

Editorial note: see former rule 59E-7.015.

59E-7.030 General Provisions.

Hospitals submitting inpatient discharge data pursuant to the provisions contained in these rules shall be directed by the following specific general provisions for inpatient data reporting beginning 1st quarter 2010:

(1) Any inpatient who is transferred or discharged from the acute care setting into a rehabilitative care distinct part unit or free standing hospital, must be reported as a separate record from the patients acute care record. The acute care discharge record is assigned data type one (1), and the comprehensive rehabilitative therapy discharge record is assigned data type two (2).

(2) If inpatients are administratively transferred or formally discharged from the acute care setting into a distinct-part Medicare certified skilled nursing unit or to hospice care, reporting accountability ceases at the time of discharge or transfer. Patient's receiving sub-acute care in these setting are excluded from inpatient reporting requirements.

(3) Observation patients are not included in the inpatient reported unless admitted to the hospital as an inpatient.

Proposed Effective Date is January 1, 2010.

Rulemaking Authority 408.061(1)(e), 408.15(8) FS. Law Implemented 408.061, 408.05, 408.062, 408.063, 408.07 FS. History–New 1-1-10.

Editorial note: former rule 59E-7.016.

CHAPTER 59E-7 PART II DATA COLLECTION COMPREHENSIVE REHABILITATION

59E-7.201 Submission of Comprehensive Inpatient Rehabilitation Hospital Patient Data.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.005(2), 408.05(2)(f)-(g), 408.05(6), 408.061(1)(a)-(b), 408.061(2)-(3), 408.061(8)-(9), 408.062(1)(f), 408.063(2), 408.07, 408.072, 408.085 FS. History–New 3-31-94, Repealed 1-1-10.

59E-7.202 Schedule for Submission of Patient Data and Extensions.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.005(2), 408.05(2)(f)-(g), 408.05(6), 408.061(1)(a)-(b), 408.061(2)-(3), 408.061(8)-(9), 408.062(1)(f), 408.063(2), 408.07, 408.072, 408.08(9), 408.085 FS. History–New 3-31-94, Repealed 1-1-10.

59E-7.203 Reporting Instructions.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.005(2), 408.05(2)(f)-(g), 408.05(6), 408.061(1)(a)-(b), 408.061(2)-(3), 408.061(8)-(9), 408.062(1)(f), 408.063(2), 408.07, 408.072, 408.085 FS. History–New 3-31-94, Repealed 1-1-10.

59E-7.204 Certification Procedures.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.005(2), 408.05(2)(f)-(g), 408.05(6), 408.061(1)(a)-(b), 408.061(2)-(3), 408.061(8)-(9), 408.062(1)(f), 408.063(2), 408.07, 408.072, 408.08(9), 408.085 FS. History–New 3-31-94, Repealed 1-1-10.

59E-7.205 Patient Data Format – Data Elements and Codes.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.005(2), 408.05(2)(f)-(g), 408.05(6), 408.061(1)(a)-(b), 408.061(2)-(3), 408.061(8)-(9), 408.062(1)(f), 408.063(2), 408.07, 408.072, 408.085 FS. History–New 3-31-94, Repealed 1-1-10.

59E-7.206 Patient Data Format – Record Layout.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.005(2), 408.05(2)(f)-(g), 408.05(6), 408.061(1)(a)-(b), 408.061(2)-(3), 408.061(8)-(9), 408.062(1)(f), 408.063(2), 408.07, 408.072, 408.085 FS. History–New 3-31-94, Repealed 1-1-10.

59E-7.207 Data Standards.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.005(2), 408.05(2)(f)-(g), 408.05(6), 408.061(1)(a)-(b), 408.061(2)-(3), 408.061(8)-(9), 408.062(1)(f), 408.063(2), 408.07, 408.072, 408.085 FS. History–New 3-31-94, Repealed 1-1-10.

59E-7.208 Notice of Potential Future Additional Data Requirements.

Proposed effective date of repeal is January 1, 2010.

Rulemaking ~~Specific~~ Authority 408.15(8) FS. Law Implemented 408.005(2), 408.05(2)(f)-(g), 408.05(6), 408.061(1)(a)-(b), 408.061(2)-(3), 408.061(8)-(9), 408.062(1)(f), 408.063(2), 408.07, 408.072, 408.085 FS. History–New 3-31-94, Repealed 1-1-10.

NAME OF PERSON ORIGINATING PROPOSED RULE: Patrick Kennedy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Holly Benson, AHCA Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 13, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 6, 2009

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 HEALTH

Board of Medicine

RULE NO.: RULE TITLE:

64B8-55.0021 Discipline of Electrolysis Facilities

PURPOSE AND EFFECT: The Board proposes the rule amendment to clarify disciplinary guidelines.

SUMMARY: Disciplinary guidelines will be clarified.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Cost has been prepared and is available by contacting Allen Hall, Executive Director, at the address listed below.

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: 456.037, 478.43(1) FS.

LAW IMPLEMENTED: 456.072(2)(c), (d), 456.037, 478.52(1)(k), (2)(b), (c), (f) 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, Electrolysis Council/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-55.0021 Discipline of Electrolysis Facilities.

Any business establishment that provides electrolysis services must have an active status license in order to provide such services. Failure to obtain and maintain an active status license as a licensed electrolysis facility pursuant to Rule 64B8-51.006, F.A.C., shall be subject to discipline as follows:

(1) A business establishment offering electrolysis services without an active status license shall:

(a) Cease and desist offering such services:

(b) Make application for a current status license pursuant to Rule 64B8-51.006, F.A.C., if the business establishment wishes to offer electrolysis services;

(c) Pay a fine equal to all licensure and renewal fees that would have been due for the time of operation without an active status license up to a maximum of $5,000 and denial of license.

(2) Any electrolysis facility with an active status license that employs or permits an unlicensed person to deliver electrolysis services shall be subject to discipline as follows:

(a) Cause the unlicensed person to cease and desist from the delivery of electrolysis services;

(b) The facility licensure shall be suspended or revoked ~~for up to one year~~;

(c) The facility shall be subject to a fine of up to $1,000.

Rulemaking ~~Specific~~ Authority 456.037, 478.43(1) FS. Law Implemented 456.072(2)(c), (d) 456.037, 478.52(1)(k), (2)(b), (c), (f) FS. History–New 3-1-00, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Electrolysis Council

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 6, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 6, 2009

DEPARTMENT OF HEALTH

Division of Emergency Medical Operations

RULE NOS.:	RULE TITLES:
64J-1.008	Emergency Medical Technician
64J-1.009	Paramedic
64J-1.010	Voluntary Inactive Certification
64J-1.011	Involuntary Inactive Certification
64J-1.012	Examinations

PURPOSE AND EFFECT: The purpose of the rule revisions is to modify DH Form 1583, 08/07, Application for Examination for Emergency Medical Technician (EMT) & Paramedic Certification, to include the applicant's National Registry of EMT candidate number, further define certification requirements for military trained applicants, replace DH Form 1164, 04/05, Statement of Good Standing, incorporate by reference the updated DH Form 1583 into Rule 64J-1.008, F.A.C., and to allow for online application and renewal process.

SUMMARY: The changes to DH Form 1583 are to facilitate the application process in an easier and quicker manner for applicants. The changes to the rule sections listed above are to reflect the changes to DH Form 1583, delete the name of the vendor for the EMT exams and to allow for online application and renewal process.

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: 401.211, 401.23, 401.24, 401.27, 401.2715, 401.35 FS.

LAW IMPLEMENTED: 381.001, 401.211, 401.23, 401.24, 401.27, 401.2715, 401.35, 401.41, 401.411 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: April 21, 2009, 2:00 p.m. – 3:00 p.m. (Eastern Standard Time)

PLACE: Southwood Office Complex – Betty Easley Meeting Rooms, 4075 Esplanade Way, Room 152, Tallahassee, FL 32399

A conference line will be available for those unable to attend in person. We request that parties from the same agency utilize one line if possible to allow other participants to dial in.

Toll free conference number: 1(888)808-6959; Conference code: 1454440

REQUEST FOR HEARING MUST BE RECEIVED IN WRITING TO: Lisa Walker, Government Analyst II at the address below.

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 1 days before the workshop/meeting by contacting: Alexander Macy, (850)245-4440, ext. 2735 or by email at: Alexander_Macy@doh.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 RULE IS: Lisa Walker, Government Analyst II, Bureau of Emergency Medical Services, 4052 Bald Cypress Way, Bin C-18, Tallahassee, FL 32399, Phone: (850)245-4440 ext. 2733; or email Lisa_Walker2@doh.state.fl.us

NOTE: If you have written comments that you wish to be added to the record please send them to Lisa Walker before the hearing so your comments may be read into the record. A copy of DH Form 1583 can be found on the Legislation and Rules page at the Bureau of EMS website: http://www.fl-ems.com

THE FULL TEXT OF THE PROPOSED RULES IS:

64J-1.008 Emergency Medical Technician.

(1) Qualifications and Procedures for Certification pursuant to Section 401.27, F.S. To be qualified for EMT certification, an individual must:

(a)1. Successfully complete an initial EMT training program conducted in accordance with the 1994 U.S. DOT EMT-Basic National Standard Curriculum, which is incorporated by reference and is available for purchase from the Government Printing Office by telephoning (202)512-1800, or writing to the Government Printing Office, Superintendent of Documents, Post Office Box 371954, Pittsburg, PA 15250-7954, or

2. If out of state or military trained in accordance with the 1994 U.S. DOT EMT-Basic National Standard Curriculum, currently hold a valid EMT certification from the National Registry of Emergency Medical Technicians or another U.S. state or territory which has the certifying authority to submit to the department DH Form 1583, 12/08, Application for Examination for Emergency Medical Technician (EMT) & Paramedic Certification, ~~1164, April 05, Statement of Good Standing~~ which is incorporated by reference and available from the department, as defined by subsection 64J-1.001(9), F.A.C., or at http://www.FLhealthsource.com,

(b) Apply for and pass Florida EMT certification examination on DH Form 1583, 12/08 ~~8/07~~, Application for Examination for Emergency Medical Technician (EMT) & Paramedic Certification which is incorporated by reference and available from the department, as defined by subsection 64J-1.001(9), F.A.C., or at http://www.FLhealthsource.com,

(c) Possess a high school diploma or a General Education Development (GED) diploma.

(2) Renewal Certification – To maintain an active certificate the EMT shall pay the recertification fee and affirm continued compliance with all applicable requirements contained in paragraphs 64J-1.008(2)(a), (b) or (c), F.A.C., complete the certification renewal notice mailed by the department. ~~To be eligible for renewal certification as an EMT an individual shall submit DH Form 622, October 06, EMT/Paramedic Renewal Certification Application, which is incorporated by reference and available from the department~~ or apply for renewal online at www.flhealthsource.com; and within 2 years prior to the expiration date of his or her EMT certification complete one of the following:

(a) Complete 30 hours of EMT refresher training based on the 1996 U.S. DOT EMT-Basic National Standard Refresher Curriculum, an additional 2 hours of HIV AIDS refresher training, in accordance with Section 381.0034, F.S.; and maintain a current CPR card as provided in Section 401.27(4)(e)2., F.S., and Rule 64J-1.022, F.A.C., CPR shall be included in the 30 hours of refresher training, provided that the CPR training is taken with a continuing education provider recognized by the department pursuant to Section 401.2715, F.S. The 1996 U.S. DOT EMT-Basic National Standard Refresher Curriculum shall be the criteria for department approval of refresher training courses. The department shall accept either the affirmation of a licensed EMS provider's medical director; or a certificate of completion of refresher training from a department approved Florida training program or a department approved continuing education provider as proof of compliance with the above requirements. The 1996 U.S. DOT EMT-Basic National Standard Refresher Curriculum is incorporated by reference and available for purchase from the Government Printing Office by telephoning (202)512-1800 or writing to the Government Printing Office, Superintendent of Documents, Post Office Box 371954, Pittsburg, PA 15250-7954.

(b) Successfully pass the EMT certification examination during the current certification cycle; and complete 2 hours of HIV AIDS refresher training, in accordance with Section 381.0034, F.S.; and maintain a current CPR BLS card for the professional rescuer. Prior to taking the examination, a candidate must request approval to sit for the examination. Such approval is requested by submitting DH Form 1583, 12/08 ~~8/07~~, Application for Examination for Emergency Medical Technician (EMT) & Paramedic Certification to the department.

(c) Satisfactorily complete the first semester of the paramedic training course at a department approved Florida training center pursuant to Section 401.2701, F.S., within the current 2-year certification cycle. Complete 2 hours of HIV AIDS refresher training in accordance with Section 381.0034, F.S., and also maintain a current CPR card for the professional rescuer.

(d) An individual must provide to the department, upon request, proof of compliance with the requirements in this section.

(3) In the event an applicant or certified EMT changes the mailing address he or she has provided the department, the applicant or certified EMT shall notify the department within 10 days of the address change.

(4) Individuals who document their possession of the following in their application shall be deemed to satisfy subsection 64J-1.012(3), F.A.C., for certification as an EMT only while these criteria are applicable:

(a) Status as a member of the United States military;

(b) Valid EMT certification from the National Registry of Emergency Medical Technicians; and

(c) Assignment to Florida as part of a training program to operate as an EMT.

Rulemaking ~~Specific~~ Authority 381.0011, 381.0034, 381.0035, 401.23, 401.27, 401.35 FS. Law Implemented 381.001, 401.23, 401.27, 401.34, 401.35, 401.41, 401.411, 401.414 FS. History–New 11-29-82, Amended 4-26-84, 3-11-85, Formerly 10D-66.56, Amended 11-2-86, 4-12-88, 8-3-88, 12-10-92, 11-30-93, 12-10-95, 1-26-97, Formerly 10D-66.056, Amended 8-4-98, 1-3-99, 9-3-00, 4-15-01, 6-3-02, 11-3-02, 10-24-05, 1-11-06, 1-23-07, 10-16-07, Formerly 64E-2.008, Amended _____.

64J-1.009 Paramedic.

(1) Qualifications and Procedures for Certification pursuant to Section 401.27, F.S. To be qualified for paramedic certification, an individual must:

(a)1. Successfully complete an initial paramedic training program that was conducted in accordance with the 1998 U.S. DOT EMT-Paramedic (EMT-P) National Standard Curriculum, (NSC), which is incorporated by reference and is available for purchase from the Government Printing Office by telephoning (202)512-1800, or

2. If out of state or military trained in accordance with the 1998 U.S. DOT EMT-Paramedic (EMT-P) NSC, currently hold a valid paramedic certification from the National Registry of Emergency Medical Technicians or be currently certified in another U.S. state or territory which has the certifying authority to submit to the department DH Form 1583, 12/08, Application for Examination for Emergency Medical Technician (EMT) & Paramedic Certification ~~1164, April 05, Statement of Good Standing~~, which is incorporated by reference in Rule 64J-1.008, F.A.C. and available from the department, as defined by subsection 64J-1.001(9), F.A.C., or at http://www.FLhealthsource.com;

(b) Apply for and pass Florida paramedic certification examination on DH form 1583, 12/08 ~~8/07~~, Application for Examination for Emergency Medical Technician (EMT) & Paramedic Certification which is incorporated by reference in Rule 64J-1.008, F.A.C.; and available from the department, as defined by subsection 64J-1.001(9), F.A.C., or at http://www.FLhealthsource.com; and

(c) Possess a high school diploma or a General Education Development (GED) diploma.

(2) Renewal Certification – To maintain an active certificate the paramedic shall pay the recertification fee and affirm continued compliance with all applicable requirements contained in paragraph 64J-1.009(2)(a) or (b), F.A.C., complete the certification renewal notice mailed by the department, ~~To be eligible for renewal certification as a paramedic an individual shall submit DH Form 622, October 06, EMT/Paramedic Renewal Certification Application which is incorporated by reference in subsection 64J-1.008(2), F.A.C.~~ or apply for renewal online at www.flhealthsource.com, and within 2 years prior to the expiration date of his or her paramedic certification complete one of the following:

(a) Complete 30 hours of paramedic refresher training based on the 1998 U.S. D.O.T. EMT-Paramedic NSC, an additional 2 hours of HIV AIDS refresher training in accordance with Section 381.0034, F.S., and also maintain a current Advanced Cardiac Life Support (ACLS) card as provided in Section 401.27(4)(e)2., F.S. and Rule 64J-1.022, F.A.C. ACLS shall be included in the 30 hours of refresher training, provided that the ACLS training includes the continuing education criteria recognized by the department pursuant to Section 401.2715, F.S. The department shall accept either the affirmation of a licensed EMS provider's medical director; or a certificate of completion of refresher training from a department approved Florida training program, or a department approved continuing education provider as proof of compliance with the above requirements.

(b) Successfully pass the paramedic certification examination during the current certification cycle; complete 2 hours of HIV/AIDS refresher training in accordance with Section 381.0034, F.S.; and also maintain a current ACLS card. Prior to taking the examination, a candidate must request approval to sit for the examination. Such approval is requested by submitting DH Form 1583, 12/08 ~~8/07~~, Application for Examination for Emergency Medical Technician (EMT) & Paramedic Certification to the department.

(3) An individual must provide to the department, upon request, proof of compliance with the requirements in this section.

(4) In the event an applicant or certified paramedic changes the mailing address he or she has provided the department, the applicant or certified paramedic shall notify the department within 10 days of the address change.

Rulemaking ~~Specific~~ Authority 381.0011, 381.0034, 381.0035, 401.27, 401.35 FS. Law Implemented 381.001, 401.23, 401.27, 401.34, 401.35, 401.41, 401.411, 401.414 FS. History–New 11-29-82, Amended 4-26-84, 3-11-85, Formerly 10D-66.57, Amended 4-12-88, 8-3-88, 12-10-92, 11-30-93, 12-10-95, 1-26-97, Formerly 10D-66.057, Amended 8-4-98, 1-3-99, 9-3-00, 4-15-01, 6-3-02, 11-3-02, 10-24-05, 1-23-07, 10-16-07, Formerly 64E-2.009, Amended _____.

64J-1.010 Voluntary Inactive Certification.

An EMT or paramedic who is currently certified can place their certificate on inactive status by sending a written request to the department and paying a fee of $50. Any EMT or paramedic whose certificate has been placed on inactive status shall not function as an EMT or paramedic until such time as he or she has completed the following requirements for reactivating the certificate:

(1) A certificate holder whose certificate has been on inactive status for 12 months or less can activate his or her certificate by submitting a written request to the department for activation and receiving written approval. Pay a late renewal fee of $50.

(a) For an EMT, send verification of having a current American Heart Association Basic Life Support Course or an American Red Cross Professional Rescuer CPR course completion certificate and meet the continuing education requirements identified in paragraph 64J-1.008(2)(a), F.A.C.

(b) For a paramedic, send verification of a current American Heart Association Advanced Cardiac Life Support (ACLS) course completion certificate and meet the continuing education requirements identified in paragraph 64J-1.009(2)(a), F.A.C.

(2) An EMT whose certificate has been on inactive status for more than 1 year can activate his or her certificate by completing the following:

(a) 30 hours of EMT refresher training which shall be based on the 1996 U.S. DOT EMT-Basic National Standard Refresher Curriculum and 2 hours of human immunodeficiency virus and acquired immune deficiency syndrome (HIV AIDS) training. The 1996 U.S. DOT EMT-Basic National Standard Refresher Curriculum is incorporated by reference in Rule 64J-1.008, F.A.C. The training:

1. Shall have been completed after the EMT certificate was placed on inactive status and have been completed no more than 2 years prior to the date of receipt of the request for return to active status; and

2. Shall have been completed at a department approved EMT training program or have been approved by the medical director of a licensed EMS provider.

(b) Hold a current CPR card pursuant to Section 401.27(4)(e)1., F.S. and Rule 64J-1.022, F.A.C., or equivalent pursuant to Rule 64E-2.038, F.A.C.

(c) Complete a field internship. The internship shall be completed under the auspices of an EMS training program or a licensed ambulance service's medical director. Upon completion of the field internship, the certificate holder must provide the department with a signed statement from the medical director attesting that the certificate holder completed a field internship program in which he or she demonstrated the ability to assume patient care responsibilities.

(d) Pass the EMT certification examination. Should the applicant fail the examination, he or she must meet requirements for initial certification.

(e) After completion of the above requirements, submit to the department:

1. The required fee and affirmation of all applicable requirements contained in subsection 64J-1.010(2), F.A.C. ~~DH Form 622, October 06, EMT/Paramedic Renewal Certification Application which is incorporated by reference in subsection 64J-1.008(2), F.A.C. or apply for renewal online at www.flhealthsource.com.~~

2. DH Form 1583, 12/08 ~~August 07~~, Application for Examination for Emergency Medical Technician (EMT) & Paramedic Certification, which is incorporated by reference in Rule 64J-1.008, F.A.C. and available from the department, as defined by subsection 64J-1.001(9), F.A.C., or at http://www.FLhealthsource.com

(3) A paramedic whose certificate has been on inactive status for more than 1 year can activate his or her certificate by completing the following:

(a) 30 hours of paramedic refresher training which shall be based on the 1998 U.S. DOT EMT-Paramedic NSC, which is incorporated by reference in Rule 64J-1.009, F.A.C., and 2 hours of human immunodeficiency virus and acquired immune deficiency syndrome (HIV AIDS) training. The training:

1. Shall have been completed after the paramedic certificate was placed on inactive status and have been completed no more than 2 years prior to the date of receipt of the request for return to active status; and

2. Shall have been completed at a department approved paramedic training program or have been approved by the medical director of a licensed EMS provider.

(b) Hold a current ACLS card pursuant to Section 401.27(4)(e)2., F.S. and Rule 64J-1.022, F.A.C., or equivalent pursuant to Rule 64J-1.022, F.A.C.

(c) Complete a field internship. The internship shall be completed under the auspices of an EMS training program or a licensed ambulance service's medical director. Upon completion of the field internship, the certificate holder must provide the department with a signed statement from the medical director attesting that the certificate holder completed a field internship program in which he or she demonstrated the ability to assume patient care responsibilities.

(d) Pass the paramedic certification examination. Should the applicant fail the examination, he or she must meet the requirements for initial certification.

(e) After completion of the above requirements, submit to the department:

1. The required fee and affirmation of all applicable requirements contained in subsection 64J-1.010(3), F.A.C. ~~DH Form 622, October 06, EMT/Paramedic Renewal Certification Application which is incorporated by reference in subsection 64J-1.088(2), F.A.C. or apply for renewal online at www.flhealthsource.com.~~

2. DH Form 1583, 12/08, Application for Examination for Emergency Medical Technician (EMT) & Paramedic Certification, ~~1977, April 05, Paramedic Initial Certification Application~~ which is incorporated by reference in Rule 64J-1.008, F.A.C., and available from the department, as defined by subsection 64J-1.001(9), F.A.C., or at http://www.FLhealthsource.com.

Rulemaking ~~Specific~~ Authority 401.27, 401.35 FS. Law Implemented 401.27, 401.34, 401.35 FS. History–New 8-4-98, Amended 1-3-99, 9-3-00, 4-21-02, 6-3-02, 11-3-02, 10-24-05, 1-23-07, 10-16-07, Formerly 64E-2.0094, Amended _____.

64J-1.011 Involuntary Inactive Certification.

(1) An EMT or paramedic certificate that is not renewed at the end of the 2-year certification period shall automatically revert to an inactive status for a period of 180 days.

(2) Such certificates may be reactivated if the applicant submits the renewal certification fee required by Section 401.34, F.S., and a late renewal fee of $25 and the following items to the department:

(a) The required fees and affirmation of all applicable requirements, contained in subsection 64J-1.008(2) or 64J-1.009(2), F.A.C. ~~DH Form 622, April 05, EMT/Paramedic Renewal Certification Application, which is incorporated by reference in subsection 64J-1.008(2), F.A.C.~~

(b) Verification of having met one of the recertification requirements contained in subsection 64J-1.008(2) or 64J-1.009(2), F.A.C. The requirements for recertification shall be completed before the end of the 180-day inactive certification period.

(3) An application for recertification received by the department more than 180 days after the expiration date of the certificate shall be denied. Such certificate holder is ineligible for recertification and must meet the requirements for initial certification.

Rulemaking ~~Specific~~ Authority 401.27, 401.35 FS. Law Implemented 401.27, 401.34, 401.35 FS. History–New 8-4-98, Amended 1-3-99, 9-3-00, 4-15-01, 10-24-05, Formerly 64E-2.0095, Amended _____.

64J-1.012 Examinations.

(1) Grade Notification – The department shall notify each candidate of the examination results. The department may post scores electronically on the internet in lieu of mailing the scores to the candidate. The date of receipt is the date the examination scores are posted electronically (official score release date). ~~If a candidate fails the certification examination developed or required by the department, he or she shall be notified by the department of examination review, and appeal rights and procedures.~~

(2) Post-Examination Review.

(a) A candidate who failed the examination shall notify the department or designee, in writing, that he or she desires a ~~an~~ post-examination review within 21 days of the official score release date ~~indicated on the failure notice~~ and include the required review fee of $50 payable by cashier's check or money order to the department or designee. Upon receipt of payment, the department or designee shall notify the candidate of a review appointment.

(b) Each candidate, who has taken and failed the examination, shall have the right to post-examination review of those ~~the~~ examination questions answered incorrectly and the correct answers to those examination questions only ~~booklet and a copy of his or her answer sheet~~.

(c) The candidate's attorney may ~~can~~ be present at the review.

(d) Examination reviews shall be conducted in the presence of a representative of the department or designee and scheduled at a location designated by the department or designee. The review shall be conducted between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding official state holidays. A candidate shall attend only one review per examination administration. If the candidate is scheduled for an examination review date and fails to appear, the review fee shall be forfeited.

(e) The candidate shall be allowed one-half the time allowed for the original administration of the examination to review the examination materials provided. Neither the candidate nor the attorney shall be allowed to bring any material for documenting or recording any test material into the review session.

(f) A representative of the department or designee shall remain with the candidate throughout the review process. The representative shall inform the candidate that the representative cannot defend the examination, attempt to answer or refute any question during the review.

(g) The candidate shall be instructed that he or she is exercising his or her right of review.

(h) Any candidate who fails the examination and attends an examination review, pursuant to this section, shall not be eligible for reexamination for at least 30 days after the examination review.

(3) Examination Requirements:

~~(a) Pursuant to paragraph 401.27(4)(d), F.S., the examination required for certification as an EMT is the National Registry Emergency Medical Technician (NREMT) EMT-Basic Examination, and the examination required for certification as a paramedic is the Florida Paramedic Certification Examination. Such examinations must be administered by the Department or the Department's authorized representatives.~~

(a)~~(b)~~ The following grades are the minimum scores required to pass the below-listed examinations:

1. ~~Florida~~ Paramedic Certification Examination, 80 percent or higher.

2. ~~NREMT~~ EMT-Basic Examination, 70 percent or higher.

(4) To be scheduled for a reexamination the requestor shall submit DH Form 1583, 12/08, Application for Examination for Emergency Medical Technician (EMT) & Paramedic Certification ~~1975, April 05, Emergency Medical Technicians Re-exam, or Form 1978, Paramedics Re-exam~~, which is incorporated by reference and available from the department, as defined by subsection 64J-1.001(9), F.A.C., or at http://www.FLhealthsource.com. ~~The request shall be submitted so as to be received by the department in accordance with the published deadlines for examinations which may be obtained by contacting the department, as defined by subsection 64J-1.001(8), F.A.C.~~

(5) An EMT candidate must document successful completion of 24 hours of department-approved refresher training based on the 1994 U.S. DOT EMT-Basic National Standard Curriculum prior to being scheduled for another

attempt at the examination after three failures. An EMT applicant who has failed the examination six times is disqualified from certification and must successfully complete a full EMT training program, pursuant to paragraph 64J-1.008(1)(a), F.A.C., prior to being considered for subsequent examination and certification.

(6) A paramedic candidate must document successful completion of 48 hours of department-approved refresher training based on the 1998 U.S. DOT EMT-Paramedic National Standard Curriculum prior to being scheduled for another attempt at the certification examination after three failures. A paramedic applicant who has failed the examination six times is disqualified from certification and must successfully complete a full paramedic education program, pursuant to paragraph 64J-1.009(1)(a), F.A.C., prior to being considered for subsequent examination and certification.

(7) Persons with documented learning disabilities in the areas of reading decoding or reading comprehension or some form of documented disability or cognitive processing deficit specifically in the reading area which would negatively impact on the candidate's performance on the written or computer based examination may be eligible for special accommodations with the ~~written~~ certification examination. The person requesting the accommodation must provide documentation of the diagnosis before any decision shall be made by the department or designee for accommodation in the administration of the paramedic examination ~~and by the National Registry of Emergency Medical Technicians for accommodation in the administration of the EMT examination~~.

(a) Individuals who qualify for special accommodation on the written or computer based examination due to a documented learning disability as described above shall be required to take the standard format of the examination, but shall receive additional time in which to complete the examination based on the department's or designee's assessment of the severity of the learning disability.

(b) Other types of accommodations to meet the needs of applicant's disabilities shall be granted with appropriate documentation of disability as determined by the department or designee.

Rulemaking ~~Specific~~ Authority 381.0011, 401.27, 401.35 FS. Law Implemented 381.001, 401.27, 401.35 FS. History–New 4-26-84, Amended 3-11-85, Formerly 10D-66.575, Amended 4-12-88, 12-10-92, 12-10-95, 1-26-97, Formerly 10D-66.0575, Amended 8-4-98, 6-3-02, 11-3-02, 10-25-04, 10-24-05, Formerly 64E-2.010, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Vicki Grant, Executive Director, Florida Department of Health, Medical Quality Assurance, 4052 Bald Cypress Way, Tallahassee, FL 32399

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: State Surgeon General Ana Viamonte Ros, Florida Department of Health, 4052 Bald Cypress Way, Tallahassee, FL 32399

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 17, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 13, 2008, Vol./No. 34/24

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Agency for Persons with Disabilities

RULE NO.: RULE TITLE:
65G-4.0023 Tier Two Waiver

PURPOSE AND EFFECT: To comply with Section 393.0661, F.S., requiring the Agency to implement the Second Tier of a Four Tiered Waiver System to serve clients with developmental disabilities.

SUMMARY: As amended in HB 5087 in 2008, Section 393.0661, F.S., now requires that the Agency amend the criteria for Tier Two of the Four Tiered Waiver System so that residential habilitation service clients are categorized by a moderate level of standard support or a minimal level of support for behavior focus residential habilitation services.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: Pursuant to Section 120.541, F.S., The Agency for Persons with Disabilities provides a summary of the Statement of Estimated Regulatory Costs (SERC). Rule 65G-4.023, F.A.C., is being revised to conform with the statutory change enacted in the 2008 legislative session, effective July 1, 2008. As amended in HB 5087 in 2008, Section 393.0661, F.S., now requires that the Agency amend the criteria for Tier Two of the Four tiered Waiver System so that residential habilitation service clients are categorized by a moderate level of standard support or a minimal level of support for behavior focus residential habilitation services rather than by an hourly minimum. The former statutory language for Tier Two stated: "The client's service needs include placement in a licensed residential facility and authorization for greater than five houors per day of residential habilitation services." The revised statutory language provides for a "moderate level of support for standard residential habilitation services or a minimal level of support for behavior focus residential habilitiation services." There is no economic impact to the clients being served by the Developmental Disability Home and Community-based Waiver or its service providers due to the change in Rule 65G-4.023, F.A.C., to conform to the revised statutory language.

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(1) FS.

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

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

DATE AND TIME: April 29, 2009, 2:00 p.m. – 5:00 p.m.

PLACE: Agency for Persons with Disabilities, 4030 Esplanade Way, Third Floor, Conference Room 301, Tallahassee, Florida 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Denise Arnold, Acting Bureau Chief, Home and Community Based Services, (850)488-3673

THE FULL TEXT OF THE PROPOSED RULE IS:

65G-4.0023 Tier Two Waiver.

The total budget in a cost plan year for each Tier Two Waiver client shall not exceed $55,000. The Tier Two Waiver is limited to clients who meet the following criteria:

(1) The client's service needs include placement in a licensed residential facility and authorization for a moderate level of support for standard residential habilitation services or a minimal level of support for behavior focus residential habilitation services; ~~greater than five hours per day of residential habilitation services;~~ or

(2) The client is in supported living and is authorized to receive more than six hours a day of in-home support services.

Rulemaking ~~Specific~~ Authority 393.0661(3) FS. Law Implemented 393.0661(3)(b) FS. History–New 7-1-08, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Denise Arnold, Bureau Chief, Home and Community Based Services

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 18, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 6, 2009

FLORIDA HOUSING FINANCE CORPORATION

RULE NOS.:	RULE TITLES:
67-21.002	Definitions
67-21.003	Application and Selection Process for Developments
67-21.0035	Applicant Administrative Appeal Procedures
67-21.004	Federal Set-Aside Requirements
67-21.0045	Determination of Method of Bond Sale
67-21.006	Development Requirements
67-21.007	Fees
67-21.008	Terms and Conditions of MMRB Loans
67-21.009	Interest Rate on Mortgage Loans
67-21.010	Issuance of Revenue Bonds
67-21.013	Non-Credit Enhanced Multifamily Mortgage Revenue Bonds
67-21.014	Credit Underwriting Procedures
67-21.015	Use of Bonds with Other Affordable Housing Finance Programs
67-21.017	Transfer of Ownership
67-21.018	Refundings and Troubled Development Review
67-21.019	Issuance of Bonds for Section 501(c)(3) Entities

PURPOSE AND EFFECT: The purpose of this Rule Chapter is to establish the procedures by which the Corporation shall administer the Application process, determine bond allocation amounts and implement the provisions of the Multifamily Mortgage Revenue Bond (MMRB) Program authorized by Section 142 of the Code and Section 420.509, F.S.

The intent of this Rule Chapter is to encourage public-private partnerships to invest in residential housing; to stimulate the construction and rehabilitation of residential housing which in turn will stimulate the job market in the construction and related industries; and to increase and improve the supply of affordable housing in the State of Florida.

SUMMARY: Prior to the opening of an Application Cycle, the Corporation (1) researches the market need for affordable housing throughout the state of Florida and (2) evaluates prior Application Cycles to determine what changes or additions should be added to the Rule and/or Application. The proposed amendments to the Rule and adopted reference material include changes that will create a formulated process for selecting Developments that will apply in the 2009 Application Cycle.

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: 420.507, 420.508 FS.

LAW IMPLEMENTED: 420.507, 420.508, 420.509 FS.

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

DATE AND TIME: April 17, 2009, 9:00 a.m.

PLACE: Florida Housing Finance Corporation, 227 North Bronough Street, 6th Floor, Seltzer Room, Tallahassee, Florida 32301. The hearing will be accessible via phone at 1(888)808-6959, Conference Code #1374197.

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: Wayne Conner, (850)488-4197. 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: Wayne Conner, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329; (850)488-4197

THE FULL TEXT OF THE PROPOSED RULES IS:

67-21.002 Definitions.

(1) "Acknowledgment Resolution" means the official action taken by the Corporation to reflect its intent to finance a Development provided that the requirements of the Corporation, the terms of the MMRB Loan Commitment, and the terms of the Credit Underwriting Report are met.

(2) "Act" means the Florida Housing Finance Corporation Act, Chapter 420, Part V, F.S.

(3) "Address" means the address assigned by the United States Postal Service and must include address number, street name and~~,~~ city~~, state and zip code~~. If the address has not yet been assigned, include, at a minimum, street name and closest designated intersection and~~,~~ city~~, state and zip code~~.

(4) "Affiliate" means any person that (i) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant or Developer, (ii) serves as an officer or director of the Applicant or Developer or of any Affiliate of the Applicant or Developer, ~~or~~ (iii) directly or indirectly receives or will receive a financial benefit from a Development, or (iv) is the spouse, parent, child, sibling, or relative by marriage of a person described in (i) ~~or~~ (ii) or (iii) above.

(5) "ALF" or "Assisted Living Facility" means a Florida licensed living facility that complies with Sections 429.01 through 429.54, F.S., and Rule Chapter 58A-5, F.A.C.

(6) "Annual Household Income" means the gross income of a person, together with the gross income of all persons who intend to permanently reside with such person in the Development to be financed by the Corporation, as of the date of occupancy shown on the Income Certification promulgated by the Corporation.

(7) "Applicant" means any person or legally formed entity that is seeking a loan or funding from the Corporation by submitting an Application or responding to a request for proposal for one of the Corporation's programs.

(8) "Application" means the forms and exhibits created by the Corporation for the purpose of providing the means to apply for one or more of the Corporation's programs. A completed Application may include additional supporting documentation provided by an Applicant.

(9) "Application Deadline" means 5:00 p.m., Eastern Time, on the final day of the Application Period.

(10) "Application Period" means a period during which Applications shall be accepted, as posted on the Corporation's website and with a deadline no less than 21 Calendar ~~thirty~~ D~~d~~ays from the beginning of the Application Period.

(11) "Board" or "Board of Directors" means the Board of Directors of the Corporation.

(12) "Bond Counsel" means the attorney or law firm retained by the Corporation to provide the specialized services generally described in the industry as the role of bond counsel.

(13) "Bond" or "Bonds" means Bond as defined in Section 420.503, F.S.

(14) "Bond Trustee" or "Trustee" means a financial institution with trust powers which acts in a fiduciary capacity for the benefit of the bond holders, and in some instances the Corporation, in enforcing the terms of the Program Documents.

(15) "Calendar Days" means the seven (7) days of the week.

(16) "Catchment Area" means the geographical area covered under a Local Homeless Assistance Continuum of Care Plan, as designated and revised as necessary by the State Office on Homelessness, in accordance with Section 420.624, F.S.

(17) "Commercial Fishing Worker" means Commercial fishing worker as defined in Section 420.503, F.S.

(18) "Commercial Fishing Worker Household" means a household of one or more persons wherein at least one member of the household is a Commercial Fishing Worker at the time of initial occupancy.

(19) "Contact Person" means the person with whom the Corporation will correspond concerning the Application and the Development. This person cannot be a third-party consultant.

(20) "Corporation" means the Florida Housing Finance Corporation as defined in Section 420.503, F.S.

(21) "Cost of Issuance Fee" means the fee charged by the Corporation to the Applicant for the payment of the costs and expenses associated with the sale of Bonds and the loaning of the proceeds, including a fee for the Corporation.

(22) "Credit Enhancement" means a letter of credit, third party guarantee, insurance contract or other collateral or security pledged to the Corporation or its Trustee for a minimum of ten years by a third party Credit Enhancer or financial institution securing, insuring or guaranteeing the repayment of the Mortgage Loan or Bonds under the MMRB Program.

(23) "Credit Enhancer" means a financial institution, insurer or other third party which provides a Credit Enhancement or Guarantee Instrument acceptable to the Corporation securing repayment of the Mortgage Loan or Bonds issued pursuant to the MMRB Program.

(24) "Credit Underwriter" means the independent contractor under contract with the Corporation having the responsibility for providing Credit Underwriting services.

(25) "Credit Underwriting" means an in-depth analysis by the Credit Underwriter of all documents submitted in connection with an Application.

(26) "Credit Underwriting Report" means the report that is a product of Credit Underwriting.

(27) "Cross-collateralization" means the pledging of the security of one Development to the obligations of another Development.

(28) "DDA" or "Difficult Development Area" means any area designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income in accordance with section 42(d)(5) of the IRC.

(29) "Developer" means the individual, association, corporation, joint venturer or partnership, which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable housing as required in the Application.

(30) "Developer Fee" means the fee earned by the Developer.

(31) "Development" means Project as defined in Section 420.503, F.S.

(32) "Development Cost" means the total of all costs incurred in the completion of a Development excluding Developer Fee and total land cost as shown in the Development Cost line item on the development cost pro forma within the Application.

(33) "Disclosure Counsel" means the Special Counsel designated by the Corporation to be responsible for the drafting and delivery of the Corporation's disclosure documents such as preliminary official statements, official statements, re-offering memorandums or private placement memorandums and continuing disclosure agreements.

(34) "Elderly" means Elderly as defined in Section 420.503, F.S.

(35) "Elderly Housing", "Elderly Development", or "Elderly Unit" means housing or a unit being occupied or reserved for qualified persons pursuant to the Federal Fair Housing Act and Section 760.29(4), F.S., provided that such Development meets the requirements for an Elderly Development as set forth in the Universal Application Package.

(36) "Family" describes a household composed of one or more persons.

(37) "Farmworker" means Farmworker as defined in Section 420.503, F.S.

(38) "Farmworker Development" means a Development:

(a) Of not greater than 80 units, at least 40 percent of the total residential units of which are occupied or reserved for Farmworker Households; and

(b) For which independent market analysis demonstrates a local need for such housing.

(39) "Farmworker Household" means a household of one or more persons wherein at least one member of the household is a Farmworker at the time of initial occupancy.

(40) "Financial Advisor" means, with respect to an issue of Bonds, a professional who is either under contract to the Corporation or is engaged by the Applicant who advises on matters pertinent to the issue, such as structure, timing, marketing, fairness of pricing, terms, bond ratings, cash flow, and investment matters.

(41) "Financial Beneficiary" means any ~~Developer and its Principals or the~~ Principal~~s~~ of the Developer or Applicant entity who receives or will receive any direct or indirect financial benefit from a Development.

(42) "Florida Keys Area" means all lands in Monroe County, except:

(a) That portion of Monroe County included within the designated exterior boundaries of the Everglades National Park and areas north of said Park;

(b) All lands more than 250 feet seaward of the mean high water line owned by local, state, or federal governments; and

(c) Federal properties.

(43) "Funding Cycle" means the period of time commencing with the Notice of Funding Availability pursuant to this rule chapter and concluding with the issuance of allocations to Applicants who applied during a given Application Period.

(44)~~(43)~~ "General Contractor" means a person or entity duly licensed in the state of Florida with the requisite skills, experience and credit worthiness to successfully provide the units required in the Application, and which meets the criteria described in Rule 67-21.007, F.A.C.

(45)~~(44)~~ "Geographic Set-Aside" means the amount of allocation that has been designated by the Corporation to be allocated for Developments located in specific geographical regions within the state of Florida.

(46)~~(45)~~ "HC" or "Housing Credit Program" means the rental housing program administered by the Corporation in accordance with section 42 of the IRC and Section 420.5099, F.S., under which the Corporation is designated the Housing Credit agency for the state of Florida within the meaning of section 42(h)(7)(A) of the IRC, and Rule Chapter 67-48, F.A.C.

(47)~~(46)~~ "Homeless" means a Family who lacks a fixed, regular, and adequate nighttime residence or a Family who has a primary nighttime residence that is:

(a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing;

(b) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term does not refer to any individual imprisoned or otherwise detained pursuant to state or federal law.

(48)~~(47)~~ "HUD" means the United States Department of Housing and Urban Development.

(49)~~(48)~~ "HUD Risk Sharing Program" means the program authorized by section 542(c) of the Housing and Community Development Act of 1992, which is adopted and incorporated herein by reference.

(50)~~(49)~~ "Identity of Interest" means, for the purpose of the HUD Risk Sharing Program, any person or entity that has a one percent or more financial interest in the Development and in any entity providing services for a fee to the Development.

(51)~~(50)~~ "IRC" is the Internal Revenue Code of 1986, as in effect on the date of this rule chapter, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the Treasury Department or Internal Revenue Service of the United States, and is adopted and incorporated herein by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links.

(52)~~(51)~~ "Issuer" means the Florida Housing Finance Corporation.

(53)~~(52)~~ "Lead Agency" means a Local Government or Non-Profit serving as the point of contact and accountability to the State Office on Homelessness with respect to the Local Homeless Assistance Continuum of Care Plan, in accordance with Section 420.624, F.S.

(54)~~(53)~~ "Local Government" means Local government as defined in Section 420.503, F.S.

(55)~~(54)~~ "Local Homeless Assistance Continuum of Care Plan" means a plan for developing and implementing a framework for a comprehensive and seamless array of housing and services to address the needs of homeless persons and persons at risk for homelessness, in accordance with Section 420.624, F.S.

(56)~~(55)~~ "Local Public Fact Finding Hearing" means a public hearing requested by any person residing in the county or municipality in which the proposed Development is located and which is conducted by the Corporation for the purpose of receiving public comment or input regarding the financing of a proposed Development with Bonds by the Corporation.

(57)~~(56)~~ "Lower Income Residents" means Families whose annual income does not exceed either 50 percent or 60 percent depending on the minimum set-aside elected of the area median income as determined by HUD with adjustments for household size. In no event shall occupants of a Development unit be considered to be Lower Income Residents if all the occupants of a unit are students as defined in section 151(c)(4) of the IRC or if the residents do not comply with the provisions of the IRC defining Lower Income Residents. (See section 142 of the IRC.)

(58)~~(57)~~ "MMRB Funding Cycle" means the period of time established by the Corporation pursuant to this rule chapter and concluding with the issuance of allocations to Applicants who applied during a given Application Period.

(59)~~(58)~~ "MMRB LURA" or "MMRB Land Use Restriction Agreement" means an agreement among the Corporation, the Bond Trustee and the Applicant which sets forth certain set-aside requirements and other Development requirements under Rule Chapter 67-21, F.A.C.

(60)~~(59)~~ "MMRB Loan" means the loan made by the Corporation to the Applicant from the proceeds of the Bonds issued by the Corporation.

(61)~~(60)~~ "MMRB Loan Agreement" means the Program Documents or Loan Documents wherein the Corporation and the Applicant agree to the terms and conditions upon which the proceeds of the Bonds shall be loaned and the terms and conditions for repayment of the Loan.

(62)~~(61)~~ "MMRB Loan Commitment" means the Program Documents or Loan Documents executed by the Corporation and the Applicant after the issuance of a favorable Credit Underwriting Report that defines the conditions under which the Corporation agrees to lend the proceeds of the Bonds to the Applicant for the purpose of financing a Development.

(63)~~(62)~~ "MMRB Program" means the Corporation's Multifamily Mortgage Revenue Bond Program.

(64)~~(63)~~ "MMRB Rehabilitation Development" means a Development, the Rehabilitation Expenditures with respect to which equal or exceed 15 percent of the portion of the cost of acquiring such Development to be financed with Bond proceeds.

(65)~~(64)~~ "Mortgage" means Mortgage as defined in Section 420.503, F.S.

(66)~~(65)~~ "Mortgage Loan" means Mortgage loan as defined in Section 420.503, F.S.

(67) "Non-Profit" means a qualified non-profit entity as defined in Section 42(h)(5)(C), subsection 501(c)(3) or 501(c)(4) of the IRC and organized under Chapter 617, F.S., if a Florida Corporation, or organized under similar state law if organized in a jurisdiction other than Florida, to provide housing and other services on a not-for-profit basis, which owns at least 51 percent of the ownership interest in the Development held by the general partner or managing member entity and which entity is acceptable to federal and state agencies and financial institutions as a Sponsor for affordable housing.

(68)~~(66)~~ "Note" means a unilateral agreement containing an express and absolute promise to pay to the Corporation a principal sum of money on a specified date, which provides the interest rate and is secured by a Mortgage.

(69)~~(67)~~ "Principal" means (i) ~~an Applicant,~~ any general partner of an Applicant or Developer, any limited partner of an Applicant or Developer, any manager or member of an Applicant or Developer, any officer, director or shareholder of an Applicant or Developer, (ii) any officer, director, shareholder, manager, member, general partner or limited partner of any general partner and limited partner of an Applicant or Developer, (iii) any officer, director, shareholder, manager, member, general partner or limited partner of any manager or ~~and~~ member of an Applicant or Developer, and (iv) any officer, director, shareholder, manager, member, general partner or limited partner of any shareholder of an Applicant or Developer.

(70)~~(68)~~ "Private Placement" or "Limited Offering" means the sale of the Corporation Bonds directly or through an underwriter or placement agent to 35 or fewer initial purchasers who are not purchasing the Bonds with the intent to offer the Bonds for retail sale and who are Qualified Institutional Buyers.

(71)~~(69)~~ "Program Documents" or "Loan Documents" means the MMRB Loan Commitment, MMRB Loan Agreement, Note, Mortgage, Credit Enhancement, MMRB Land Use Restriction Agreement, Trust Indenture, Preliminary and Final Official Statements, Intercreditor Agreement, Assignments, Bond Purchase Agreement, Compliance Monitoring Agreement, Mortgage Servicing Agreement and such other ordinary and customary documents necessary to issue and secure repayment of the Bonds and Mortgage sufficient to protect the interests of the Bond owners and the Corporation.

(72)~~(70)~~ "QCT" or "Qualified Census Tract" means any census tract which is designated by the Secretary of Housing and Urban Development as having either 50 percent or more of the households at an income which is less than 60 percent of the area median gross income, or a poverty rate of at least 25 percent, in accordance with section 42(d)(5)(C) of the IRC.

(73)~~(71)~~ "Qualified Institutional Buyer" is sometimes called a "sophisticated investor" and specifically includes the following:

(a) Any of the following entities, acting for its own account or the accounts of other Qualified Institutional Buyers that, in the aggregate, own and invest on a discretionary basis at least $100 million in securities of issuers that are not affiliated with the entity:

1. Any insurance company as defined in section 2(13) of the Securities Exchange Act, which is adopted and incorporated herein by reference;

2. Any investment company registered under the Investment Company Act of 1940 or any business development company as defined in section 80a-2(a)(48) of that Act, which is adopted and incorporated herein by reference;

3. Any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958, which is adopted and incorporated herein by reference;

4. Any plan established and maintained by a state or state agency or any of its political subdivisions, on behalf of their employees;

5. Any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, which is adopted and incorporated herein by reference;

6. Trust funds of various types, except for trust funds that include participants' individual retirement accounts or H.R. 10 plans;

7. Any business development company as defined in section 80b-2(a)(22) of the Investment Advisors Act of 1940, which is adopted and incorporated herein by reference;

8. Any organization described in section 501(c)(3) of the IRC, corporation (except a bank or savings and loan defined in section 3(a)(2) or 3(a)(5)(A) of the Securities and Exchange Act, which is adopted and incorporated herein by reference, or a foreign bank or savings and loan or similar institution), partnership, Massachusetts or similar business trust, or any investment adviser registered under the Investment Advisors Act, which is adopted and incorporated herein by reference.

(b) Any dealer registered under section 15 of the Securities Exchange Act, which is adopted and incorporated herein by reference, acting on its own behalf or on the behalf of other Qualified Institutional Buyers who in the aggregate own and invest at least $10 million of securities of issuers not affiliated with the dealer (not including securities held pending public offering).

(c) Any dealer registered under section 15 of the Securities Exchange Act, which is adopted and incorporated herein by reference, acting in a riskless principal transaction on behalf of a Qualified Institutional Buyer.

(d) Any investment company registered under the Investment Company Act, which is adopted and incorporated herein by reference, that is part of a family of investment companies that together own at least $100 million in securities of issuers, other than companies with which the investment company or family of investment companies is affiliated.

(e) Any entity, all of whose equity owners are Qualified Institutional Buyers.

(f) Any bank or savings and loan defined in section 3(a)(2) or 3(a)(5)(A) of the Securities Exchange Act, which is adopted and incorporated herein by reference, or foreign bank or savings and loan or similar institution that, in aggregate with the other Qualified Institutional Buyers, owns and invests in at

least $100 million in securities of affiliates that are not affiliated with it and that has an audited net worth of at least $25 million as demonstrated during the 16 to 18 months prior to the sale.

(74)~~(72)~~ "Qualified Lending Institution" means any lending institution designated by the Corporation.

(75)~~(73)~~ "Qualified Project Period" means Qualified Project Period as defined in Section 142(d) of the IRC.

(76)~~(74)~~ "Received" as it relates to delivery of a document by a specified deadline means, unless otherwise indicated, delivery by hand, United States Postal Service, or other courier service, in the office of the Corporation no later than 5:00 p.m., Eastern Time, on the deadline date.

(77)~~(75)~~ "Rehabilitation Expenditures" has the meaning set forth in section 147(d)(3) of the IRC.

(78)~~(76)~~ "SBA" or "State Board of Administration" means the State Board of Administration created by and referred to in s. 9, Article XII of the State Constitution.

(79)~~(77)~~ "Scattered Sites" for a single Development means a Development consisting of real property in the same county (i) any part of which is not contiguous ("non-contiguous parts") or (ii) any part of which is divided by a street or easement ("divided parts") and (iii) it is readily apparent from the proximity of the non-contiguous parts or the divided parts of the real property, chain of title, or other information available to the Corporation that the non-contiguous parts or the divided parts of the real property are part of a common or related scheme of development.

(80)~~(78)~~ "Single Room Occupancy" or "SRO" means housing consisting of single room dwelling units that is the primary residence of its occupant or occupants. An SRO does not include facilities for students.

(81)~~(79)~~ "Special Counsel" means any attorney or law firm retained by the Corporation, pursuant to an RFQ, to serve as counsel to the Corporation, including Disclosure Counsel.

(82)~~(80)~~ "State Bond Allocation" means the allocation of the state private activity bond volume limitation pursuant to Chapter 159, Part VI, F.S., administered by the Division of Bond Finance and allocated to the Corporation for the issuance of Tax-exempt Bonds by either the SFMRB or MMRB Programs.

(83)~~(81)~~ "State Office on Homelessness" means the office created within the Department of Children and Family Services under Section 420.622, F.S.

(84)~~(82)~~ "Taxable Bonds" means those Bonds on which the interest earned is included in gross income of the owner for federal income tax purposes pursuant to the IRC.

(85)~~(83)~~ "Tax Exempt Bond-Financed Development" means a Development which has been financed by the issuance of tax-exempt bonds subject to applicable volume cap pursuant to section 42(h)(4) of the IRC.

(86)~~(84)~~ "Tax-exempt Bonds" means those Bonds on which all or part of the interest earned is excluded from gross income of the owner for federal income tax purposes pursuant to the IRC.

(87)~~(85)~~ "Tie-Breaker Measurement Point" means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on one of the Scattered Sites which comprise the Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. In addition, the Tie-Breaker Measurement Point must be located on the site with the most units if any of the Scattered Sites has more than four (4) units.

(88)~~(86)~~ "TEFRA Hearing" means a public hearing held pursuant to the requirements of the IRC and in accordance with the Tax Equity and Fiscal Responsibility Act (TEFRA), section 147(f) of the IRC, at which members of the public or interested persons are provided an opportunity to present evidence or written statements or make comments regarding a requested application for Tax-exempt Bond financing of a Development by the Corporation.

(89)~~(87)~~ "Total Development Cost" means the sum total of all costs incurred in the construction of a Development all of which shall be subject to the review and approval by the Credit Underwriter and the Corporation pursuant to this rule chapter.

(90)~~(88)~~ "Universal Cycle" means any funding cycle provided for in this or previous versions of this rule chapter.

(91)~~(89)~~ "Urban In-Fill Development" means a Development (i) in a site or area that is targeted for in-fill housing or neighborhood revitalization by the local, county, state or federal government as evidenced by its inclusion in a HUD Empowerment/Enterprise Zone, a HUD-approved Neighborhood Revitalization Strategy, Florida Enterprise Zone, area designated under a Community Development Block Grant (CDBG) or area designated as a HOPE VI or Front Porch Florida Community or a Community Redevelopment Area as described and defined in the Florida Community Redevelopment Act of 1969, or the proposed Development is located in a Qualified Census Tract and the development of which contributes to a concerted community revitalization plan, and (ii) in a site which is located in an area that is already developed and part of an incorporated area or existing urban service area.

(92)~~(90)~~ "Website" means the Florida Housing Finance Corporation's website, the Universal Resource Locator (URL) of which is www.floridahousing.org.

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.503, 420.503(4), 420.507, 420.508, 420.5099 FS. History–New 12-3-86, Amended 2-22-89, 12-4-90, 11-23-94, 2-6-97, 1-7-98, Formerly 9I-21.002, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 10-5-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, _____.

67-21.003 Application and Selection Process for Developments.

(1) When submitting an Application, Applicants must utilize the Universal Application in effect at the Application Deadline.

(a) The Universal Application Package or UA1016 (Rev. 5-09 ~~3-08~~) is adopted and incorporated herein by reference and consists of the forms and instructions, obtained from the Corporation, for a fee, at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or available, without charge, on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Instructions and Application, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the MMRB Program.

(b) All Applications must be complete, legible and timely when submitted, except as described below. Corporation staff may not assist any Applicant by copying, collating, or adding documents to an Application nor shall any Applicant be permitted to use the Corporation's facilities or equipment for purposes of compiling or completing an Application.

(2) Failure to submit an Application completed in accordance with the Application instructions and these rules will result in the failure to meet threshold, rejection of the Application, a score less than the maximum available, or a combination of these results in accordance with the instructions in the Application and this rule chapter.

(3) Each submitted Application shall be evaluated and preliminarily scored using the factors specified in the Universal Application Package and these rules. Preliminary scores shall be transmitted to all Applicants.

(4) Applicants who wish to notify the Corporation of possible scoring errors relative to another Applicant's Application will be provided a time period for filing a written Notice of Possible Scoring Error (NOPSE). Such time period will be no fewer than three (3) ~~must file with the Corporation, within~~ 8 Calendar Days from ~~of~~ the date the preliminary scores are sent by overnight delivery by the Corporation~~, a written Notice of Possible Scoring Error (NOPSE)~~. The deadline for filing a NOPSE will be provided at the time the preliminary scores are issued. Each NOPSE must specify the assigned Application number of the Applicant submitting the NOPSE, the assigned Application number of the Application in question and the scores in question, as well as describe the alleged deficiencies in detail. Each NOPSE is limited to the review of only one Application's score. Any NOPSE that seeks the review of more than one Application's score will be considered improperly filed and ineligible for review. There is no limit to the number of NOPSEs that may be submitted. The Corporation's staff will review each written NOPSE Received timely. To be considered Received timely, the Applicant must submit one (1) original hard copy and three (3) photocopies of each NOPSE. The Corporation will not consider any NOPSE submitted via facsimile or other electronic transmission.

(5) The Corporation shall transmit to each Applicant the NOPSEs submitted by other Applicants with regard to its Application. The notice shall also include the Corporation's decision regarding the NOPSE, along with any other items identified by the Corporation to be addressed by the Applicant, which may include financial obligations for which the Applican~~tion~~ or Developer or Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer is in arrears to the Corporation or any agent or assignee of the Corporation as of the due date for NOPSE filing as set forth in subsection (4) above.

(6) ~~Within 11 Calendar Days of the date of the notice set forth in subsection (5) above is sent by overnight delivery by the Corporation,~~ Eeach Applicant shall be allowed to cure its Application by submitting additional documentation, revised pages and such other information as the Applicant deems appropriate ("cures") to address the issues raised pursuant to subsections (3) and (5) above that could result in failure to meet threshold or a score less than the maximum available. The time period for submitting the "cures" will be no fewer than three (3) Calendar Days from the date the notice set forth in subsection (5) above is sent by overnight delivery by the Corporation. Such notice will provide the deadline for submitting the "cures." A new form, page or exhibit provided to the Corporation during this period shall be considered a replacement of that form, page or exhibit if such form, page or exhibit was previously submitted in the Applicant's Application. Pages of the Application that are not revised or otherwise changed may not be resubmitted, except that documents executed by third parties must be submitted in their entirety, including all attachments and exhibits referenced therein, even if only a portion of the original document was revised. Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant shall also be required in its submittal to make such other changes as necessary to keep the Application consistent as revised. To be considered by the Corporation, the Applicant must submit one (1) ~~an~~ original hard copy and three (3) photocopies of all additional documentation and revisions and such revisions, changes and other information must be Received by the deadline set forth herein. Any subsequent revision submitted prior to the deadline shall include a written request from the Applicant for withdrawal of any previously submitted revision(s).

(7) ~~Within seven (7) Calendar Days of the deadline for receipt by the Corporation of the documentation set forth in subsection (6) above,~~ Aall Applicants may submit to the Corporation a Notice of Alleged Deficiencies (NOAD) in any other Application. The time period for submitting each NOAD will be no fewer than three (3) Calendar Days from the deadline for receipt by the Corporation of the documentation set forth in subsection (6) above. The notice set forth in subsection (5) above will provide the deadline for submitting the NOAD. Each NOAD is limited only to issues created by document revisions, additions, or both, by the Applicant submitting the Application pursuant to subsection (6) above. Each NOAD must specify the assigned Application number of the Applicant submitting the NOAD, the assigned Application number of the Application in question, the pages and the documents in question, as well as describe the alleged deficiencies in detail. Each NOAD is limited to the review of only one Applicant's submission. However, there is no limit to the number of NOADs that may be submitted. NOADs that seek the review of more than one Applicant's submission will be considered improperly filed and ineligible for review. The Corporation will only review each written NOAD Received timely. To be considered Received timely, the Applicant must submit one (1) original hard copy and three (3) photocopies of each NOAD. The Corporation will not consider any NOAD submitted via facsimile or other electronic transmission.

(8) The Corporation shall transmit a copy of all NOADs to the affected Applicant.

(9) Following the receipt and review by the Corporation of the documentation described in subsections (5), (6) and (7) above, the Corporation shall then prepare final scores. In determining such final scores, no Application shall fail threshold or receive a point reduction as a result of any issues not previously identified in the notices described in subsections (3), (4) and (5) above. However, inconsistencies created by the Applicant as a result of information provided pursuant to subsections (6) and (7) above will still be justification for rejection of the Application, threshold failure, or reduction of points as appropriate. Notwithstanding the foregoing, any deficiencies in the mandatory elements set forth in subsection (14) below can be identified at any time prior to sending the final scores to Applicants and will result in rejection of the Application. The Corporation shall then transmit final scores to all Applicants.

(10) Based on the order of the ranked Applications after informal appeals and the availability of State Bond Allocation designated by the Board of Directors for multifamily housing, the Board of Directors shall designate Applications for funding and offer the opportunity to enter Credit Underwriting, and shall designate those that are below the funding line on the MMRB ranked list. Any additional allocation designated by the Board of Directors for MMRB shall be applied to the next unfunded Application(s) on the ranked list, but only to the extent said Application's request can be fully funded. Any remaining allocation designated by the Board of Directors for multifamily housing, which as of December 1 of each year is insufficient to fully fund the next ranked Application shall be offered to the next ranked Applicant, continuing down the ranked list until sufficient to fully fund a proposed Development. After December 1, Applicants shall be permitted to downsize their allocation request by up to 15 percent of the original allocation request for the purpose of becoming fully funded but may not reduce the number of units or the unit sizes in the development. Any unused allocation shall, at the option of the Board of Directors, be carried over and applied to the next calendar year allocation or applied to single family housing. The Corporation may, after the cure period and upon a determination that such is necessary to assure timely processing of Applicants, invite Applicants who meet threshold into Credit Underwriting at their own risk. Applicants shall be notified in writing of the opportunity to enter Credit Underwriting. A detailed timeline for submitting required fees and information to the Credit Underwriter shall be included. Failure to meet the deadlines established by such timeline shall result in the immediate termination of Credit Underwriting activities and the Application shall be moved to the bottom of the ranked list. Applicants electing to proceed to Credit Underwriting without designation for funding do so at their own risk, and said opportunity does not ensure that the Application will be funded. Any Applicant that declines invitation to Credit Underwriting, when invited by the Board of Directors, shall be removed from the ranked list.

(11) Except for Local Government-issued Tax-Exempt Bond-Financed Developments that submit a separate Application for non-competitive Housing Credits, Applications shall be limited to one submission per subject property. Two or more Applications, submitted in the same Funding Cycle, that have the same demographic commitment and one or more of the same Financial Beneficiaries will be considered submissions for the same Development if any of the following is true: (i) any part of any of the property sites is contiguous with any part of any of the other property sites, or (ii) any of the property sites are divided by a street or easement, or (iii) it is readily apparent from the Applications, proximity, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development. If two or more Applications are considered to be submissions for the same Development, the Corporation will reject all such Applications except the Application with the highest (worst) lottery number. The Application(s) with the lowest lottery number(s) will still be rejected even if the Applicant withdraws the Application with the highest (worst) lottery number. Financial Beneficiary, as defined in Rule 67-21.002, F.A.C., does not include third party lenders, third party management agents or companies, housing credit syndicators, Credit Enhancers who are regulated by a state or

federal agency and who do not share in the profits of the Development or contractors whose total fees are within the limit described in Rule 67-21.007, F.A.C.

(12) If the Board of Directors determines that any Applicant or any Affiliate of an Applicant:

(a) Has engaged in fraudulent actions;

(b) Has materially misrepresented information to the Corporation regarding any past or present Application or Development;

(c) Has been convicted of fraud, theft or misappropriation of funds;

(d) Has been excluded from federal or Florida procurement programs; or

(e) Has been convicted of a felony;

~~And that such action substantially increases the likelihood that the Applicant will not be able to produce quality affordable housing,~~ T~~t~~he Applicant and any of the Applicant's Affiliates will be ineligible for funding or allocation in any program administered by the Corporation for a period of up to two (2) years, which will begin from the date the Board of Directors makes such determination. Such determination shall be either pursuant to a proceeding conducted pursuant to Sections 120.569 and 120.57, F.S., or as a result of a finding by a court of competent jurisdiction.

(13) The Corporation shall reject an Application if, following the submission of the additional documentation, revised pages and other information as the Applicant deems appropriate as described in subsection (6) above:

(a) The Development is inconsistent with the purpose of the MMRB Program or does not conform to the Application requirements specified in this rule chapter;

(b) The Applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application and Application instructions;

(c) The Applicant fails to file all applicable Application pages and exhibits that are provided by the Corporation and adopted under this rule chapter;

(d) The Applicant fails to satisfy any arrearages described in subsection (5) above.

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(a) Name of Applicant; notwithstanding the foregoing, the name of the Applicant may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting;

(b) Identity of each Developer, including all co-Developers; notwithstanding the foregoing, the identity of the Developer(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting;

(c) Program(s) applied for;

(d) Applicant applying as a Non-Profit or for-profit organization;

(e) Site for the Development; notwithstanding the foregoing, after the Applicant has been invited to enter credit underwriting and subject to written request of an Applicant to Corporation staff and approval of the Corporation, the site for the Development may be increased or decreased, provided the Tie Breaker Measurement Point is on the site and the total proximity points awarded during scoring are not reduced;

(f) Development Category;

(g) Development Type;

(h) Designation selection;

(i) Total number of units; notwithstanding the foregoing, the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation;

(j) Funding request, except for Taxable Bonds and as provided in subsection 67-21.003(10), F.A.C.; notwithstanding the foregoing, requested amounts exceeding the Corporation and program funding limits can be reduced by the Applicant to reflect the maximum request amount allowed (and no other changes to this amount will be allowed);

(k) The Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application;

(l) Submission of one original hard copy with the required number of photocopies of the Application by the Application Deadline;

(m) Payment of the required Application fee and TEFRA fee by the Application Deadline.

(n) The Application labeled "Original Hard Copy" must include a properly completed Applicant Certification and Acknowledgement form reflecting original signatures.

All other items may be submitted as cures pursuant to subsection (6) above.

With regard to paragraphs (a) and (b) above, the Board shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested change.

(15) A Development will be withdrawn from funding and any outstanding commitments for funds will be rescinded if at any time the Board of Directors determines that the Applicant's Development or Development team is no longer the Development or Development team described in the

Application, and the changes made are prejudicial to the Development or to the market to be served by the Development.

(16) If an Applicant or Developer or any Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer has any existing Developments participating in any Corporation programs that remain in non-compliance with the IRC, Title 67, F.A.C. ~~this rule chapter~~, or applicable loan documents, and any applicable cure period granted for correcting such non-compliance has ended as of the time of submission of the Application or at the time of issuance of a Credit Underwriting Report, the requested allocation will, upon a determination by the Board of Directors that such non-compliance substantially increases the likelihood that such Applicant or Developer will not be able to produce quality affordable housing, be denied and the Applicant or Developer and the Affiliates of the Applicant or Developer will be prohibited from new participation in any of the Corporation's programs for the subsequent cycle and continuing until such time as all of their existing Developments participating in any Corporation programs are in compliance.

(17) When two or more Applications receive the same numerical score, the Applications will be ranked as outlined in the Application instructions.

(18) At no time during the Application, scoring and appeal process may Applicants or their representatives contact members of the Board of Directors concerning their own Development or any other Applicant's Development. At no time from the Application Deadline until after issuance of the final scores as set forth in subsection (9) above, may Applicants or their representatives verbally contact Corporation staff concerning their own Application or any other Applicant's Application. If an Applicant or its representative does contact a member of the Board of Directors in violation of this section, the Board of Directors shall, upon a determination that such contact was deliberate, disqualify such Applicant's Application.

(19) Applicants may withdraw an Application from consideration only by submitting a written notice of withdrawal to the Corporation Clerk. Applicants may not rescind any notice of withdrawal that was submitted to the Corporation Clerk. For ranking purposes, the Corporation shall disregard any withdrawal that is submitted after 5:00 p.m., Eastern Time, 14 Calendar Days prior to the date the Board of Directors is scheduled to convene to consider approval of the final rankings of the Applications and such Application shall be included in the ranking as if no notice of withdrawal had been submitted. After the Board of Directors has approved the final ranking, any notice of withdrawal submitted during the time period prohibited above and before the Board of Directors approves the final ranking, shall be deemed withdrawn immediately after Board approval of the final ranking. If an Applicant has applied for or been awarded funding from two or more programs, the withdrawal by the Applicant from any one program will be deemed by the Corporation to be a withdrawal of the Application from all programs.

(20) The name of the Development provided in the Application may not be changed or altered after submission of the Application during the history of the Development with the Corporation unless the change is requested in writing and approved in writing by the Corporation. The Corporation shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant such request.

(21) If an Applicant or any Affiliate of an Applicant has offered or given consideration, other than the consideration to provide affordable housing, with respect to a local contribution and this is discovered prior to Board of Directors approval of the ranking, the Corporation shall reject the Application and any other Application submitted by the same Applicant and any Affiliate of the Applicant. If discovered after the Board of Directors approves final ranking, any tentative funding or allocation for the Application and any other Application submitted in the same cycle by the same Applicant and any Affiliate of the Applicant will be withdrawn. Such Applicant and any of such Applicant's Affiliates will be ineligible for funding or allocation in any program administered by the Corporation for a period of up to two years, which will begin the date the Board of Directors issues a final order on such matter in a proceeding conducted pursuant to Sections 120.569 and 120.57, F.S.

(22) The Corporation shall initiate TEFRA Hearings on the proposed Developments whose Applications were Received by the Application Deadline. Neither the TEFRA Hearing, the invitation into Credit Underwriting, nor the Acknowledgment Resolution obligate the Corporation to finance the proposed Development in any way.

(23) Upon receipt of the Credit Underwriting Report, the Corporation shall submit the Application to its Financial Advisor for a preliminary recommendation of the method of bond sale for each Development pursuant to Rule 67-21.0045, F.A.C.

(24) Proposed Developments that are ranked, but not selected by the Board of Directors to enter Credit Underwriting, shall remain on the ranked list in the event State Bond Allocation becomes available to fund additional Developments. If the current year's State Bond Allocation designated by the Board of Directors for the MMRB Program is insufficient to fully finance a Development, subject to the provisions of subsection 67-21.003(10), F.A.C., permitting reduction of the requested amount, a new Application must be filed to be eligible for a future year's State Bond Allocation.

(25) The Corporation shall notify the Applicant, in writing, of the Board of Directors determination related to approval of the Credit Underwriting Report and require the Applicant to submit one-half of the Good Faith Deposit within 7 Calendar Days from the receipt of such notice.

(26) Upon favorable recommendation of the Credit Underwriting Report and preliminary recommendation of the method of bond sale from the Corporation's Financial Advisor, the Board of Directors shall designate by resolution the method of bond sale considered appropriate for financing. The Board of Directors shall consider authorizing the execution of the Loan Commitment and shall consider final Board of Directors approval reserving State Bond Allocation for a Development. Requests for Taxable Bonds shall be considered by the Board of Directors in an amount recommended by the Credit Underwriter. The Board of Directors shall also assign a bond underwriter, structuring agent, or Financial Advisor and any other professionals necessary to complete the transaction. Staff shall assign the Corporation Bond Counsel and Special Counsel and Trustee as needed.

(27) Following receipt of one-half of the Good Faith Deposit, the Corporation's assigned Special Counsel shall begin preparation of the Loan Commitment.

(28) Upon execution of a Loan Commitment, Applicant shall pay the balance of the Good Faith Deposit and the Corporation shall authorize Bond Counsel and Special Counsel to prepare the Program Documents.

(29) For computing any period of time allowed by this rule, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(4), (13), (14), (18), (19), (20), (21), (24), 420.508 FS. History–New 12-3-86, Amended 12-4-90, 11-23-94, 9-25-96, 1-7-98, Formerly 9I-21.003, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, _____.

67-21.0035 Applicant Administrative Appeal Procedures.

(1) At the conclusion of the review and scoring process established by Rule 67-21.003, F.A.C., each Applicant will be provided with its final score and notice of rights, which shall constitute the point of entry to contest any issue related to the Applicant's Application for the MMRB Program.

(2) Each Applicant that wishes to contest its final score must file a petition with the Corporation within 21 Calendar Days after the date the Applicant receives its notice of rights. The petition must conform to subsection 28-106.201(2) or 28-106.301(2), and subsection 67-52.002(3), F.A.C., and specify in detail each issue and score sought to be challenged. If the petition does not raise a disputed issue of material fact, the challenge will be conducted pursuant to Section 120.57(2), F.S. If the petition raises one or more disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), F.S. At the conclusion of any administrative hearing, a recommended order shall be entered by the designated hearing officer which will then be considered by the Board of Directors.

(3) Any Applicant who wishes to challenge the findings and conclusions of the recommended order entered pursuant to a Section 120.57(2), F.S., proceeding concerning its own Application shall be allowed the opportunity to submit written arguments to the Board of Directors. Any written argument should be typed and double-spaced with margins no less than one inch in either Times New Roman 14-point or Courier New 12-point font and may not exceed five (5) pages, excluding the caption and certificate of service. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m., Eastern Time, no later than five (5) Calendar Days from the date of issuance of the recommended order. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board of Directors. Parties will not be permitted to make oral presentations to the Board in response to recommended orders.

(4) Following the entry of final orders in all petitions filed pursuant to Section 120.57(2), F.S., and in accordance with Rule Chapter 67-21, F.A.C., the Corporation shall issue final rankings. For an Applicant that filed a petition pursuant to Section 120.57(1), F.S., which challenged the scoring of its own Application but has not had a final order entered as of the date the final rankings are approved by the Board of Directors, the Corporation shall, if any such Applicant ultimately obtains a final order that modifies the score so that its Application would have been in the funding range of the applicable final ranking had it been entered prior to the date the final rankings were presented to the Board of Directors, provide the requested allocation from the next available allocation, whether in the current year or a subsequent year. Nothing contained herein shall affect any applicable Credit Underwriting requirements.

(5) Each Applicant will be provided with a final ranking of all Applications and notice of rights, which shall constitute the point of entry to contest any ranking or scoring issue related to any other Applications for the MMRB Program. An Applicant that wishes to contest the final ranking or score of another Applicant may do so only if:

(a) The competing Applicant files a petition on or before the 21st Calendar Day after the receipt of the notice of rights pursuant to this subsection (5). The petition must conform to subsection 28-106.201(2) or 28-106.301(2), and subsection 67-52.002(3), F.A.C., and specify in detail each issue, score or ranking sought to be challenged.

(b) For any Application cycle closing after January 1, 2002, if the contested issue involves an error in scoring, the contested issue must (i) be one that could not have been cured pursuant to subsection 67-21.003(14), F.A.C., or (ii) be one that could have been cured, if the ability to cure was not solely within the Applicant's control. The contested issue cannot be one that was both curable and within the Applicant's sole control to cure. With regard to curable issues, a petitioner must prove that the contested issue was not feasibly curable within the time allowed for cures in subsection 67-21.003(6), F.A.C.

(c) The competing Applicant alleges facts in its petition sufficient to demonstrate that, but for the specifically identified threshold, scoring or ranking errors in the challenged Application, its Application would have been in the funding range at the time the Corporation provided the Applicant with its final ranking.

(d) If the petition does not raise a disputed issue of material fact, the appeal will be conducted pursuant to Section 120.57(2), F.S. If the petition raises one or more disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), F.S. At the conclusion of any administrative hearing, a recommended order shall be entered which will then be considered by the Board of Directors.

(6) Any Applicant who wishes to challenge the findings and conclusions of the recommended order entered pursuant to a Section 120.57(2), F.S., proceeding as described in subsection (5) above concerning the final ranking of another Application, shall be allowed the opportunity to submit written arguments to the Board of Directors. Any written arguments should be typed and double-spaced with margins no less than one inch in either Times New Roman 14-point or Courier New 12-point font and may not exceed five (5) pages, excluding the caption and certificate of service. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m., Eastern Time, no later than five (5) Calendar Days from the date of issuance of the recommended order. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board of Directors. Parties will not be permitted to make oral presentations to the Board of Directors in response to recommended orders.

(7) For those Applicants that have filed a petition pursuant to subsection (5) above, the Corporation shall, if any such Applicant ultimately obtains a final order that demonstrates that its Application would have been in the funding range of the applicable final ranking, provide the requested allocation from the next available allocation, whether in the current year or a subsequent year. Nothing contained herein shall affect any applicable credit underwriting requirements. The filing of a petition pursuant to subsection (5) above shall not stay the Corporation's provision of funding to Applicants per the final rankings referenced in subsection (4) above.

Rulemaking ~~Specific~~ Authority 420.507, 420.508 FS. Law Implemented 120.569(2)(b), 120.57, 420.502, 420.507, 420.508 FS. History–New 11-14-99, Amended 2-11-01, 3-17-02, 10-8-02, 12-4-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, Repromulgated 3-30-08, _____.

67-21.004 Federal Set-Aside Requirements.

Each Application shall designate one of the following minimum federal set-aside requirements that the Development shall meet commencing with the first day on which at least 10 percent of the units in the property are occupied:

(1) Twenty percent of the residential units in the Development shall be occupied by or reserved for occupancy by a Family whose Annual Household Income does not exceed 50 percent of the area median income limits adjusted for Family size (the 20/50 set-aside); or

(2) Forty percent of the residential units in the Development shall be occupied by or reserved for occupancy by a Family whose Annual Household Income does not exceed 60 percent of the area median income limits adjusted for Family size (the 40/60 set-aside).

(3) For Developments financed solely through the issuance of Taxable Bonds or refundings of Tax-exempt Bonds originally issued under section 103(b)(4)(A) of the Internal Revenue Code of 1954, as amended, which is adopted and incorporated herein by reference, 20 percent of the residential units in the Development shall be occupied by or reserved for occupancy by a Family whose Annual Household Income does not exceed 80 percent of the area median income limits adjusted for Family size (the 20/80 set-aside).

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(4), (6), (12), (13), (14), (18), (19), (21), 420.508 FS. History–New 12-3-86, Amended 2-22-89, 12-4-90, 11-23-94, 9-25-96, 2-6-97, 1-7-98, Formerly 9I-21.004, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended 2-7-05, 1-29-06, Repromulgated 4-1-07, 3-30-08, _____.

67-21.0045 Determination of Method of Bond Sale.

(1) The Corporation may sell Bonds for the purpose of financing a proposed Development through a negotiated sale, competitively bid sale or Private Placement. Prior to the sale of Bonds for a Development, the Board of Directors shall authorize a resolution specifying the method of sale.

(2) Following receipt of the Credit Underwriting Report, staff shall provide the Corporation's Financial Advisor copies of such report for review and preparation of a written recommendation for the method of Bond sale.

(3) In preparing a recommendation for the method of sale to the Board of Directors, the Financial Advisor shall consider the following:

(a) The cost components of the sale, including interest costs and financing costs. The purpose of the analysis is to determine how these costs are affected by the alternative forms of sale.

(b) The anticipated credit and security structure of the transaction.

(c) The proposed financing structure of the transaction.

(d) The financing experience of the Applicant.

(e) The Corporation's programmatic objectives.

(f) Market stability.

(g) Other factors identified by staff, counsel, or the Applicant.

(4) The written recommendation shall include an identification of the Development, the recommended method of sale, and a summary statement as to why the particular method of sale is being recommended.

(5) For those transactions that the Corporation's Financial Advisor recommends as candidates for a competitive sale, the Corporation shall engage a structuring agent. The Applicant may, at its sole expense, engage a Financial Advisor for the transaction. Any cost to the Applicant for the Financial Advisor in excess of $18,000 must be paid out of Developer Fee.

(6) For those transactions that the Corporation's Financial Advisor recommends for a negotiated sale, the Corporation shall appoint a bond underwriter.

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507(4), (13), (19), (20), 420.508, 420.509(12) FS. History–New 1-7-98, Formerly 9I-21.0045, Amended 1-26-99, Repromulgated 11-14-99, 2-11-01, Amended 3-17-02, Repromulgated 4-6-03, Amended 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, _____.

67-21.006 Development Requirements.

A Development shall at a minimum meet the following requirements or an Applicant shall be able to certify that the following requirements shall be met with respect to a Development:

(1) Must provide safe, sanitary and decent multifamily residential housing for lower, middle and moderate income persons or families.

(2) Must be owned, managed and operated as a Development to provide multifamily residential rental property comprised of a building or structure or several proximate buildings or structures, each containing two or more dwelling units and functionally related facilities, in accordance with section 142(d) of the IRC.

(3) The Development shall consist of similar units, containing complete facilities for living, sleeping, eating, cooking and sanitation for a Family.

(4) None of the units in the Development shall be used on a transient basis, nor shall they be knowingly leased for a period of less than 180 days unless a determination is made by the Corporation that there is a specific need in that particular area for leasing arrangements of less than 180 days, but in no event shall a lease be for a period less than 30 days, nor shall a Development be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home or rest home or trailer court or park.

(5) All of the dwelling units shall be rented or shall be available for rent on a continuous basis to members of the general public, and the Applicant shall not give preference to any particular class or group in renting the dwelling units in the Development, except to the extent that dwelling units are required to be occupied in compliance with the IRC or are being held for Elderly Persons, Commercial Fishing Workers, Homeless Persons or Farmworkers.

(6) The Applicant shall have no present plan to convert the Development to any use other than the use as affordable residential rental property.

(7) None of the units shall at any time be occupied by the owner of the Development or an individual related to the owner as such terms are defined by the Code; provided, however, that in Developments containing more than 50 residential units, such owner or related person may occupy up to one unit per each 100 units in a Development and such owner or related person must reside in a unit that is in a building or structure which contains at least five residential units.

(8) Commencing with the date on which at least 10 percent of the units in the Development are occupied:

(a) At least 20 percent or 40 percent, whichever is applicable based on Applicant's selection of the minimum federal set-aside, of the occupied and completed residential units in the Development shall be occupied by Lower Income Residents, prior to the satisfaction of which no additional units shall be rented or leased, except to a Family that is also a Lower Income Resident;

(b) All of the Public Policy Criteria and Qualified Resident Programs selected in the Application must be met; and

(c) After initial rental occupancy of such residential units by Lower Income Residents, at least 20 percent or 40 percent, whichever is applicable based on Applicant's selection of the minimum federal set-aside, of the completed residential units in the Development at all times shall be rented to and occupied by Lower Income Residents as required by section 142(d) of the IRC, if the Development is financed with the proceeds of Tax-exempt Bonds, or as required by the Act, if the Development is financed with the proceeds of Taxable Bonds, or held available for rental if previously rented to and occupied by a Lower Income Resident.

(9) The Applicant shall obtain and maintain on file income certifications from each Lower Income Resident immediately prior to initial occupancy and at least annually thereafter.

(10) The Applicant shall not take, permit, or cause to be taken any action which would adversely affect the exemption from federal income taxation of the interest on Tax-exempt Bonds, nor shall the Applicant fail to take any action which is necessary to preserve the exemption from federal income taxation of the interest on Tax-exempt Bonds.

(11) The Applicant shall take such action or actions as shall be necessary to comply fully with the IRC, Florida Statutes, and the Corporation's rules.

(12) The Applicant may limit the leasing of units in a Development to Elderly Persons, Commercial Fishing Workers, Homeless Persons or Farmworkers as permitted hereby.

(13) In the event that the Applicant has determined that the market no longer supports the Development as Elderly Housing and desires to rent to younger persons or families, the following criteria must be met:

(a) A viable marketing plan is submitted to and is acceptable to the Corporation showing a good faith effort to market the unit as Elderly Housing.

(b) The Applicant demonstrates that a good faith effort was made to lease the unit as Elderly Housing and that such effort was made for at least six months after the certificate of occupancy for the relevant unit was issued.

(c) The Applicant has requested and received Board of Directors' approval that the Development no longer qualifies as Elderly Housing.

(14) The Applicant and Developer of a proposed Rehabilitation Development shall make every effort to rehabilitate existing housing (i) without displacing existing tenants or (ii) by temporarily moving existing tenants to unaffected units within the Development until the renovation of affected units is completed.

(15) The owner of a Development must notify the Corporation of an intended change in the management company. The Corporation must approve, pursuant to subsection 67-53.003(3), F.A.C., the Applicant's selection of a management agent prior to such company assuming responsibility for the Development. A key management company representative must attend a Corporation-sponsored training workshop on certification and compliance procedures prior to the leasing of any units in the Development.

(16) The Applicant shall use cost certifications with respect to each Development as required by the United States Department of Housing and Urban Development ("HUD") in connection with Developments financed by HUD, including the HUD Risk Sharing Program.

(17) The Applicant shall provide annually to the Trustee not later than 120 days after the end of the Applicant's fiscal year, audited financial statements prepared by an independent certified public accounting firm, consolidated or consolidating, on the Development and any other information required by the Corporation to comply with continuing disclosure requirements imposed by law.

(18) Unless otherwise approved by the Board of Directors, Cross-collateralization shall not be allowed.

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(9), (11), (14), (18), (19), (20), (21), 420.508 FS. History–New 12-3-86, Amended 2-22-89, 12-4-90, 9-25-96, 1-7-98, Formerly 9I-21.006, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, Amended 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, _____.

67-21.007 Fees.

In addition to the fees specified in the Universal Application Package, the Corporation shall collect the following fees and charges in conjunction with the MMRB Program:

(1) TEFRA Fee: Applicants shall submit a non-refundable TEFRA fee to the Corporation in the amount of $500 by the Application Deadline, or, for refundings or 501(c)(3) Applicants, upon submission of the Application or request for refunding. This fee shall be applied to the actual cost of publishing required newspaper advertisements and Florida Administrative Weekly notices of TEFRA Hearings. If the actual cost of the required publishing exceeds $500, Applicant shall be invoiced for the difference. If a Local Public Fact Finding Hearing is requested, the Applicant shall be responsible for payment of any fees incurred by the Corporation. If the first TEFRA approval period has expired and a second TEFRA notice and hearing are required, Applicant is responsible for all costs associated with the additional TEFRA process.

(2) Credit Underwriting and Appraisal Fee: Applicants shall submit the required non-refundable Credit Underwriting and Appraisal Fee for each Development to the Credit Underwriter designated by the Corporation within seven Calendar Days of the date the Applicant accepts the invitation by the Corporation to enter the Credit Underwriting process and prior to final credit review by the Credit Underwriter. The Credit Underwriting fee shall be determined pursuant to a contract between the Corporation and the Credit Underwriter.

(3) Good Faith Deposit means a total deposit equal to one percent of the Loan amount reflected in the Loan Commitment paid by the Applicant to Florida Housing. The Applicant shall pay a total deposit equal to one percent of the aggregate principal amount of proposed Taxable and Tax-exempt Bonds, or $75,000, whichever is greater, to the Corporation, which deposit may be applied toward the Cost of Issuance Fee. The maximum Good Faith Deposit required is $175,000. The Good Faith Deposit is payable in two equal installments: the first installment (one-half of one percent) is due within seven Calendar Days of the date the Board of Directors approves the Credit Underwriting Report. The balance is payable no later than the date when the Applicant executes the Loan Commitment. If the Good Faith Deposit is exhausted, the

Applicant shall be required to pay, within three days of notice, an additional deposit to ensure payment of the expenses associated with the processing of the Application, the sale of the Bonds, including document production and the securitization of the Loan. The Good Faith Deposit shall be remitted by certified check or wire transfer. In the event the MMRB Loan does not close, the unused portion of the Good Faith Deposit shall be refunded to the Applicant. Notwithstanding the foregoing, the Applicant is responsible for all expenses incurred in preparation for loan closing. Any and all costs of the Corporation will be deducted from the Good Faith Deposit prior to refunding any unused funds to the Applicant. In the event that additional invoices are received by the Corporation subsequent to a determination that the MMRB Loan will not close and refunding any unused funds to the Applicant, which invoices related to costs incurred prior to such determination and refunding, Applicant shall be responsible for payment of the balance due as invoiced.

(4) Cost of Issuance Fee: the Corporation shall require Applicants or participating Qualified Lending Institutions selected for participation in the program, to deliver to the Corporation, or, at the request of the Corporation, directly to the Trustee, before the date of delivery of the Bonds, a Cost of Issuance Fee in an amount determined by the Corporation to be sufficient to pay the costs and expenses relating to issuance of the Bonds, which amount shall be deposited into an account to be held by the Trustee. The Corporation shall provide the Applicant with a good faith estimate of the Cost of Issuance Fee prior to closing. The Applicant shall pay all costs and expenses incurred by the Corporation in connection with the issuance of the Bonds, the expenditure of the MMRB Loan proceeds, and provision of Credit Enhancement, if any, even if such costs and expenses exceed the Cost of Issuance Fee. Any amounts remaining in this account at the time the balance is transferred and the account closed pursuant to the Trust Indenture shall be returned to the Applicant.

(5) HUD Risk Sharing Fees: Applicants also using the HUD Risk Sharing Program for the Development shall be responsible for associated fees, as follows:

(a) Format II Environmental Review Fee – The fee the Applicant shall pay will be determined by contract between the Corporation and the environmental professional.

(b) Subsidy Layering Review Fee – The fee the Applicant shall pay will be determined by the contract between the Corporation and the Credit Underwriter.

(6) Compliance Monitoring Fees: The annual monitoring fee the Applicant shall pay will be determined by contract between the Corporation and the monitoring agent.

(7) Permanent Loan Servicing Fees: The annual servicing fee the Applicant shall pay will be determined by contract between the Corporation and the servicer.

(8) Financial Monitoring Fees: The annual financial monitoring fee the Applicant shall pay will be determined by contract between the Corporation and the monitoring agent.

(9) Other Corporation Program Fees:

(a) Housing Credit Fees – If Housing Credits are used for the Development, the Compliance Monitoring Fee for that program shall be collected from the Applicant in conjunction with the Compliance Monitoring Fee for the program.

(b) Florida Affordable Housing Guarantee Program Fees – If the Guarantee Program is used in the Development, the same fee schedule described in Rule Chapter 67-39, F.A.C., shall apply and be paid by the Applicant to the Corporation.

(10) Developer Fee shall be limited to 18 percent of ~~Total~~ Development Cost excluding land. Consulting fees, if any, must be paid out of the Developer Fee. Consulting fees include payments for Application consultants, construction management or supervision, or Local Government consultants. Fees of the Applicant's or Developer's attorney(s) awarded in conjunction with litigation against the Corporation with respect to a Development shall also not be included in Total Development Costs. Fees for services provided by architects, accountants, appraisers, engineers or Financial Advisors may be included as part of the Total Development Costs, except that those fees for a Financial Advisor that are in excess of $18,000 must be paid out of the Developer Fee. In the event of extraordinary circumstances, Applicant may petition the Board for relief from the cap on Financial Advisor fees. The Corporation shall not authorize fees to be paid for duplicative services or duplicative overhead.

(11) General Contractor's Fees are inclusive of general requirements, profit and overhead and shall be limited to 14 percent of hard costs, excluding any hard cost contingencies. For the purpose of the HUD Risk Sharing Program, if there exists an Identity of Interest as defined herein between the Applicant or Developer and the General Contractor, the allowable fees shall in no case exceed the amount allowable pursuant to the HUD subsidy layering review requirements. Additionally, fees shall be allowed to be paid only to the person or entity that actually meets the definitional requirements to be considered a General Contractor. The Corporation shall not allow fees for duplicative services or duplicative overhead. The General Contractor must meet the following conditions:

(a) Employ a Development superintendent and charge the costs of such employment to the general requirements line item of the General Contractor's budget;

(b) Charge the costs of the Development construction trailer, if needed, and other overhead to the general requirements line item of the General Contractor's budget;

(c) Secure building permits, issued in the name of the General Contractor;

(d) Secure a payment and performance bond (or approved alternate security for General Contractor's performance, such as a letter of credit), issued in the name of the General Contractor, from a company rated at least "A-" by AMBest & Co.;

(e) Ensure that none of the General Contractor duties to manage and control the construction of the Development are subcontracted; and

(f) Ensure that not more than 20 percent of the construction cost is subcontracted to any one entity unless otherwise approved by the Board for a specific Development.

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507(4), (19) FS. History–New 12-3-86, Amended 1-7-98, Formerly 9I-21.007, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, Repromulgated 4-1-07, Amended 3-30-08, _____.

67-21.008 Terms and Conditions of MMRB Loans.

(1) Each Mortgage Loan for a Development made by the Corporation shall:

(a) Be evidenced by a properly executed Note or other evidence of indebtedness and be secured by a recorded Mortgage;

(b) Provide for a fully amortized payment of the Mortgage Loan in full beginning no later than the 37th month after closing and ending no later than the expiration of the useful life of the property, and in any event, no later than 45 years from the date of the Mortgage Loan;

(c) Not exceed 95 percent of the Total Development Cost;

(d) If the Mortgage Loan is to provide financing for the construction of a Development, have each advance thereof secured, insured, or guaranteed in such manner as the Corporation determines shall protect its interest and those of the Bond holders;

(e) Have the initial review, approval, and origination process accomplished by a Qualified Lending Institution;

(f) Be serviced by such Qualified Lending Institution or other private entity engaged in the business of servicing mortgage loans in Florida as the Corporation shall approve; and

(g) Require the submission to the Corporation of an annual audited financial statement for the Development, and for the Applicant if revenue from multiple projects is being pledged. An annual financial statement compiled or reviewed by a licensed Certified Public Accountant may be submitted in lieu of an audited financial statement for the Development prior to the issuance of a certificate of occupancy for any unit in the Development, provided that the subsequent annual audited financial statement shall include all operations since inception.

(h) If Credit Enhancement is used, a Credit Enhancement instrument of less than ten years must be approved by the Board of Directors.

(2) Upon approval, execution, and satisfaction of the terms of the Program Documents by the Applicant and the Corporation, the Bond sale and the MMRB Loan shall be scheduled for closing.

(3) The Applicant may obtain construction financing from an alternative source with the Bond proceeds being invested in accordance with an investment agreement subject to the requirements of the IRC for Tax-exempt Bonds.

(4) The Applicant shall also establish and maintain escrow deposits sufficient to pay any insurance premiums and applicable taxes.

(5) The Corporation shall charge such program administration fees as are required to pay the cost of administering the program during the life of the Bonds and MMRB Loan.

(6) The interest rate on the MMRB Loan shall be determined by the Corporation at the time of sale of the Bonds based on the financing structure and the interest rate on the Bonds.

(7) Prepayments shall be permitted only in accordance with the terms and conditions of the Program Documents.

(8) The Corporation shall appoint a Trustee and servicing agent when necessary to administer the program and service the MMRB Loan.

(9) All MMRB Loans are contingent upon:

(a) The sale, issuance and delivery of the Bonds and the availability of Bond proceeds.

(b) The Applicant obtaining title insurance on the property.

(c) The Applicant obtaining all governmental approvals for constructing and operating the Development as a multifamily housing Development.

(d) The Applicant providing to the Corporation, Bond Counsel and Special Counsel the Note, Mortgage, financing statements, survey, hazard insurance policies, liability insurance policies, escrow agreement, investment agreements, opinions of counsel including preference opinions, if required, and such other documents as are necessary to ensure that the Corporation has a properly secured Mortgage as required under the Act and to protect the holders of the Bonds.

(e) If required by Bond Counsel in order to deliver their opinion in connection with the issuance of the Bonds or at the request of the Corporation, the Bonds being validated pursuant to Chapter 75, F.S., and a certificate of no appeal issuing.

(f) Receipt of TEFRA approval for Tax-exempt Bonds.

(10) All MMRB Loans shall be reviewed and originated by a servicer designated by the Corporation, in conformance with the Act.

(11) The Applicant shall agree to execute or cause to be executed all of the MMRB Program Loan Documents required by the Corporation to secure the unconditional payment of the MMRB Loan and to retain the tax-exempt status of the Bonds, if Bonds are issued as Tax-exempt Bonds.

(12) The Applicant shall, prior to the requested date for funding, or as requested during Credit Underwriting, supply in draft form to the Corporation the following documents with respect to the Development being financed, together with any other documents required by the MMRB Loan Agreement:

(a) A survey, as described in the Application, dated within 90 days of the date submitted showing the location of all improvements, encroachments, easements and rights-of-way, and a site plan which has been approved by all governmental authorities.

(b) A fully completed, executed and sealed surveyors' certification to the Corporation.

(c) Written evidence of appropriate zoning and governmental approvals.

(d) Plans and specifications bearing the seal of a licensed engineer.

(e) Policies of insurance and evidence of payment of premiums.

(f) Required opinions of counsel necessary for the issuance of the Bonds.

(g) A commitment for mortgagee title insurance in favor of the Corporation or its Trustee or designated servicer, with only standard exceptions and such other exceptions as are usually permitted in Mortgage Loans of this nature and that are acceptable to the Corporation. Such policy shall be in an amount not less than the MMRB Loan amount plus an amount sufficient to cover any debt service reserve required by the Corporation.

(h) A copy of the deed or form of deed conveying the land for the Development to the Applicant or a copy of the lease creating a long-term leasehold in favor of the Applicant acceptable to the Corporation and the Credit Underwriter.

(i) Evidence as to the status of liens, including mechanic's liens, recorded against the property and the permission of the Corporation to allow any liens to remain recorded against the land or the Development.

(j) Such other documents as shall be reasonably required by the Corporation, by the MMRB Loan Commitment, or by the Corporation's respective counsel to protect the interest of the Corporation in the financing.

(13) The Borrower shall not sell, transfer, or otherwise assign any of its interest in the Development without the prior written consent of the Corporation.

(14) The Corporation shall require all MMRB Loans to be secured to the extent necessary to protect the Corporation and Bond holders.

(15) Any MMRB Loan financed with proceeds of Tax-exempt Bonds, except for 501(c)(3) Bonds, shall provide that the portion of any debt service reserve fund associated therewith to be financed with the Tax-exempt Bonds shall not exceed six months of debt service on the Bonds.

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.502, 420.507(4), (6), (9), (11), (21), 420.508 FS. History–New 12-3-86, Amended 12-4-90, 11-23-94, 9-25-96, 1-7-98, Formerly 9I-21.008, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, Amended 3-30-08, Repromulgated _____.

67-21.009 Interest Rate on Mortgage Loans.

The Corporation shall establish the interest rate on Mortgage Loans at the time of sale of the Bonds. The interest rate shall in no event exceed the arbitrage limit which is legally allowed without jeopardizing the tax exempt status of the Bonds, if Bonds are issued as Tax-exempt Bonds.

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(c) FS. Law Implemented Chapter 75, 420.507, 420.508 FS. History–New 12-3-86, Amended 1-7-98, Formerly 9I-21.009, Amended 1-26-99, 11-14-99, Repromulgated 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, _____.

67-21.010 Issuance of Revenue Bonds.

The Corporation shall fund Mortgage Loans with the proceeds from the sale of Bonds. The issuance and sale of the Bonds shall be governed by resolutions adopted by the Corporation and by applicable law and rule. If Bonds cannot be sold or cannot be sold in an amount or at an interest rate or under conditions which satisfy the Credit Underwriting Report, as the same may be amended, the Corporation shall terminate its MMRB Loan Commitment and such other agreements as were executed in conjunction with the proposed MMRB Loan.

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507(6), 420.508, 420.509 FS. History–New 12-3-86, Amended 1-7-98, Formerly 9I-21.010, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, _____.

67-21.013 Non-Credit Enhanced Multifamily Mortgage Revenue Bonds.

Any issuance of non-Credit Enhanced revenue Bonds shall be sold only to a Qualified Institutional Buyer. Such non-Credit Enhanced revenue Bonds may only be utilized for financings where the Applicant has demonstrated that the issuance produces a substantial benefit to the Development not otherwise available from Credit Enhancement structures. The analysis of the substantial benefit must be provided in a format acceptable to the Corporation and shall include the initial issuer cost of issuance, underwriter's discount or placement agent fee, annual debt service, total debt service and any other factors necessary and appropriate to demonstrate that the issuance produces a substantial benefit to the Development.

This analysis must be provided both prior to the review of the method of Bond sale conducted by the Corporation's Financial Advisor, and again prior to the pricing of the Bonds, showing any changes affecting the original estimated substantial benefit. The Corporation shall designate the bond underwriter or placement agent with respect to such Bonds, who shall be on the Corporation's approved bond underwriters list. The Corporation, in its discretion, will allow only an underwriting discount or a placement agent fee, but not both. Unless such Bonds are rated in one of the four highest rating categories by a nationally recognized rating service, such Bonds shall not be held in a full book-entry system (but may be DTC-Eligible) and shall comply with at least one of the following criteria:

(1) The Bonds shall be issued in minimum denominations of $100,000 (subject to reduction by means of redemption) and each purchaser of such Bond, including subsequent purchasers unless the requirements of subsection (2) or (3) below are met, shall certify to the Corporation prior to any purchase or transfer of any Bond that such purchaser is a Qualified Institutional Buyer; or

(2) The Bonds shall be issued in minimum denominations of $250,000 (subject to reduction by means of redemption) and an investment letter satisfactory to the Corporation and its counsel shall be obtained from each initial purchaser of the Bonds (including any purchaser purchasing such Bonds in an immediate resale from an underwriter), but shall not be required of subsequent purchasers of the Bonds, to the effect that, among other things, such purchaser is a Qualified Institutional Buyer, is purchasing such Bonds for its own account and not for immediate resale to other than another Qualified Institutional Buyer, and has made an independent investment decision as a sophisticated or institutional investor; or

(3) The Bonds shall be issued in minimum denominations of $250,000 (subject to reduction by means of redemption) and an investment letter satisfactory to the Corporation and its counsel shall be obtained from each initial purchaser of the Bonds and from each subsequent transferee of the Bonds prior to any transfer thereof, to the effect that such purchaser is a Qualified Institutional Buyer.

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507(4), (5), (6), (9), (11), (14), (16), (18), (19), (20), (21) FS. History–New 11-23-94, Amended 1-7-98, Formerly 9I-21.013, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, _____.

67-21.014 Credit Underwriting Procedures.

(1) An invitation into Credit Underwriting shall require that the Applicant submit the Credit Underwriting and Appraisal Fee and information required to complete the Credit Underwriting, to the Credit Underwriter in accordance with the schedule established by the Corporation upon the recommendation of the Credit Underwriter. Failure to submit the Credit Underwriting and Appraisal Fee or meet the deadlines as set forth in the schedule shall result in the immediate termination of Credit Underwriting activities and the Application shall be moved to the bottom of the ranked list.

(2) The Credit Underwriter shall in Credit Underwriting analyze and verify all information in the Application, or any proposed changes made subsequent thereto, in order to make a recommendation to the Board of Directors on the feasibility of the Development, without taking into account the willingness of a Credit Enhancer to provide Credit Enhancement. Credit Underwriting services shall include, for example, a comprehensive analysis of the Applicant, the real estate, the economics of the Development, the ability of the Applicant and the Development team to proceed, and the evidence of need for affordable housing in order to determine that the Development meets the MMRB Program requirements. The Credit Underwriter shall determine a recommended Bond amount that should be made to a Development, whether an initial loan or a refunding.

(a) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of normal underwriting procedures, the cost of such expertise shall be borne by the Applicant.

(b) The Credit Underwriter shall review the proposed financing structure to determine whether the MMRB Loan is feasible.

(c) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves when calculating the final net operating income available to service the debt. A minimum amount of $250 per unit must be deposited annually in the replacement reserve account for all Developments. An Applicant may choose to fund a portion of the replacement reserves at closing from moneys other than the proceeds of the Bonds. This partial funding cannot exceed 50 percent of the required replacement reserves for two years and must be placed in escrow with the Bond Trustee at closing. Applicants with Credit Enhancement may employ a different replacement reserve structure with the Corporation's approval.

(d) The Corporation shall consider the following when determining the need for construction completion guarantees based on the recommendations of the Credit Underwriter:

1. Liquidity of any guarantee provider.

2. Applicant's, Developer's and General Contractor's history in successfully completing Developments of similar type.

3. The past performance of the Applicant, Developer, General Contractor, or management agent, in developing, constructing or managing Developments financed by the Corporation or its predecessor, including, by way of example and not limitation, nonpayment of fees and noncompliance with program requirements.

4. Percentage of the Corporation's funds utilized compared to Total Development Costs. At a minimum, the corporate general partner of the borrowing entity shall provide a personal guarantee for completion of construction. In addition, a letter of credit or payment and performance bond shall be required if the Corporation determines upon recommendation of the Credit Underwriter after evaluation of conditions in subparagraphs 1. through 3., above, that additional surety is needed.

(e) The Credit Underwriter shall review and make a recommendation to the Corporation whether the number of existing loans and construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of each proposed Corporation Development.

(f) The Credit Underwriter shall consider the appraisal of the Development and other market study documentation to make a recommendation as to whether the market exists to support both the demographic and income restriction set-asides committed to within the Application. The Credit Underwriter shall consider the market study and other documentation to make a recommendation of whether to approve or disapprove an allocation when the proposed Development would financially impair an existing Development previously funded by the Corporation. The Credit Underwriter must review and determine whether there will be a negative impact to Guarantee Fund Developments within the primary market area or five (5) miles of the proposed Development, whichever is greater.

(g) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process to complete the Credit Underwriting Report, the Credit Underwriter shall notify the Corporation and request the information from the Applicant. Such requested information shall be submitted within ten business days of receipt of the request therefor. Failure for any reason to submit required information on or before the specified deadline shall result in the Application being moved to the bottom of the ranked list.

(h) At a minimum, the Credit Underwriter shall require the following information during Credit Underwriting:

1. For Credit Enhancers, audited financial statements for their most recent fiscal year ended, if published; otherwise the previous year's audited statements will be provided until the current statements are published or Credit Underwriting is complete.

2. For guarantors, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If audited financial statements are not available, unaudited financial statements prepared by an independent licensed Certified Public Accountant within the last 90 days and reviewed by the Credit Underwriter in accordance with Part III, Sections 604 through 607, of the Fannie Mae Multifamily Delegated Underwriting and Servicing (DUS) Guide, effective November 6, 2003, which is incorporated by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links, and the two most recent years tax returns. If the entities are newly formed (less than 18 months in existence as of the date that credit underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules.

3. For the General Contractor, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100 percent of the total construction cost is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

4. For the Applicant and General Partner, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If the entities are newly formed (less than 18 months in existence as of the date that Credit Underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules.

(i) The Credit Underwriter shall require an operating deficit guarantee. The operating deficit guarantee will be released when the Development achieves an average 1.15 ~~a minimum 1.10~~ debt service coverage ratio on the MMRB Loan and 90 percent occupancy and 90 percent of the gross potential rental income, all for twelve (12) ~~six~~ consecutive months as certified by an independent Certified Public Accountant, and verified by the Credit Underwriter.

(j) The Credit Underwriter shall also require environmental indemnity and recourse obligation guarantees.

(k) Required appraisals, market studies, pre-construction analyses, physical needs assessments, and environmental studies (other than Phase I Environmental Site Assessments) shall be completed by professionals approved by the Credit Underwriter. Approval of appraisers and contractors to complete market and environmental studies shall be based upon review of qualifications, professional designations held, references and prior experience with similar types of Developments.

(l) A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice, which is adopted and incorporated herein by reference, and a separate market study shall be ordered by the Credit Underwriter from an appraiser qualified for the geographic area and product type not later than when an Application enters Credit Underwriting.

The Credit Underwriter shall review the appraisals to properly evaluate the MMRB Loan request in relation to the property value.

(m) Appraisals and separate market studies which have been ordered and submitted by third party Credit Enhancers or syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal or market study referenced above.

(n) The Credit Underwriting Report shall include a thorough analysis of the proposed Development and a statement as to whether a MMRB Loan is recommended, and if so, the amount recommended. The Credit Underwriter or the Corporation may request such additional information as is necessary to properly analyze the credit risk being presented to the Corporation and the Bond holders. For the Credit Underwriter to make a favorable recommendation, the submarket of the proposed Development must have an average occupancy rate of 90% or greater.

(3) The Applicant shall review and provide written comments on the draft Credit Underwriting Report to the Corporation and the Credit Underwriter within the time frame established by the Corporation. The Corporation shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. The Credit Underwriter shall then review and incorporate the Corporation's and, if deemed appropriate, the Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within the established time frame. Then, the Credit Underwriter shall provide a final report, which shall address comments made by the Applicant to the Corporation.

(4) After approval by the Board of Directors following presentation of the Credit Underwriting Report and payment of one-half of the Good Faith Deposit, Corporation staff and Special Counsel shall begin negotiations of the MMRB Loan Commitment with the Applicant.

(5) At a minimum, a 10 percent retainage will be held by the Trustee or the servicer administering the construction loan funds until the Development is 50 percent complete. At 50 percent completion, no additional retainage will be held from the remaining draws. The total retainage dollars will be held by the Trustee or the servicer and released pursuant to the terms of the construction loan agreement.

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507, 420.508, 420.508(3)(b)3., 420.509 FS. History–New 1-7-98, Formerly 9I-21.014, Amended 1-26-99, 11-14-99, 1-26-00, 2-11-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, _____.

67-21.015 Use of Bonds with Other Affordable Housing Finance Programs.

(1) Applicants may submit one Application for the MMRB Program, SAIL, HOME Rental, competitive housing credits and non-competitive housing credits, subject to the restrictions set forth in the Universal Application Package.

(2) Applicants that receive funding from other programs and the Multifamily Mortgage Revenue Bond Program shall comply with the requirements of the applicable program rule and this rule.

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507, 420.508 FS. History–New 1-7-98, Formerly 9I-21.015, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, _____.

67-21.017 Transfer of Ownership.

(1) Any transfer of ownership of any Development shall be subject to compliance with the provisions of this section, provided that transfers of the limited partnership interest or limited liability company interest in the owner to a tax credit syndicator, or the transfer of ownership to a creditor by means of foreclosure or deed in lieu of foreclosure, need not comply with this provision. The determination of whether a transfer of ownership of a Development shall be deemed to take place for purposes of this rule shall be made in accordance with the provisions of the MMRB Land Use Restriction Agreement and other Program Documents for such Development. Owners shall advise the Corporation in writing of any change of ownership of the owner aggregating 50 percent or more of ownership interests in the owner within any six-month period.

(2) A request for transfer of ownership shall be submitted to the Corporation in writing and include evidence that the current owner has agreed to the proposed sale. A detailed opinion letter from the legal counsel for the current owner or prospective purchaser describing the scope of the proposed transaction must also be provided. The Corporation shall review the letter and, if acceptable, assign a Credit Underwriter. The Credit Underwriter will notify the current owner and prospective purchaser of any additional information necessary to complete its Credit Underwriting Report.

(3) Upon demonstration of compliance with the provisions of this section, and favorable consideration by the Board of Directors of the Credit Underwriting Report, the Corporation shall assign a Bond Counsel, Special Counsel, and other professionals as needed to effect the transfer.

(4) Prior to the transfer of ownership:

(a) The Credit Underwriter shall conduct a Credit Underwriting of the prospective purchaser upon any transfer of ownership. Additionally, the prospective purchaser shall be notified that any refunding of Bonds associated with such Development shall require a full Credit Underwriting of the Development. The prospective purchaser and the conditions of the assumption of the Program Documents must be approved

by the Credit Underwriter as meeting the terms of its Credit Underwriting Report, Bond Counsel and Special Counsel as complying with all applicable legal requirements, and the Corporation as meeting the stated purposes of the Corporation,

(b) All outstanding fees owing to the Corporation or any of its assigned professionals shall be paid,

(c) The Development shall be in compliance with all existing regulatory requirements imposed by the Corporation or its predecessor, and

(d) If the set-aside requirements in the MMRB Land Use Restriction Agreement are expired or have less than 12 months remaining, such agreement shall be extended for a minimum of two years from the date of closing. All transfer of ownership transactions shall be subject to all conditions of the Credit Underwriting Report including the requirements for a guarantee of recourse obligations and an environmental indemnity from the assuming owner.

(5) The prospective purchaser or current owner shall be responsible for payment of all fees for professional services rendered in association with the transfer of ownership.

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507, 420.508, 420.508(3)(a) FS. History–New 1-7-98, Formerly 9I-21.017, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, Amended 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, _____.

67-21.018 Refundings and Troubled Development Review.

(1) Refunding of previously issued Bonds shall in all instances be at the option of the Corporation and not an obligation of the Corporation.

(2) The Corporation shall endeavor where feasible to refund Bonds which are either in default or face a pending default.

(3) Approval by the Corporation for a refunding of an issue of Bonds for reasons related to pending default shall be subject to the following:

(a) Determination of the likelihood of the impending default;

(b) Submission of a sworn certificate of impending default by the owner or Credit Enhancer;

(c) Submission of sworn certificate from the owner or Credit Enhancer that conditions causing default are likely to continue;

(d) Submission of certified information from a certified public accountant concerning cash contributions to the Development, financial condition of the Development, including analysis of tax benefits derived from Development losses, and the financial condition of the owner or Credit Enhancer;

(e) Independent evidence of market conditions in the Development location;

(f) Evidence of effort by the owner or Credit Enhancer to procure other sources of capital infusion;

(g) Statement by the owner or Credit Enhancer of the continued public purpose to be achieved by refunding;

(h) Agreement by the owner or Credit Enhancer to update the MMRB Land Use Restriction Agreement, including retention of state and federal income limits;

(i) New Credit Underwriting by the Corporation, with new Bond amount determined by the Corporation based upon real estate underwriting criteria and equal to the lesser of the amount determined by the Corporation or the Credit Enhancer, to provide assurance that a similar default condition will not present itself in the future;

(j) The full risk of refunding is taken by the Credit Enhancer through full indemnification of the Corporation; with consideration given to personal indemnification from the owner if sufficient financial strength can be demonstrated;

(k) All costs of refunding are paid by the owner or the Credit Enhancer outside of Bond proceeds, including all applicable fees;

(l) Retention of annual fees by the Corporation;

(m) Provision of other evidence of the immediacy of default;

(n) Retention of the Credit Enhancement, or an acceptable non-Credit Enhancement structure; and

(o) Management of the Development is reviewed and approved by the Corporation.

(4) In connection with all refundings, the following shall apply:

(a) All outstanding fees of the Corporation and any of its assigned professionals shall be paid in connection with the refunding;

(b) The set-asides required by the original MMRB Land Use Restriction Agreement shall be increased by an amount and extended for a period determined by the Corporation;

(c) A Credit Underwriting Report shall be required, which may incorporate any Credit Underwriting undertaken within the past twelve months in connection with a transfer of ownership of the same Development;

(d) A guarantee of recourse obligations and an environmental indemnity shall be required;

(e) Additional operating deficit or other guarantees and establishment of replacement reserves or increase in existing reserves may be required as specified in the Credit Underwriting Report;

(f) The MMRB Loan shall immediately, on the earlier of 24 months after closing or stabilized occupancy in the case of major rehabilitation, begin full amortization over the remaining life of the Bonds; and in no event shall it exceed the economic remaining life of the property, provided that, in the case of a

refunding relating to a pending financial default, such amortization may be delayed to the extent recommended in the Credit Underwriting Report;

(g) Any material changes to the underlying documents shall be deemed to constitute a refunding for purposes hereof;

(h) Any extension or extensions of maturity cumulatively exceeding 60 months shall be deemed to constitute a refunding for purposes hereof; and

(i) The owner of the Development must provide a written request for the refunding and a detailed opinion from Applicant's counsel describing the scope of the transaction. It shall not be necessary to complete an Application in connection with a refunding request.

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507, 420.508 FS. History–New 1-7-98, Formerly 9I-21.018, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, _____.

67-21.019 Issuance of Bonds for Section 501(c)(3) Entities.

(1) The Corporation shall entertain requests, on a non-competitive basis, for it to serve as the issuer of Tax-exempt 501(c)(3) Bonds for the acquisition or construction of multifamily housing to be owned by a not-for-profit entity organized under section 501(c)(3) of the IRC.

(2) In connection with all Bonds issued pursuant to this section, Applicants shall be required to comply with the applicable provisions of Rules 67-21.0045 through 67-21.018, F.A.C., Florida Statutes, and the IRC, including all safe harbor provisions.

(3) In addition, Applicant shall submit the following:

(a) An initial Bond Counsel fee of $1,000 along with IRS Form 1023, which is adopted and incorporated herein by reference, and all attachments and correspondence to and from the IRS relative to section 501(c)(3) status of the Applicant. A copy of IRS Form 1023 is available on the IRS web site at www.irs.gov; and

(b) An opinion from Applicant's counsel at Applicant's sole expense evidencing the Applicant's qualifications as a section 501(c)(3) entity and Applicant's authority to incur bond debt for multifamily housing; and

(c) If a Development to be acquired is intended to be exempt from ad valorem taxes, evidence that it has notified all local ad valorem taxing authorities of the acquisition of the proposed Development by a section 501(c)(3) entity.

(d) The completed Universal Application in effect at the time the Applicant submits the Application. Applicants must meet all threshold requirements of the Application as well as achieve 50 percent of all points (excluding tie-breaker points) available in the Application.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.502, 420.507(14), (24), 420.508 FS. History–New 11-14-99, Amended 2-11-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, 2-7-05, 1-29-06, Amended 4-1-07, Repromulgated 3-30-08, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Wayne Conner, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: David Oellerich, Chairman of the Board, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 13, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 34, No. 36, September 5, 2008

FLORIDA HOUSING FINANCE CORPORATION

RULE NOS.:	RULE TITLES:
67-48.001	Purpose and Intent
67-48.002	Definitions
67-48.004	Application and Selection Procedures for Developments
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67-48.031	Termination of Extended Use Agreement and Disposition of Housing Credit Developments

PURPOSE AND EFFECT: The purpose of this Rule Chapter is to establish the procedures by which the Corporation shall:

(1) Administer the Application process, determine loan amounts, make and service mortgage loans for new construction or rehabilitation of affordable rental units under the State Apartment Incentive Loan (SAIL) Program authorized by Section 420.5087, Florida Statutes; and the HOME Investment Partnerships (HOME) Program authorized by Section 420.5089, Florida Statutes; and

(2) Administer the Application process, determine Housing Credit amounts and implement the provisions of the Housing Credit (HC) Program authorized by Section 42 of the IRC and Section 420.5099, Florida Statutes.

The intent of this Rule Chapter is to encourage public-private partnerships to invest in residential housing; to stimulate the construction and rehabilitation of residential housing which in turn will stimulate the job market in the construction and related industries; and to increase and improve the supply of affordable housing in the state of Florida.

SUMMARY: Prior to the opening of an Application Cycle, the Corporation (1) researches the market need for affordable housing throughout the state of Florida and (2) evaluates prior Application Cycles to determine what changes or additions should be added to the Rule, Application and/or QAP. The proposed amendments to the Rule and adopted reference material include changes that will create a formulated process for selecting Developments that will apply in the 2009 Application Cycle.

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: 420.507 FS.

LAW IMPLEMENTED: 420.5087, 420.5089, 420.5099 FS.

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

DATE AND TIME: April 17, 2009, 9:00 a.m.

PLACE: Florida Housing Finance Corporation, 227 North Bronough Street, 6th Floor, Seltzer Room, Tallahassee, Florida 32301. The hearing will be accessible via phone at 1(888)808-6959, Conference Code #1374197.

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: Blake Carson-Poston (850)488-4197. 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: Deborah Dozier Blinderman, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

THE FULL TEXT OF THE PROPOSED RULES IS:

67-48.001 Purpose and Intent.

The purpose of this rule chapter is to establish the procedures by which the Corporation shall:

(1) Administer the Application process, determine loan amounts, make and service mortgage loans for new construction or Rehabilitation/Substantial Rehabilitation of affordable rental units under the State Apartment Incentive Loan (SAIL) Program authorized by Section 420.5087, F.S., and the HOME Investment Partnerships (HOME) Program authorized by Section 420.5089, F.S.; and

(2) Administer the Application process, determine Housing Credit amounts and implement the provisions of the Housing Credit (HC) Program authorized by Section 42 of the IRC and Section 420.5099, F.S.

Rulemaking ~~Specific~~ Authority 420.507 FS. Law Implemented 420.5087, 420.5089(2), 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.001, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, Amended 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, Amended 3-30-08, Repromulgated _____.

67-48.002 Definitions.

(1) "Act" means the Florida Housing Finance Corporation Act as found in Chapter 420, Part V, F.S.

(2) "Address" means the address assigned by the United States Postal Service and must include address number, street name and~~,~~ city~~, state and zip code~~. If address has not yet been assigned, include, at a minimum, street name and closest designated intersection and~~,~~ city~~, state and zip code~~.

(3) "Adjusted Income" means, with respect to a HOME Development, the gross income from wages, income from assets, regular cash or noncash contributions, and any other resources and benefits determined to be income by HUD,

adjusted for family size, minus the deductions allowable under 24 CFR § 5.611, which is adopted and incorporated herein by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links.

(4) "Affiliate" means any person that, (i) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant or Developer, (ii) serves as an officer or director of the Applicant or Developer or of any Affiliate of the Applicant or Developer, ~~or~~ (iii) directly or indirectly receives or will receive a financial benefit from a Development except as further described in Rule 67-48.0075, F.A.C., or (iv) is the spouse, parent, child, sibling, or relative by marriage of a person described in (i)~~.~~ ~~or~~ (ii) or (iii) above.

(5) "ALF" or "Assisted Living Facility" means a Florida licensed living facility that complies with Sections 429.01 through 429.54, F.S., and Chapter 58A-5, F.A.C.

(6) "Allocation Authority" means the total dollar volume of Competitive Housing Credits available for distribution by the Corporation and authorized pursuant to Section 42 of the IRC.

(7) "Applicable Fraction" means Applicable Fraction as defined in Section 42(c)(1)(B) of the IRC.

(8) "Applicant" means any person or legally formed entity that is seeking a loan or funding from the Corporation by submitting an Application or responding to a request for proposal for one or more of the Corporation's programs. For purposes of ~~paragraph 67-48.0075(7)(b) and~~ Rules 67-48.0105, 67-48.0205 and 67-48.031, F.A.C., Applicant also includes any assigns or successors in interest of the Applicant.

(9) "Application" means the forms and exhibits created by the Corporation for the purpose of providing the means to apply for one or more Corporation programs. A completed Application may include additional supporting documentation provided by an Applicant.

(10) "Application Deadline" means 5:00 p.m., Eastern Time, on the final day of the Application Period.

(11) "Application Period" means a period during which Applications shall be accepted as posted on the Corporation's Website and with a deadline no less than 21 Calendar ~~thirty~~ D~~d~~ays from the beginning of the Application Period.

(12) "Binding Commitment" means, with respect to a Housing Credit Development, an agreement between the Corporation and an Applicant by which the Corporation allocates and the Applicant accepts Housing Credits from a later year's Allocation Authority in accordance with Section 42(h)(1)(C) of the IRC.

(13) "Board of Directors" or "Board" means the Board of Directors of the Corporation.

(14) "Building Identification Number" means, with respect to a Housing Credit Development, the number assigned by the Corporation to describe each building in a Housing Credit Development, pursuant to Internal Revenue Service Notice 88-91, which is incorporated by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links.

(15) "Calendar Days" means, the seven (7) days of the week.

(16) "Carryover" means the provision under Section 42 of the IRC and Rule 67-48.028, F.A.C., which allows a Development to receive a Housing Credit Allocation in a given calendar year and be placed in service by the close of the second calendar year following the calendar year in which the allocation is made.

(17) "Catchment Area" means the geographical area covered under a Local Homeless Assistance Continuum of Care Plan, as designated and revised as necessary by the State Office on Homelessness, in accordance with Section 420.624, F.S.

(18) "CHDOs" or "Community Housing Development Organizations" means Community housing development organizations as defined in Section 420.503, F.S., and 24 CFR Part 92.

(19) "Commercial Fishing Worker" means Commercial fishing worker as defined in Section 420.503, F.S.

(20) "Commercial Fishing Worker Household" means a household of one or more persons wherein at least one member of the household is a Commercial Fishing Worker at the time of initial occupancy.

(21) "Competitive Housing Credits" or "Competitive HC" means those Housing Credits which come from the Corporation's annual Allocation Authority.

(22) "Compliance Period" means a period of time that the Development shall conform to all set-aside requirements as described further in the rule chapter and agreed to by the Applicant in the Application.

(23) "Consolidated Plan" means the plan prepared in accordance with 24 CFR Part 91, which is adopted and incorporated herein by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links, and which describes needs, resources, priorities and proposed activities to be undertaken with respect to certain HUD programs, including the HOME Program.

(24) "Contact Person" means the person with whom the Corporation will correspond concerning the Application and the Development. This person cannot be a third-party consultant.

(25) "Corporation" means the Florida Housing Finance Corporation as defined in Section 420.503, F.S.

(26) "Credit Underwriter" means the independent contractor under contract with the Corporation having the responsibility for providing stated credit underwriting services.

(27) "DDA" or "Difficult Development Area" means areas designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income in accordance with Section 42(d)(5), of the IRC.

(28) "Department" means the Department of Community Affairs as defined in Section 420.503, F.S.

(29) "Developer" means any individual, association, corporation, joint venturer, or partnership which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable housing as required in the Application.

(30) "Development" means Project as defined in Section 420.503, F.S.

(31) "Development Cash Flow" means, with respect to SAIL Developments, cash flow of a SAIL Development as calculated in the statement of cash flows prepared in accordance with generally accepted accounting principles ("GAAP") and as adjusted for items including any distribution or payment to the Applicant or Developer, Principal(s) of the Applicant or Developer or any Affiliate of the Principal(s) of the Applicant or Developer, or to the Developer or any Affiliate of the Developer, whether paid directly or indirectly, which was not expressly disclosed in determining debt service coverage in the Board approved final credit underwriting report.

(32) "Development Cost" means the total of all costs incurred in the completion of a Development excluding developer fee and total land cost as shown in the Development Cost line item on the development cost pro forma within the Application.

(33) "Development Expenses" means, with respect to SAIL Developments, usual and customary operating and financial costs, such as the compliance monitoring fee, the financial monitoring fee, replacement reserves, the servicing fee and the debt service reserves. As it relates to SAIL Developments and to the application of Development Cash Flow described in subsections 67-48.010(5) and (6), F.A.C., the term includes only those expenses disclosed in the operating pro forma included in the final credit underwriting report, as approved by the Board.

(34) "Document" means electronic media, written or graphic matter, of any kind whatsoever, however produced or reproduced, including records, reports, memoranda, minutes, notes, graphs, maps, charts, contracts, opinions, studies, analysis, photographs, financial statements and correspondence as well as any other tangible thing on which information is recorded.

(35) "Domestic Violence" means Domestic violence as defined in Section 741.28, F.S.

(36)~~(35)~~ "Draw" means the disbursement of funds to a Development.

(37)~~(36)~~ "Elderly" means Elderly as defined in Section 420.503, F.S.

(38)~~(37)~~ "ELI Household" or "Extremely Low Income Household" means a household of one or more persons wherein the annual adjusted gross income for the Family is equal to or below the percentage of area median income for ELI Persons.

(39)~~(38)~~ "ELI Persons" or "Extremely Low Income Persons" means Extremely low income persons as defined in Section 420.0004(8), F.S., and for the Universal Cycle, will be as outlined in the ELI County Chart included in the Set-Aside Commitments section of the Universal Application instructions.

(40)~~(39)~~ "ELI Set-Aside" or "Extremely Low Income Set-Aside" means the number of units designated to serve ELI Households.

(41)~~(40)~~ "Eligible Persons" means one or more natural persons or a family, irrespective of race, creed, national origin, or sex, determined by the Corporation to be of Low Income or Very Low Income, as further described in Rule 67-48.0075, F.A.C.

(42)~~(41)~~ "EUA" or "Extended Use Agreement" means, with respect to the HC Program, an agreement which sets forth the set-aside requirements and other Development requirements under the HC Program.

(43)~~(42)~~ "Executive Director" means the Executive Director of the Corporation.

(44)~~(43)~~ "Family" describes a household composed of one or more persons.

(45)~~(44)~~ "Farmworker" means Farmworker as defined in Section 420.503, F.S.

(46)~~(45)~~ "Farmworker Household" means a household of one or more persons wherein at least one member of the household is a Farmworker at the time of initial occupancy.

(47)~~(46)~~ "Final Housing Credit Allocation" means, with respect to a Housing Credit Development, the issuance of Housing Credits to an Applicant upon completion of construction or Rehabilitation of a Development and submission to the Corporation by the Applicant of a completed and executed Final Cost Certification Application pursuant to Rule 67-48.023, F.A.C.

(48)~~(47)~~ "Financial Beneficiary" means any ~~Developer and its principals or~~ Principal~~s~~ of the Developer or Applicant entity who receives or will receive any direct or indirect financial benefit from a Development except as further described in Rule 67-48.0075, F.A.C.

(49)~~(48)~~ "Financial Institution" means Lending institution as defined in Section 420.503, F.S.

(50)~~(49)~~ "Florida Keys Area" means all lands in Monroe County, except:

(a) That portion of Monroe County included within the designated exterior boundaries of the Everglades National Park and areas north of said Park;

(b) All lands more than 250 feet seaward of the mean high water line owned by local, state, or federal governments; and

(c) Federal properties.

(51)~~(50)~~ "Funding Cycle" means the period of time commencing with the Notice of Funding Availability or Notice of Credit Availability pursuant to this rule chapter and concluding with the issuance of allocations or loans to Applicants who applied during a given Application Period.

(52)~~(51)~~ "General Contractor" means a person or entity duly licensed in the state of Florida with the requisite skills, experience and credit worthiness to successfully provide the units required in the Application, and which meets the criteria described in Rule 67-48.0072, F.A.C.

(53)~~(52)~~ "Geographic Set-Aside" means the amount of Allocation Authority or funding which has been designated by the Corporation to be allocated for Developments located in specific geographical regions within the state of Florida.

(54)~~(53)~~ "HC" or "Housing Credit Program" means the rental housing program administered by the Corporation pursuant to Section 42 of the IRC and Section 420.5099, F.S., under which the Corporation is designated the Housing Credit agency for the state of Florida within the meaning of Section 42(h)(7)(A) of the IRC and Rule Chapter 67-48, F.A.C.

(55)~~(54)~~ "HOME" or "HOME Program" means the HOME Investment Partnerships Program administered by the Corporation pursuant to 24 CFR Part 92, which is adopted and incorporated herein by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links, and Section 420.5089, F.S.

(56)~~(55)~~ "HOME-Assisted Unit" means the specific units that are funded with HOME funds. HOME units shall adhere to rent controls and income targeting requirements pursuant to 24 CFR § 92.252.

(57)~~(56)~~ "HOME Development" means any Development which receives financial assistance from the Corporation under the HOME Program.

(58)~~(57)~~ "HOME Rental Development" means a Development proposed to be constructed or rehabilitated with HOME funds.

(59)~~(58)~~ "HOME Rent-Restricted Unit" means the maximum allowable rents designed to ensure affordability on the HOME-Assisted Units.

(60)~~(59)~~ "Homeless" means a Family who lacks a fixed, regular, and adequate nighttime residence or a Family who has a primary nighttime residence that is:

(a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing;

(b) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not refer to any individual imprisoned or otherwise detained pursuant to state or federal law.

(61)~~(60)~~ "Housing Credit" means the tax credit issued in exchange for the development of rental housing pursuant to Section 42 of the IRC and the provisions of Rule Chapter 67-48, F.A.C.

(62)~~(61)~~ "Housing Credit Allocation" means the amount of Housing Credits determined by the Corporation as necessary to make a Development financially feasible and viable throughout the Development's Compliance Period pursuant to Section 42(m)(2)(A) of the IRC.

(63)~~(62)~~ "Housing Credit Development" means the proposed or existing rental housing Development(s) for which Housing Credits have been applied or received.

(64)~~(63)~~ "Housing Credit Extended Use Period" means, with respect to any building that is included in a Housing Credit Development, the period that begins on the first day of the Compliance Period in which such building is part of the Development and ends on the later of: (i) the date specified by the Corporation in the Extended Use Agreement or (ii) the date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the IRC.

(65)~~(64)~~ "Housing Credit Period" means with respect to any building that is included in a Housing Credit Development, the period of 10 years beginning with:

(a) The taxable year in which such building is placed in service, or

(b) At the election of the Developer, the succeeding taxable year.

(66)~~(65)~~ "Housing Credit Rent-Restricted Unit" means, with respect to a Housing Credit Development, a unit for which the gross rent does not exceed 30 percent of the imputed income limitation applicable to such unit as chosen by the Applicant in the Application and in accordance with Section 42 of the IRC.

(67)~~(66)~~ "Housing Credit Set-Aside" means the number of units in a Housing Credit Development necessary to satisfy the percentage of units set-aside at 60 percent of the Area Median Income (AMI) or less as chosen by the Applicant in the Application.

(68)~~(67)~~ "Housing Credit Syndicator" means a person, partnership, corporation, trust or other entity that regularly engages in the purchase of interests in entities that produce Qualified Low Income Housing Projects [as defined in Section 42(g) of the Internal Revenue Code] and provides at least one written reference in the Application that such person, partnership, corporation, trust or other entity has performed its obligation under the partnership agreements and is not currently in default under those agreements, in accordance with the Application instructions.

(69)~~(68)~~ "Housing Provider" means, with respect to a HOME Development, Local Government, consortia approved by HUD under 24 CFR Part 92, for-profit and Non-profit Developers, and qualified CHDOs, with demonstrated capacity to construct or rehabilitate affordable housing.

(70)~~(69)~~ "HUD" means the United States Department of Housing and Urban Development.

(71)~~(70)~~ "IRC" means Section 42 and subsections 501(c)(3) and 501(c)(4) of the Internal Revenue Code of 1986, as in effect on the date of this rule chapter, together with corresponding and applicable final, temporary or proposed regulations, notices, and revenue rulings issued with respect thereto by the Treasury or the Internal Revenue Service of the United States, which are incorporated by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links.

(72) "Joint Venture Application" means an Application in which the Applicant is either a Joint Venture Non-Profit Applicant or a Joint Venture Public Housing Authority Applicant.

(73) "Joint Venture Non-Profit Applicant" means an Applicant that (i) states in its Application that it is applying as a Non-Profit and (ii) is a legal entity which is owned by two or more separate and distinct legal entities which share no common ownership between or among them, at least one of which is a Non-Profit entity, as defined in Rule 67-48.002, F.A.C., provided such Non-Profit is receiving at least 25 percent of the total Developer fee.

(74) "Joint Venture Public Housing Authority Applicant" means an Applicant that is a legal entity which is owned by two or more separate and distinct legal entities which share no common ownership between or among them, at least one of which is a Public Housing Authority or an entity created under Section 421.08(8), F.S.

(75)~~(71)~~ "Lead Agency" means a Local Government or non-profit serving as the point of contact and accountability to the State Office on Homelessness with respect to the Local Homeless Assistance of Continuum of Care Plan, in accordance with Section 420.624, F.S.

(76)~~(72)~~ "Local Government" means Local government as defined in Section 420.503, F.S.

(77)~~(73)~~ "Local Homeless Assistance Continuum of Care Plan" means a plan for developing and implementing a framework for a comprehensive and seamless array of housing and services to address the needs of homeless persons and persons at risk for homelessness, in accordance with Section 420.624, F.S.

(78)~~(74)~~ "Low Income" means the Adjusted Income for a Family which does not exceed 80 percent of the area median income.

(79)~~(75)~~ "LURA" or "Land Use Restriction Agreement" means an agreement which sets forth the set-aside requirements and other Development requirements under a Corporation program.

(80)~~(76)~~ "Match" means non-federal contributions to a HOME Development eligible pursuant to 24 CFR Part 92.

(81)~~(77)~~ "Mortgage" means Mortgage as defined in Section 420.503, F.S.

(82) "Non-Joint Venture Application" means an Application other than a Joint Venture Application.

(83)~~(78)~~ "Non-Profit" means a qualified non-profit entity as defined in Section 42(h)(5)(C), subsection 501(c)(3) or 501(c)(4) of the IRC and organized under Chapter 617, F.S., if a Florida Corporation, or organized under similar state law if organized in a jurisdiction other than Florida, to provide housing and other services on a not-for-profit basis, which owns at least 51 percent of the ownership interest in the Development held by the general partner or managing member entity and which entity is acceptable to federal and state agencies and financial institutions as a Sponsor for affordable housing, as further described in Rule 67-48.0075, F.A.C.

(84)~~(79)~~ "Note" means a unilateral agreement containing an express and absolute promise to pay to the Corporation a principal sum of money on a specified date, which provides the interest rate and is secured by a Mortgage.

(85)~~(80)~~ "PBRA" or "Project-Based Rental Assistance" means a rental subsidy through a contract with HUD or RD in a property that is 20 or more years of age.

(86) "Person with a Disability" means, pursuant to Section 3 of the Americans with Disabilities Act of 1990, which is incorporated by reference and available on the Corporation's Website under the 2009 Universal Application link labeled Related References and Links, an individual to which both of the following applies: (i) the individual has a physical or mental impairment that substantially limits one or more of the major life activities of such individual, and (ii) the individual is currently or was formerly regarded as having an existing record of such an impairment.

(87) "Pool of Related Applications" means a group of Related Applications comprised of all Related Applications submitted in the same Funding Cycle that share among such Related Applications one or more Principals or Affiliates of an Applicant or Developer common to any or all such Related Applications.

(88)~~(81)~~ "Portfolio Diversification" means a distribution of SAIL and HOME Program loans to Developments in varying geographic locations with varying design structures and sizes and with different types and identity of Sponsors.

(89)~~(82)~~ "Preliminary Allocation" means a non-binding reservation of Housing Credits issued to a Housing Credit Development which has demonstrated a need for Housing Credits and received a positive recommendation from the Credit Underwriter.

(90)~~(83)~~ "Preliminary Determination" means an initial determination by the Corporation of the amount of Housing Credits outside the Allocation Authority needed from the Treasury to make a Tax-Exempt Bond-Financed Development financially feasible and viable.

(91)~~(84)~~ "Preservation" means, with respect to a Competitive HC Development, Rehabilitation of existing developments receiving PBRA.

(92)~~(85)~~ "Principal" means (i) ~~an Applicant,~~ any general partner of an Applicant or Developer, any limited partner of an Applicant or Developer, any manager or member of an Applicant or Developer, any officer, director or shareholder of an Applicant or Developer, (ii) any officer, director, shareholder, manager, member, general partner or limited partner of any general partner and limited partner of an Applicant or Developer, (iii) any officer, director, shareholder, manager, member, general partner or limited partner of any manager or ~~and~~ member of an Applicant or Developer, and (iv) any officer, director, shareholder, manager, member, general partner or limited partner of any shareholder of an Applicant or Developer.

(93)~~(86)~~ "Progress Report" or "Form Q/M Report" means, with respect to a Housing Credit Development, a report format that is required to be completed and submitted to the Corporation pursuant to Rule 67-48.028, F.A.C., and is adopted and incorporated herein by reference, effective January 2007. A copy of such form is available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

(94)~~(87)~~ "Project" or "Property" means Project as defined in Section 420.503, F.S.

(95)~~(88)~~ "QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2009 ~~2008~~ Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the state of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~information~~ and Links or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

(96)~~(89)~~ "QCT" or "Qualified Census Tract" means any census tract which is designated by the Secretary of Housing and Urban Development as having either 50 percent or more of the households at an income which is less than 60 percent of the area median gross income, or a poverty rate of at least 25 percent, in accordance with Section 42(d)(5)(C) of the IRC.

(97)~~(90)~~ "RD" or "Rural Development" means Rural Development Services (formerly the "Farmer's Home Administration" or "FmHA") of the United States Department of Agriculture.

(98)~~(91)~~ "Received" as it relates to delivery of a document by a specified deadline means, unless otherwise indicated, delivery by hand, United States Postal Service or other courier service, in the office of the Corporation no later than 5:00 p.m., Eastern Time, on the deadline date.

(99)~~(92)~~ "Rehabilitation" means, with respect to the HOME and Housing Credit Program(s), the alteration, improvement or modification of an existing structure where less than 50 percent of the proposed construction work consists of new construction, as further described in Rule 67-48.0075, F.A.C.

(100) "Related Application" means an Application submitted in the same Funding Cycle that shares one or more Principals or Affiliates of an Applicant or Developer common to any or all of the Principals or Affiliates of an Applicant or Developer in another Application in the same Funding Cycle. Notwithstanding the foregoing, an Application shall not be deemed to be related to another Application if the only Principal or Affiliate of an Applicant or Developer that it shares with such other Application is (i) a Public Housing Authority or an entity created under Section 421.08(8), F.S., or (ii) a Non-Profit as defined in Rule 67-48.002, F.A.C., that is receiving at least 25 percent of the total Developer fee.

(101)~~(93)~~ "Review Committee" means a committee established pursuant to Sections 420.5087 and 420.5089, F.S.

(102)~~(94)~~ "RRLP" or "RRLP Program" means the Rental Recovery Loan Program which was created pursuant to Section 3, Chapter 2005-92, and Section 31, Chapter 2006-69, L.O.F., to facilitate the allocation of RRLP loans.

(103)~~(95)~~ "SAIL" or "SAIL Program" means the State Apartment Incentive Loan Program created pursuant to Sections 420.507(22) and 420.5087, F.S.

(104)~~(96)~~ "SAIL Development" means a residential development comprised of one (1) or more residential buildings, each containing five (5) or more dwelling units and functionally related facilities, proposed to be constructed or substantially rehabilitated with SAIL funds for Eligible Persons.

(105)~~(97)~~ "SAIL Minimum Set-Aside Requirement" means the least number of set-aside units in a SAIL Development which must be held for Very Low-Income persons or households pursuant to the category (i.e., Family, Elderly, Homeless, or Farmworker and Commercial Fishing Worker) under which the Application has been made, as further described in Rule 67-48.009, F.A.C.

(106)~~(98)~~ "Scattered Sites" for a single Development means a Development consisting of real property in the same county (i) any part of which is not contiguous ("non-contiguous parts") or (ii) any part of which is divided by

a street or easement ("divided parts") and (iii) it is readily apparent from the proximity of the non-contiguous parts or the divided parts of the real property, chain of title, or other information available to the Corporation that the non-contiguous parts or the divided parts of the real property are part of a common or related scheme of development.

(107)~~(99)~~ "Section 8 Eligible" means a Family with an income which meets the income eligibility requirements of Section 8 of the United States Housing Act of 1937, which is adopted and incorporated herein by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links.

(108)~~(100)~~ "Single Room Occupancy" or "SRO" means housing, consisting of single room dwelling units, that is the primary residence of its occupant or occupants. An SRO does not include facilities for students.

(109) "Special Needs Household" means a household consisting of a Family that is considered to be Homeless, a survivor of Domestic Violence, a Person with a Disability, or Youth Aging Out of Foster Care. These households require initial, intermittent or on-going supportive services from one or more community based service providers to obtain and retain stable, adequate and safe housing in their communities.

(110) "Special Needs Household Referral Agency" means a participating organization that is included on the Special Needs Household Referral Agency Participation List, effective 1-12-09, incorporated by reference and available on the Corporation's Website under the 2009 Universal Application link labeled Related References and Links.

(111)~~(101)~~ "Sponsor" means Sponsor as defined in Section 420.503, F.S.

(112)~~(102)~~ "State Office on Homelessness" means the office created within the Department of Children and Family Services under Section 420.622, F.S.

(113)~~(103)~~ "Substantial Rehabilitation" means, with respect to the SAIL Program, to bring a Development back to its original state with added improvements, where the value of such repairs or improvements (excluding the costs of acquiring or moving a structure) exceeds 40 percent of the appraised as is value (excluding land) of such Development before repair and less than 50 percent of the proposed construction work consists of new construction. For purposes of this definition, the value of the repairs or improvements means the Development Cost. To be considered "Substantial Rehabilitation," there must be at least the foundations remaining from the previous structures, suitable to support the proposed construction.

(114)~~(104)~~ "Tax Exempt Bond-Financed Development" means a Development which has been financed by the issuance of tax-exempt bonds subject to applicable volume cap pursuant to Section 42(h)(4) of the IRC.

(115)~~(105)~~ "Tie-Breaker Measurement Point" means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on one of the Scattered Sites which comprise the Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. In addition, the Tie-Breaker Measurement Point must be located on the site with the most units if any of the Scattered Sites has more than four (4) units.

(116)~~(106)~~ "Total Development Cost" means the total of all costs incurred in the completion of a Development, all of which shall be subject to the review and approval by the Credit Underwriter and the Corporation pursuant to this rule chapter, and as further described in Rule 67-48.0075, F.A.C.

(117)~~(107)~~ "Treasury" means the United States Department of Treasury or other agency or instrumentality created or chartered by the United States to which the powers of the Department of Treasury have been transferred.

(118)~~(108)~~ "Universal Cycle" means any F~~f~~unding C~~c~~ycle provided for in this or previous versions of this rule chapter.

(119)~~(109)~~ "Urban In-Fill Development" means a Development (i) in a site or area that is targeted for in-fill housing or neighborhood revitalization by the local, county, state or federal government as evidenced by its inclusion in a HUD Empowerment/Enterprise Zone, a HUD-approved Neighborhood Revitalization Strategy, Florida Enterprise Zone, area designated under a Community Development Block Grant (CDBG), area designated as HOPE VI or Front Porch Florida Community, or a Community Redevelopment Area as described and defined in the Florida Community Redevelopment Act of 1969, or the proposed Development is located in a Qualified Census Tract and the development of which contributes to a concerted community revitalization plan, and (ii) in a site which is located in an area that is already developed and part of an incorporated area or existing urban service area.

(120)~~(110)~~ "Very Low-Income" means:

(a) With respect to the SAIL Program,

1. If using tax-exempt bond financing for the first mortgage, income which meets the income eligibility requirements of Section 8 of the United States Housing Act of 1937, as in effect on the date of this rule chapter; or

2. If using taxable financing for the first mortgage, total annual gross household income which does not exceed 50 percent of the median income adjusted for family size, or 50 percent of the median income adjusted for family size for households within the metropolitan statistical area (MSA), within the county in which the Family resides, or within the state of Florida, whichever is greater; or

3. If used in a Development using Housing Credits, income which meets the income eligibility requirements of Section 42 of the IRC; or

(b) With respect to the HOME Program, income which does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for family size, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on a basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

(121)~~(111)~~ "Website" means the Florida Housing Finance Corporation's website, the Universal Resource Locator (URL) for which is www.floridahousing.org.

(122) "Youth Aging Out of Foster Care" means youth or young adults participating in independent living transition services pursuant to Section 409.1451, F.S., and meeting the eligibility requirements pursuant to Section 409.1451(2)(b), F.S.

Rulemaking ~~Specific~~ Authority 420.507 FS. Law Implemented 420.5087, 420.5089(2) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.002, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, _____.

67-48.004 Application and Selection Procedures for Developments.

(1) When submitting an Application, Applicants must utilize the Universal Application in effect at the Application Deadline.

(a) The Universal Application Package or UA1016 (Rev. 5-09 ~~3-08~~) is adopted and incorporated herein by reference and consists of the forms and instructions, obtained from the Corporation, for a fee, at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or available, without charge, on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Instructions and Application, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the ~~SAIL,~~ HOME~~, HC, or SAIL~~ and HC Program(s).

(b) All Applications must be complete, legible and timely when submitted, except as described below. Corporation staff may not assist any Applicant by copying, collating, or adding documents to an Application nor shall any Applicant be permitted to use the Corporation's facilities or equipment for purposes of compiling or completing an Application.

(2) Failure to submit an Application completed in accordance with the Application instructions and these rules will result in the failure to meet threshold, rejection of the Application, a score less than the maximum available, or a combination of these results in accordance with the instructions in the Application and this rule chapter.

(3) Each submitted Application shall be evaluated and preliminarily scored using the factors specified in the Universal Application Package and these rules. Preliminary scores shall be transmitted to all Applicants.

(4) Applicants who wish to notify the Corporation of possible scoring errors relative to another Applicant's Application will be provided a time period for filing a written Notice of Possible Scoring Error (NOPSE). Such time period will be no fewer than three (3) ~~must file with the Corporation, within eight (8)~~ Calendar Days from ~~of~~ the date the preliminary scores are sent by overnight delivery by the Corporation~~, a written Notice of Possible Scoring Error (NOPSE)~~. The deadline for filing a NOPSE will be provided at the time the preliminary scores are issued. Each NOPSE must specify the assigned Application number of the Applicant submitting the NOPSE, the assigned Application number of the Application in question and the scores in question, as well as describe the alleged deficiencies in detail. Each NOPSE is limited to the review of only one Application's score. Any NOPSE that seeks the review of more than one Application's score will be considered improperly filed and ineligible for review. There is no limit to the number of NOPSEs that may be submitted. The Corporation's staff will review each written NOPSE Received timely. To be considered Received timely, the Applicant must submit one (1) original hard copy and three (3) photocopies of each NOPSE. The Corporation will not consider any NOPSE submitted via facsimile or other electronic transmission.

(5) The Corporation shall transmit to each Applicant the NOPSEs submitted by other Applicants with regard to its Application. The notice shall also include the Corporation's decision regarding the NOPSE, along with any other items identified by the Corporation to be addressed by the Applicant, which may include financial obligations for which an Applicant or Developer or Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer is in arrears to the Corporation or any agent or assignee of the Corporation as of the due date for NOPSE filing as set forth in subsection (4) above.

(6) ~~Within 11 Calendar Days of the date the notice set forth in subsection (5) above is sent by overnight delivery by the Corporation,~~ Eeach Applicant shall be allowed to cure its Application by submitting additional documentation, revised pages and such other information as the Applicant deems appropriate ("cures") to address the issues raised pursuant to subsections (3) and (5) above that could result in failure to meet threshold or a score less than the maximum available. The time period for submitting the "cures" will be no fewer than three (3) Calendar Days from the date the notice set forth in subsection (5) above is sent by overnight delivery by the Corporation. Such notice will provide the deadline for submitting the "cures." A new form, page or exhibit provided to the Corporation during this period shall be considered a replacement of that form, page or exhibit if such form, page or

exhibit was previously submitted in the Applicant's Application. Pages of the Application that are not revised or otherwise changed may not be resubmitted, except that documents executed by third parties must be submitted in their entirety, including all attachments and exhibits referenced therein, even if only a portion of the original document was revised. Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant shall also be required in its submittal to make such other changes as necessary to keep the Application consistent as revised. To be considered by the Corporation, the Applicant must submit one (1) ~~an~~ original hard copy and three (3) photocopies of all additional documentation and revisions, and such revisions, changes and other information must be Received by the deadline set forth herein. Any subsequent revision submitted prior to the deadline shall include a written request from the Applicant for withdrawal of any previously submitted revision(s).

(7) ~~Within seven (7) Calendar Days of the deadline for receipt by the Corporation of the documentation set forth in subsection (6) above,~~ Aall Applicants may submit to the Corporation a Notice of Alleged Deficiencies (NOAD) in any other Application. The time period for submitting each NOAD will be no fewer than three (3) Calendar Days from the deadline for receipt by the Corporation of the documentation set forth in subsection (6) above. The notice set forth in subsection (5) above will provide the deadline for submitting the NOAD. Each NOAD is limited only to issues created by document revisions, additions, or both, by the Applicant submitting the Application pursuant to subsection (6) above. Each NOAD must specify the assigned Application number of the Applicant submitting the NOAD, the assigned Application number of the Application in question, the pages and the documents in question, as well as describe the alleged deficiencies in detail. Each NOAD is limited to the review of only one Applicant's submission. However, there is no limit to the number of NOADs which may be submitted. NOADs which seek the review of more than one Applicant's submission will be considered improperly filed and ineligible for review. The Corporation will only review each written NOAD Received timely. To be considered Received timely, the Applicant must submit one (1) original hard copy and three (3) photocopies of each NOAD. The Corporation will not consider any NOAD submitted via facsimile or other electronic transmission.

(8) The Corporation shall transmit a copy of all NOADs to the affected Applicant.

(9) Following the receipt and review by the Corporation of the documentation described in subsections (5), (6) and (7) above, the Corporation shall then prepare final scores. In determining such final scores, no Application shall fail threshold or receive a point reduction as a result of any issues not previously identified in the notices described in subsections (3), (4) and (5) above. However, inconsistencies created by the Applicant as a result of information provided pursuant to subsections (6) and (7) above will still be justification for rejection of the Application, threshold failure, or reduction of points, as appropriate. Notwithstanding the foregoing, any deficiencies in the mandatory elements set forth in subsection (14) below can be identified at any time prior to sending the final scores to Applicants and will result in rejection of the Application. The Corporation shall then transmit final scores to all Applicants.

(10) The availability of any remaining funds or Allocation Authority shall be noticed or offered to a Development as approved by the Board of Directors. With respect to the HC Program, in the event there remains Allocation Authority after the Corporation has exhausted its waiting list of Applications during a Funding Cycle and time requirements preclude an Application Period and notice thereof, the Corporation shall allocate any unused Allocation Authority to any eligible Development meeting the requirements of Section 42 of the IRC and in accordance with the Qualified Allocation Plan.

(11) Except for Local Government-issued Tax-Exempt Bond-Financed Developments that submit a separate Application for non-competitive Housing Credits, Applications shall be limited to one submission per subject property. Two or more Applications, submitted in the same Funding Cycle, that have the same demographic commitment and one or more of the same Financial Beneficiaries, will be considered submissions for the same Development if any of the following is true: (i) any part of any of the property sites is contiguous with any part of any of the other property sites, or (ii) any of the property sites are divided by a street or easement, or (iii) it is readily apparent from the Applications, proximity, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development. If two or more Applications are considered to be submissions for the same Development, the Corporation will reject all such Applications except the Application with the highest (worst) lottery number. The Application(s) with the lowest lottery number(s) will still be rejected even if the Applicant withdraws the Application with the highest (worst) lottery number.

(12) If the Board determines that any Applicant or any Affiliate of an Applicant:

(a) Has engaged in fraudulent actions;

(b) Has materially misrepresented information to the Corporation regarding any past or present Application or Development;

(c) Has been convicted of fraud, theft or misappropriation of funds;

(d) Has been excluded from federal or Florida procurement programs; or

(e) Has been convicted of a felony;

~~And that such action substantially increases the likelihood that the Applicant will not be able to produce quality affordable housing,~~ Tthe Applicant and any of the Applicant's Affiliates will be ineligible for funding or allocation in any program administered by the Corporation for a period of up to two (2) years, which will begin from the date the Board makes such determination. Such determination shall be either pursuant to a proceeding conducted pursuant to Sections 120.569 and 120.57, F.S., or as a result of a finding by a court of competent jurisdiction.

(13) The Corporation shall reject an Application if, following the submission of the additional documentation, revised pages and other information as the Applicant deems appropriate as described in subsection (6) above:

(a) The Development is inconsistent with the purposes of the SAIL, HOME, or HC Program(s) or does not conform to the Application requirements specified in this rule chapter;

(b) The Applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application, and Application instructions;

(c) The Applicant fails to file all applicable Application pages and exhibits which are provided by the Corporation and adopted under this rule chapter;

(d) The Applicant fails to satisfy any arrearages described in subsection (5) above. For purposes of the SAIL and HOME Programs, this rule subsection does not include permissible deferral of SAIL or HOME interest.

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(a) Name of Applicant; notwithstanding the foregoing, the name of the Applicant may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting;

(b) Identity of each Developer, including all co-Developers; notwithstanding the foregoing, the identity of the Developer(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting;

(c) Program(s) applied for;

(d) Applicant applying as a Non-Profit or for-profit organization;

(e) Site for the Development; notwithstanding the foregoing, after the Applicant has been invited to enter credit underwriting and subject to written request of an Applicant to Corporation staff and approval of the Corporation, the site for the Development may be increased or decreased, provided the Tie Breaker Measurement Point is on the site and the total proximity points awarded during scoring are not reduced;

(f) Development Category;

(g) Development Type;

(h) Designation selection;

(i) Total number of units; notwithstanding the foregoing, for the SAIL and HC Programs the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation;

(j) With regard to the SAIL and HC Programs, the ELI Set-Aside commitment on the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application;

(k) With regard to the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application. With regard to the HOME Program, the Total Set-Aside Percentage as stated in the Set-Aside Commitment section of the Application, unless the change results from the revision allowed under paragraph (m) below;

(l) CHDO election for the HOME Program;

(m) Funding Request (except for Taxable Bonds) amount; notwithstanding the foregoing, requested amounts can be changed only as follows:

1. Reduced by the Applicant to reflect the maximum request amount allowed in those instances where an Applicant requested more than its request limit, or

2. When the county in which the Development is located is newly designated by HUD as a Difficult Development Area (DDA) after the Application Deadline but prior to the end of the cure period outlined in Rule 67-48.004, F.A.C.: (i) an Applicant, who has not failed threshold for exceeding its Competitive HC request limit, may increase its Competitive HC request by an amount equaling 30 percent, rounded to whole dollars, of the remainder of the Applicant's initial request amount, or (ii) an Applicant, that failed threshold during preliminary scoring for requesting more than its Competitive HC request limit because the Development was not then designated as being in a DDA, may increase its Competitive HC request amount to the maximum allowable amount for the Development.

(n) Submission of one original hard copy with the required number of photocopies of the Application by the Application Deadline;

(o) Payment of the required Application fee by the Application Deadline;

(p) The Application labeled "Original Hard Copy" must include a properly completed Applicant Certification and Acknowledgement form reflecting an original signature.

All other items may be submitted as cures pursuant to subsection (6) above.

With regard to paragraphs (a) and (b) above, the Board shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested change.

(15) A Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if, at any time, the Board determines that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or to the market to be served by the Development.

(16) If an Applicant or Developer or any Principal, Affiliate or Financial Beneficiary of an Applicant or ~~a~~ Developer has any existing Developments participating in any Corporation programs that remain in non-compliance with Section 42 of the IRC, Title 67, F.A.C. ~~this rule chapter~~, or applicable loan documents, and any applicable cure period granted for correcting such non-compliance has ended as of the time of submission of the Application or at the time of issuance of a credit underwriting report, the requested allocation will, upon a determination by the Board that such non-compliance substantially increases the likelihood that such Applicant or Developer will not be able to produce quality affordable housing, be denied and the Applicant or Developer and the Affiliates of the Applicant or Developer will be prohibited from new participation in any of the Corporation's programs for the subsequent cycle and continuing until such time as all of their existing Developments participating in any Corporation programs are in compliance.

(17) With respect to the SAIL, HOME and HC Program Applications, when two or more Applications receive the same numerical score, the Applications will be ranked as outlined in the Application instructions.

(18) At no time during the Application, scoring and appeal process may Applicants or their representatives contact Board members concerning their own Development or any other Applicant's Development. At no time from the Application Deadline until the issuance of the final scores as set forth in subsection (9) above, may Applicants or their representatives verbally contact Corporation staff concerning their own Application or any other Applicant's Application. If an Applicant or its representative does contact a Board member in violation of this section, the Board shall, upon a determination that such contact was deliberate, disqualify such Applicant's Application.

(19) Applicants may withdraw an Application from consideration only by submitting a written notice of withdrawal to the Corporation Clerk. Applicants may not rescind any notice of withdrawal that was submitted to the Corporation Clerk. For ranking purposes, the Corporation shall disregard any withdrawal that is submitted after 5:00 p.m., Eastern Time, 14 Calendar Days prior to the date the Board is scheduled to convene to consider approval of the final ranking of the Applications and such Application shall be included in the ranking as if no notice of withdrawal had been submitted. After the Board has approved the final ranking, any notice of withdrawal submitted during the time period prohibited above and before the Board approves the final ranking, shall be deemed withdrawn immediately after Board approval of the final ranking. If an Applicant has applied for or been awarded funding from two or more programs, the withdrawal by the Applicant from any one program will be deemed by the Corporation to be a withdrawal of the Application from all programs.

(20) The name of the Development provided in the Application may not be changed or altered after submission of the Application during the history of the Development with the Corporation unless the change is requested in writing and approved in writing by the Corporation. The Corporation shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant such request.

(21) If an Applicant or any Affiliate of an Applicant has offered or given consideration, other than the consideration to provide affordable housing, with respect to a local contribution and this is discovered prior to Board approval of the final ranking, the Corporation shall reject the Application and any other Application submitted by the same Applicant and any Affiliate of the Applicant. If discovered after the Board approves final ranking, any tentative funding or allocation for the Application and any other Application submitted in the same cycle by the same Applicant and any Affiliate of the Applicant will be withdrawn. Such Applicant and any of such Applicant's Affiliates will be ineligible for funding or allocation in any program administered by the Corporation for a period of up to two (2) years, which will begin the date the Board issues a final order on such matter, in a proceeding conducted pursuant to Sections 120.569 and 120.57, F.S.

Rulemaking ~~Specific~~ Authority 420.507, 420.507(22)(f) FS. Law Implemented 420.5087, 420.5087(6)(c), 420.5089, 420.5089(6), 420.5099, 420.5099(2) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.004, Amended 4-7-98, 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, _____.

67-48.005 Applicant Administrative Appeal Procedures.

(1) At the conclusion of the review and scoring process established by Rule 67-48.004, F.A.C., each Applicant will be provided with its final score and notice of rights, which shall constitute the point of entry to contest any issue related to the Applicant's Application for the SAIL Program, the HOME Program or the HC Program.

(2) Each Applicant that wishes to contest its final score must file a petition with the Corporation within 21 Calendar Days after the date the Applicant receives its notice of rights. The petition must conform to subsection 28-106.201(2) or 28-106.301(2), and subsection 67-52.002(3), F.A.C., and specify in detail each issue and score sought to be challenged. If the petition does not raise a disputed issue of material fact, the challenge will be conducted pursuant to Section 120.57(2), F.S. If the petition raises one or more disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), F.S. At the conclusion of any administrative hearing, a recommended order shall be entered by the designated hearing officer which will then be considered by the Board.

(3) Any Applicant who wishes to challenge the findings and conclusions of the recommended order entered pursuant to a Section 120.57(2), F.S., proceeding concerning its own Application shall be allowed the opportunity to submit written arguments to the Board. Any written argument should be typed and double-spaced with margins no less than one inch in either Times New Roman 14-point or Courier New 12-point font and may not exceed five (5) pages, excluding the caption and certificate of service. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m., Eastern Time, no later than five (5) Calendar Days from the date of issuance of the recommended order. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to recommended orders.

(4) Following the entry of final orders in all petitions filed pursuant to Section 120.57(2), F.S., and in accordance with the prioritization of the QAP and Rule Chapter 67-48, F.A.C., the Corporation shall issue final rankings. For an Applicant that filed a petition pursuant to Section 120.57(1), F.S., which challenged the scoring of its own Application but has not had a final order entered as of the date the final rankings are approved by the Board, the Corporation shall, if any such Applicant ultimately obtains a final order that modifies the score so that its Application would have been in the funding range of the applicable final ranking had it been entered prior to the date the final rankings were presented to the Board, provide the requested funding, allocation, or both, from the next available funding, allocation, or both, whether in the current year or a subsequent year. For HC, i~~I~~f the final order is executed on or before the Corporation issues the current year's final scores, the ~~funding,~~ allocation~~, or both,~~ will come from the current year or~~.~~ i~~I~~f the final order is executed after the Corporation issues the current year's final scores, the ~~funding,~~ allocation~~, or both,~~ will come from the subsequent year. Funding refers to SAIL or HOME and allocation refers to HC. Nothing contained herein shall affect any applicable credit underwriting requirements.

(5) Each Applicant will be provided with a final ranking of all Applications and notice of rights, which shall constitute the point of entry to contest any ranking or scoring issue related to any other Applications for the SAIL Program, the HOME Program or the HC Program. An Applicant that wishes to contest the final ranking or score of another Applicant may do so only if:

(a) The competing Applicant files a petition on or before the 21st Calendar Day after the receipt of the notice of rights pursuant to this subsection (5). The petition must conform to subsection 28-106.201(2) or 28-106.301(2), and subsection 67-52.002(3), F.A.C., and specify in detail each issue, score or ranking sought to be challenged.

(b) For any Application cycle closing after January 1, 2002, if the contested issue involves an error in scoring, the contested issue must (i) be one that could not have been cured pursuant to subsection 67-48.004(14), F.A.C., or (ii) be one that could have been cured, if the ability to cure was not solely within the Applicant's control. The contested issue cannot be one that was both curable and within the Applicant's sole control to cure. With regard to curable issues, a petitioner must prove that the contested issue was not feasibly curable within the time allowed for cures in subsection 67-48.004(6), F.A.C.

(c) The competing Applicant alleges facts in its petition sufficient to demonstrate that, but for the specifically identified threshold, scoring or ranking errors in the challenged Application, its Application would have been in the funding range at the time the Corporation provided the Applicant with its final ranking.

(d) If the petition does not raise a disputed issue of material fact, the appeal will be conducted pursuant to Section 120.57(2), F.S. If the petition raises one or more disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), F.S. At the conclusion of any administrative hearing, a recommended order shall be entered which will then be considered by the Board.

(6) Any Applicant who wishes to challenge the findings and conclusions of the recommended order entered pursuant to a Section 120.57(2), F.S., proceeding as described in subsection (5) above concerning the final ranking of another Application, shall be allowed the opportunity to submit written arguments to the Board. Any written arguments should be typed and double-spaced with margins no less than one inch in either Times New Roman 14-point or Courier New 12-point font and may not exceed five (5) pages, excluding the caption and certificate of service. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m., Eastern Time, no later than five (5) Calendar Days from the date of issuance of the recommended order. Failure to timely file a written argument shall constitute

a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to recommended orders.

(7) For those Applicants that have filed a petition pursuant to subsection (5) above, the Corporation shall, if any such Applicant ultimately obtains a final order that demonstrates that its Application would have been in the funding range of the applicable final ranking, provide the requested funding, allocation, or both from the next available funding, allocation, or both, whether in the current year or a subsequent year. For HC, if the final order is executed on or before the Corporation issues the current year's final scores, the funding, allocation, or both, will come from the current year or. if the final order is executed after the Corporation issues the current year's final scores, the funding, allocation, or both, will come from the subsequent year. Funding refers to SAIL or HOME and allocation refers to HC. Nothing contained herein shall affect any applicable credit underwriting requirements. The filing of a petition pursuant to subsection (5) above shall not stay the Corporation's provision of funding to Applicants per the final rankings referenced in subsection (4) above.

Rulemaking Specific Authority 420.507 FS. Law Implemented 120.569, 120.57, 420.5087, 420.5089, 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.005, Amended 4-7-98, 11-9-98, 2-24-00, 2-22-01, 3-17-02, 10-8-02, 12-4-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, _____.

67-48.007 Fees.

The Corporation, the Credit Underwriter or the environmental provider shall collect via check or money order the following fees and charges in conjunction with the SAIL, HOME and/or HC Programs, as outlined in the Universal Application instructions:

(1) Universal Application Package fee, if applicable.

(2) Application fee.

(3) Credit Underwriting fees.

(4) Administrative fees.

(5) Commitment fees.

(6) Compliance monitoring fees.

(7) Loan servicing fees.

(8) Construction inspection fees.

(9) Financial monitoring fees.

(10) Tax-exempt mortgage financing fees.

(11) HUD environmental fees.

(12) Qualified Contract Package fees.

(13) Assumption/Renegotiation fees.

(14) Loan closing extension fees.

(15) Processing fees.

All of the fees set forth above with respect to the SAIL Program are part of Development Cost and can be included in the Development Cost pro forma and paid with SAIL loan proceeds. Failure to pay any fee shall cause the firm loan commitment under any program to be terminated or shall constitute a default on the respective loan documents.

Rulemaking Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.007, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, Repromulgated 3-21-04, Amended 2-7-05, 1-29-06, 4-1-07, Repromulgated 3-30-08, Amended _____.

67-48.0072 Credit Underwriting and Loan Procedures.

The credit underwriting review shall include a comprehensive analysis of the Applicant, the real estate, the economics of the Development, the ability of the Applicant and the Development team to proceed, the evidence of need for affordable housing in order to determine that the Development meets the program requirements and determine a recommended SAIL or HOME loan amount, Housing Credit allocation amount or a combined SAIL loan amount and Housing Credit Allocation amount, if any. Corporation funding will be based on appraisals of comparable developments, cost benefit analysis, and other documents evidencing justification of costs. As part of the credit underwriting review, the Credit Underwriter will consider the applicable provisions of Rule Chapter 67-48, F.A.C.

(1) Within 10 business days aAfter the final rankings are approved by the Board, the Corporation shall offer all Applicants within the funding range an invitation to enter credit underwriting. The Corporation shall select the Credit Underwriter for each Development.

(2) For SAIL and HOME Applicants and Applicants eligible for a supplemental loan, the invitation to enter credit underwriting constitutes a preliminary commitment.

(3) A response to the invitation to enter credit underwriting must be received by the Corporation and the Credit Underwriter not later than seven (7) Calendar Days after the date of the letter of invitation.

(4) If the credit underwriting invitation is accepted:

(a) The Applicant shall submit the credit underwriting fee to the Credit Underwriter within seven (7) Calendar Days of the date of the letter of invitation. In addition, SAIL Applicants shall submit the administrative fee to the Corporation within seven (7) Calendar Days of the date of the letter of invitation.

(b) Failure to submit the required credit underwriting fee or SAIL administrative fee, if applicable, by the specified deadline shall result in withdrawal of the invitation and issuance of an invitation to the next eligible Applicant as outlined in the Universal Application instructions. For HOME Applicants that apply and qualify as a Non-Profit entity, the Corporation shall bear the cost of the credit underwriting review and environmental review. However, if the HOME commitment is canceled for failure to adhere to rule deadlines or for reasons within the Applicant's control, the Development

will be responsible for reimbursing the Corporation for fees incurred for credit underwriting and environmental review processing.

(c) For SAIL and HOME Applicants ~~and Applicants eligible for a supplemental loan~~, the loan~~(s)~~ must close on or before October 15, 2010 ~~within 14 months of the issuance of the preliminary commitment~~. Applicants may request one (1) extension of up to 12 ~~10~~ months. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request will then be submitted to the Corporation's Board for consideration. The Board shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested extension. The Corporation shall charge a non-refundable extension fee of 1 percent of each loan amount if the Board approves the request to extend the commitment beyond October 15, 2010 ~~the initial 14 month period~~. In the event the loan does not close by October 15, 2011 ~~within 24 months of the issuance of the preliminary commitment~~, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be deobligated.

(5) The Credit Underwriter shall verify all information in the Application, including information relative to the Applicant, Developer, Housing Credit Syndicator, General Contractor, and, if an ALF, the service provider(s), as well as other members of the Development team.

(6) If an Applicant or Developer or Housing Credit Syndicator or any Financial Beneficiary of an Applicant or Developer has been a party of any Development which has been or is in the process of being foreclosed upon or is in arrears to the Corporation or any agent or assignee of the Corporation, the Credit Underwriter will consider this and other past performance issues in determining whether or not to provide a positive recommendation.

(7) The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during credit underwriting.

(8) The Applicant will be responsible for all fees in connection with the documentation submitted to the Credit Underwriter.

(9) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of the Credit Underwriter's expertise, the fee for such services shall be borne by the Applicant.

(10) A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and product type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the proposed property's financial feasibility. Appraisals which have been ordered and submitted by third party credit enhancers, first mortgagors or Housing Credit Syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal referenced above. The market study must be completed by a disinterested party who is approved by the Credit Underwriter. The Credit Underwriter shall consider the market study, the Development's financial impact on Developments in the area previously funded by the Corporation, and other documentation when making its recommendation of whether to approve or disapprove a SAIL or HOME loan, a Housing Credit Allocation, or a combined SAIL loan and Housing Credit Allocation~~,~~ or ~~a~~ Housing Credit Allocation and HOME ~~supplemental~~ loan. The Credit Underwriter must review and determine whether there will be a negative impact to Guarantee Fund Developments within the primary market area or five (5) miles of the proposed Development, whichever is greater. The Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application. For the Credit Underwriter to make a favorable recommendation, the submarket of the proposed Development must have an average occupancy rate of 90 percent or greater.

(11) The proposed Development must demonstrate, based on current rates, that it can meet minimum 1.10 debt service coverage (DSC) requirements with all first and second mortgages for Housing Credits. For HOME Applications, the minimum debt service coverage shall be 1.10 for the HOME loan, including all superior mortgages. For SAIL Applications, the minimum debt service coverage shall be 1.10 for the SAIL loan, including all superior mortgages. However, if the Applicant defers at least 35 percent of its developer fee for at least six (6) months following construction completion, the minimum debt service coverage shall be 1.00 for the SAIL loan, including all superior mortgages. For SAIL and HOME Applications, the maximum debt service coverage shall be 1.50 for the SAIL or HOME loan, including all superior mortgages. In extenuating circumstances, such as when the Development has deep or short term subsidy, the debt service coverage may exceed 1.50 if the Credit Underwriter's favorable recommendation is supported by the projected cash flow analysis. Developments receiving first mortgage funding from the United States Department of Agriculture Rural Development (RD) are not required to meet the debt service coverage standards if RD is providing rental assistance and has acknowledged that rents will be set at an amount sufficient to pay all operating expenses, replacement reserve requirements and debt service on the first and second mortgages.

(12) The Corporation's assigned Credit Underwriter shall require a guaranteed maximum price or stipulated sum construction contract, which may include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant's sole expense, and review a pre-construction analysis for all new construction or a physical needs assessment for Rehabilitation or Substantial Rehabilitation and review the Development's costs.

(13) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves and operating expense reserves deemed appropriate by the Credit Underwriter when calculating the final net operating income available to service the debt. A minimum amount of $250 per unit must be used for all Developments. However, the amount may be increased based on a physical needs assessment. An Applicant may choose to fund a portion of the replacement reserves at closing. The amount cannot exceed 50 percent of the required replacement reserves for two (2) years and must be placed in escrow at closing.

(14) For SAIL, HOME, and HC Applications, the underwriters may request additional information, but at a minimum for SAIL and HOME, the following will be required during the underwriting process:

(a) For credit enhancers, audited financial statements for their most recent fiscal year ended, if published; otherwise the previous year's audited statements will be provided until the current statements are published or credit underwriting is complete. The audited statements may be waived if the credit enhancer is rated at least "A-" by Moody's, Standard and Poor's or Fitch.

(b) For the Applicant, general partner(s), and guarantors, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant are not available, unaudited financial statements prepared within the last 90 days and reviewed by the Credit Underwriter in accordance with Part III, Sections 604 through 607, of the Fannie Mae Multifamily Delegated Underwriting and Servicing (DUS) Guide, effective November 6, 2003, which is incorporated by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links, and the two most recent years' tax returns. If the entities are newly formed (less than 18 months in existence as of the date that credit underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules.

(c) For the General Contractor, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100 percent of the total construction cost whose terms do not adversely affect the Corporation's interest, and is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

(15) The Credit Underwriter shall consider the following when determining the need for construction completion guarantees:

(a) Liquidity of the guarantor.

(b) Developer and General Contractor's history in successfully completing Developments of similar nature.

(c) Problems encountered previously with Developer or contractor.

(d) Exposure of Corporation funds compared to Total Development Cost.

At a minimum, the Credit Underwriter shall require a personal guarantee for completion of construction from the principal individual or the corporate general partner of the borrowing entity. In addition, a letter of credit or payment and performance bond whose terms do not adversely affect the Corporation's interest will be required if the Credit Underwriter determines after evaluation of paragraphs (a)-(d) in this subsection that additional surety is needed. However, a completion guarantee will not be required if SAIL funds are not drawn until evidence of lien free completion is provided.

(16) For all Developments, the Developer fee and General Contractor's fee shall be limited to:

(a) The Developer fee shall be limited to 16 percent of Development Cost, with the following exceptions:

1. A Developer fee of 18 percent of Development Cost shall be allowed if the proposed Development is qualified for Housing Credits pursuant to Rule 67-48.027, F.A.C., pertaining to Tax-Exempt Bond-Financed Developments; and

2. A Developer fee of 21 percent of Development Cost shall be allowed if the proposed Development is qualified for Competitive Housing Credits with a demographic commitment of Homeless; however, an amount equal to the difference between the Developer fee and an amount equal to 16 percent of Development Cost must be placed in an operating subsidy reserve account to be held by the Corporation or its servicer. Any disbursements from said operating subsidy reserve account shall be reviewed and approved by the Corporation or its servicer. Upon the expiration of the Compliance Period, any remaining balance may be drawn to pay down any outstanding SAIL or HOME debt on the proposed Development or such other Corporation loan debt on the proposed Development. If there is no Corporation loan debt on the proposed Development at the end of the Compliance Period, then any remaining balance in said operating subsidy reserve account shall be placed in a replacement reserve account for the

proposed Development. In no event shall the remaining balance in said operating subsidy reserve account be paid to the Developer.

(b) The General Contractor's fee shall be limited to a maximum of 14 percent of the actual construction cost.

(17) The General Contractor must meet the following conditions:

(a) Employ a Development superintendent and charge the costs of such employment to the general requirements line item of the General Contractor's budget;

(b) Charge the costs of the Development construction trailer, if needed, and other overhead to the general requirements line item of the General Contractor's budget;

(c) Secure building permits, issued in the name of the General Contractor;

(d) Secure a payment and performance bond whose terms do not adversely affect the Corporation's interest (or approved alternate security for General Contractor's performance, such as a letter of credit), issued in the name of the General Contractor, from a company rated at least "A-" by AMBest & Co.;

(e) Ensure that none of the General Contractor duties to manage and control the construction of the Development are subcontracted; and

(f) Ensure that not more than 20 percent of the construction cost is subcontracted to any one entity unless otherwise approved by the Board for a specific Development.

(18) For SAIL and HOME Applications, the Credit Underwriter shall require an operating deficit guarantee, to be released upon achievement of an average 1.15 ~~1.10~~ debt service coverage for a minimum of 12 ~~six (6)~~ consecutive months for the combined permanent first mortgage and SAIL or HOME loan. An operating deficit guarantee, to be released upon achievement of 1.00 debt service coverage for a minimum of six (6) consecutive months for the combined permanent first mortgage and SAIL or HOME loan will be required for Developments receiving first mortgage funding from the United States Department of Agriculture Rural Development (RD) if RD is providing rental assistance and has acknowledged that rents will be set at an amount sufficient to pay all operating expenses, replacement reserve requirements and debt service on the SAIL or HOME loan and all superior mortgages.

(19) Contingency reserves which total no more than 5 percent of hard and soft costs for new construction and no more than 15 percent of hard and soft costs for Rehabilitation or Substantial Rehabilitation may be included within the Total Development Cost for Application and underwriting purposes. Contingency reserves shall not be paid from SAIL or HOME funds.

(20) The Credit Underwriter will review and determine if the number of loans and construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of each proposed Corporation-funded Development.

(21) All Applicants must provide the items required by the Credit Underwriter within 10 months of the Applicant's acceptance to enter credit underwriting. For HC Developments, all preliminary items required for the Credit Underwriter's preliminary HC allocation recommendation must be provided to the Credit Underwriter within 21 Calendar Days of the date of the invitation to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to submit the required credit underwriting information by the specified deadline(s) shall result in withdrawal of the preliminary commitment or~~, if applicable,~~ the HC invitation to enter credit underwriting, or both, as applicable, and the funds will be distributed as outlined in the Universal Application instructions. The Board shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested extension.

(22) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same. Failure to submit required information by the specified deadline, unless a written extension of time has been approved by the Corporation, shall result in withdrawal of the preliminary commitment or the HC invitation to enter credit underwriting, or both, as applicable, and the funds will be distributed as outlined in the Universal Application instructions. The Board shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested extension ~~rejection of the Application~~. ~~If the Application is rejected, the Corporation will select additional Application(s) as outlined in the Universal Application instructions.~~

(23) The Credit Underwriter shall complete its analysis and submit a written draft report and recommendation to the Corporation. Upon receipt, the Corporation shall provide to the Applicant the section of the written draft report consisting of supporting information and schedules. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter within 48 hours of receipt. After the 48 hour period, the Corporation shall provide to the Credit Underwriter comments on the draft report and, as applicable, on the Applicant's comments. Then, the Credit Underwriter shall review and incorporate, if deemed appropriate, the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within 72 hours of

receipt of the revised report. Then, the Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(24) For SAIL and HOME Applications ~~and HC Applications eligible for a supplemental loan~~, the Credit Underwriter's loan recommendations will be sent to the Board for approval.

(25) After approval of the Credit Underwriter's recommendation for funding by the Board, the Corporation shall issue a firm loan commitment.

(26) For SAIL and HOME Applications ~~and HC Applications eligible for a supplemental loan~~, these loans and other mortgage loans related to the construction of the Development must close within 60 Calendar Days of the date of the firm loan commitment(s) unless an extension is approved by the Board. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The Board shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested extension. ~~For SAIL and HOME Applications,~~ T~~t~~he Corporation shall charge an extension fee of one-half of one percent of the ~~SAIL or HOME~~ loan amount if the Board approves the request to extend the ~~SAIL or HOME~~ commitment beyond the period outlined in this rule chapter.

(27) At least five (5) Calendar Days prior to any loan closing:

(a) The Applicant must provide evidence of all necessary consents or required signatures from first mortgagees or subordinate mortgagees to the Corporation and its counsel, and

(b) The Credit Underwriter must have received all items necessary to release its letter confirming that all closing contingencies have been met, including the finalized sources and uses of funds and Draw schedule.

(28) For Housing Credit Applications, the Credit Underwriter shall use the following procedures during the credit underwriting evaluation:

(a) The Credit Underwriter, in determining the amount of Housing Credits a Development is eligible for when using the qualified basis calculation, shall use a Housing Credit percentage of:

1. Thirty (30) basis points over the percentage as of the date of invitation to credit underwriting up to 9 percent for 9 percent credits for new construction and Rehabilitation Developments;

2. Fifteen (15) basis points over the percentage as of the date of invitation to credit underwriting up to 4 percent for 4 percent credits for acquisition and federally subsidized Developments. A percentage of 15 basis points over the percentage as of the date of invitation to final credit underwriting up to 4 percent will be used for Developments receiving tax-exempt bonds.

(b) Costs such as syndication fees and brokerage fees cannot be included in eligible basis. All consulting fees must be paid out of the Developer fee. Consulting fees cannot cause the Developer fee to exceed the maximum allowable fee as set forth in subsection 67-48.0072(16), F.A.C.

(c) All contracts for hard or soft Development Costs must be itemized for each cost component.

(d) The allocation amount for acquisition Housing Credits shall be limited to the lesser of the sale price or the appraised value of the building(s).

(e) If the Credit Underwriter is to recommend a Competitive Housing Credit allocation, the recommendation will be the lesser of (i) the qualified basis calculation result, (ii) the gap calculation result, or (iii) the Applicant's request amount. In the event the Credit Underwriter is making a recommendation for non-competitive Housing Credits, the recommendation will be the lesser of the qualified basis calculation result or the gap calculation result.

(29) If the Credit Underwriter recommends that Housing Credits be allocated to the Development, the Corporation shall determine the credit amount, if any, necessary to make the Development financially feasible and viable throughout the Housing Credit Extended Use Period and shall issue a Preliminary Allocation certificate or a Preliminary Determination of Housing Credits in the case of Tax-Exempt Bond-Financed Developments. If the Credit Underwriter recommends that no credits be allocated to the Development and the Executive Director accepts the recommendation, the Applicant shall be notified that no Housing Credits will be allocated to the Development. No Preliminary Allocation certificate shall be issued on an RD (formerly FmHA) Development which competed for Housing Credits within the RD set-aside and has not received an Obligation of Funding (Form RD 3560-51, Rev. 02-05), an Assumption Agreement (Form RD 3560-21, Rev. 02-05), a Reamortization Agreement (Form RD 3560-16, Rev. 02-05), or a combination of these RD forms by November ~~October~~ 1st of the year the Applicant is invited into credit underwriting. The RD Forms 3560-51, 3560-21 and 3560-16 are adopted and incorporated herein by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links. All contingencies required in the Preliminary Allocation shall be met or satisfied by the Applicant within 45 Calendar Days from the date of issuance or as otherwise indicated on the certificate unless an extension of this deadline is requested in writing by the Applicant and is granted by the Corporation in writing for good cause.

Rulemaking ~~Specific~~ Authority 420.507 FS. Law Implemented 420.5087, 420.5089, 420.5099 FS. History–New 2-7-05, Amended 1-29-06, 4-1-07, 3-30-08, _____.

67-48.0075 Miscellaneous Criteria.

(1) In addition to the alteration, improvement or modification of an existing structure, Rehabilitation with respect to the HOME Program and Rehabilitation or Preservation with respect to the Housing Credit Program also includes:

(a) For HOME Developments, moving an existing structure to a foundation constructed with HOME funds. Rehabilitation may include adding rooms outside the existing walls of a structure, but adding a housing unit is considered new construction.

(b) For Housing Credit Developments, what is stated in Section 42(e) of the IRC, with the exception of Section 42(e)(3)(A)(ii)(II), which, for the purposes of Competitive HC, is changed to read: "II. The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units, in the building, is $20,000 or more," and, for the purposes of all other HC, is changed to read: "II. The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units, in the building, is $10,000 or more."

(2) For purposes of this rule chapter, in accordance with Section 42 of the IRC, a for-profit entity wholly owned by one or more qualified non-profit organizations will constitute a Non-Profit entity. The purpose of the Non-Profit must be, in part, to foster low-income housing and such purpose must be reflected in the Articles of Incorporation of the Non-Profit entity. To evidence its qualification as a Non-Profit entity, the Applicant must provide within its Application a written opinion from legal counsel. The total cost of securing this written legal opinion will be borne entirely by the Applicant. A Non-Profit entity shall own an interest in the Development, either directly or indirectly; shall not be affiliated with or controlled by a for-profit Corporation; and shall materially participate in the development and operation of the Development throughout the total affordability period as stated in the Land Use Restriction Agreement and the Extended Use Agreement. If an Applicant applies to the Corporation as a Non-Profit entity but does not qualify as such, the Application will fail threshold.

(3) Total Development Cost includes the following:

(a) The cost of acquiring real property and any buildings thereon, including payment for options, deposits, or contracts to purchase properties.

(b) The cost of site preparation, demolition, and development.

(c) Any expenses relating to the issuance of tax-exempt bonds or taxable bonds, if any, related to the particular Development.

(d) Fees in connection with the planning, execution, and financing of the Development, such as those of architects, engineers, attorneys, accountants, Developer fee, and the Corporation.

(e) The cost of studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction, rehabilitation, or reconstruction of the Development.

(f) The cost of the construction, rehabilitation, and equipping of the Development.

(g) The cost of land improvements, such as landscaping and offsite improvements related to the Development, whether such costs are paid in cash, property, or services. However, offsite improvements are not eligible to be paid with HOME funds.

(h) Expenses in connection with initial occupancy of the Development.

(i) Allowances for contingency reserves and reserves for any anticipated operating deficits during the first two (2) years after completion of the Development.

(j) The cost of such other items, including relocation costs, indemnity and surety bonds, premiums on insurance, and fees and expenses of trustees, depositories, and paying agents for the Corporation's bonds, for the construction or Rehabilitation/Substantial Rehabilitation of the Development.

(4) In determining the income standards of Eligible Persons for its various programs, the Corporation shall take into account the following factors:

(a) Requirements mandated by federal law.

(b) Variations in circumstances in the different areas of the state.

(c) Whether the determination is for rental housing.

(d) The need for family size adjustments to accomplish the purposes set forth in this rule chapter.

With respect to the HC Program, an Eligible Person shall mean a Family having a combined income which meets the income eligibility requirements of the HC Program and Section 42 of the IRC.

(5) Financial Beneficiary and Affiliate, as defined in Rule 67-48.002, F.A.C., do ~~does~~ not include third party lenders, third party management agents or companies, third party service providers, Housing Credit Syndicators, credit enhancers ~~who are~~ regulated by a state or federal agency, ~~and who do not share in the profits of the Development~~ or contractors whose total fees are within the limit described in Rule 67-48.0072, F.A.C., provided such parties do not share in the profits of the Development.

(6) For computing any period of time allowed by this rule chapter, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday,

Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

~~(7) Supplemental loans will be subject to the credit underwriting provisions outlined in Rule 67-48.0072, F.A.C., and the loan provisions outlined below:~~

~~(a) The terms and conditions of the supplemental loan shall be as follows:~~

~~1. The supplemental loan shall be (i) based on each ELI Set-Aside unit above the minimum ELI Set-Aside threshold requirement in the Universal Application instructions; and (ii) non-amortizing at 0 percent simple interest per annum over the life of the loan, with the principal forgivable provided the units for which the supplemental loan amount is awarded are targeted to ELI Households for at least 15 years.~~

~~2. Any sale, conveyance, assignment, or other transfer of interest or the grant of a security interest in all or any part of the title to the Development other than a superior mortgage shall be subject to the Corporation's prior written approval. The Board shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant such request.~~

~~3. The supplemental loan shall be serviced either directly by the Corporation or by the servicer on behalf of the Corporation.~~

~~4. The Corporation shall monitor compliance of all terms and conditions of the supplemental loan and shall require that certain terms and conditions be embodied in the Land Use Restriction Agreement and recorded in the public records of the county wherein the Development is located. Violation of any material term or condition of the documents evidencing or securing the supplemental loan shall constitute a default during the term of the supplemental loan. The Corporation shall take appropriate legal action to effect compliance if a violation of any material term or condition relative to the set-aside of units for ELI Households is discovered during the course of compliance monitoring or by any other means.~~

~~5. The Corporation shall require adequate insurance to be maintained on the Development as determined by the first mortgage lender or the Corporation's servicer, but which shall, in any case, include fire, hazard and other insurance sufficient to meet the standards established in Part V, Section 106 of the Fannie Mae DUS Guide, effective August 10, 2006, which is adopted and incorporated herein by reference and available on the Corporation's Website under the 2008 Universal Application link labeled Related Information and Links.~~

~~6. All supplemental loans shall be in conformance with applicable federal and state statutes, including the Fair Housing Act as implemented by 24 CFR Part 100, which is adopted and incorporated herein by reference, and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR Part 35, which is adopted and incorporated herein by reference. These provisions are available on the Corporation's Website under the 2008 Universal Application link labeled Related Information and Links. The Corporation shall allow units dedicated to occupancy by the Elderly in a Development designed for occupancy by elderly households pursuant to authorization by HUD under the Fair Housing Amendments of 1988 as implemented by 24 CFR Part 100.~~

~~7. Rent controls for the ELI Set Aside units for which the supplemental loan is issued shall be restricted at the level applicable for federal Housing Credits.~~

~~8. The documents creating, evidencing or securing each supplemental loan must provide that any violation of the terms and conditions described in Rule Chapter 67-48, F.A.C., constitutes a default under the supplemental loan documents allowing the Corporation to accelerate its loan and to seek foreclosure as well as any other remedies legally available to it.~~

~~(b) The supplemental loan shall be assumable upon sale or transfer of the Development if the following conditions are met:~~

~~1. The proposed transferee meets all specific Applicant identity criteria which were required as conditions of the original loan;~~

~~2. The proposed transferee agrees to maintain all ELI Set-Asides and other requirements of the supplemental loan for the period originally specified or longer; and~~

~~3. The proposed transferee and release of transferor receives a favorable recommendation from the Credit Underwriter and approval by the Board of Directors of the Corporation.~~

~~All assumption requests must be submitted in writing to the Director of Special Assets and contain the specific details of the transfer and assumption. In addition to any related professional fees, the Corporation shall charge a non-refundable assumption fee as outlined in the Universal Application instructions.~~

~~(c) Supplemental loan construction disbursements and permanent loan servicing shall be based on the following:~~

~~1. Supplemental loan proceeds shall be disbursed during the construction phase in an amount per Draw which does not exceed the ratio of the supplemental loan to the Total Development Cost, unless approved by the Credit Underwriter.~~

~~2. Ten (10) business days prior to each Draw, the Applicant shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Applicant for a Draw. The request shall set forth the amount to be paid and shall be accompanied by documentation specified by the Corporation's servicer including claims for labor and materials to date of the last inspection.~~

~~3. The Corporation and its servicer shall review the request for a Draw, and the servicer shall provide the Corporation with approval of the request or an alternative recommendation, after the title insurer provides an endorsement to the policy of title insurance updating the policy to the date of the current Draw and increasing the insurance~~

~~coverage to an amount equal to the sum of all prior Draws and the current Draw, without additional exceptions, except those specifically approved in writing by the Corporation.~~

~~4. The Corporation shall disburse construction Draws through Automated Clearing House (ACH). The Applicant may request disbursement of construction Draws via a wire transfer. The Applicant will be charged a fee of $10 for each wire transfer requested. This charge will be netted against the Draw amount.~~

~~5. The Corporation shall elect to withhold any Draw or portion of any Draw, notwithstanding any documentation submitted by the Applicant in connection with the request for a Draw, if~~

~~a. The Corporation or the Corporation's servicer determines at any time that the actual cost budget or progress of construction differs from that as shown on the loan documents; or~~

~~b. The percentage of progress of construction of the improvements differs from that shown on the request for a Draw.~~

~~6. The servicer may request submission of revised construction budgets.~~

~~7. Based on the Applicant's progress of construction, if the Corporation determines that further analysis by the Credit Underwriter is required prior to the release of the final Draw, the Applicant shall pay to the Credit Underwriter a fee based on an hourly rate determined pursuant to the contract between the Corporation and the Credit Underwriter.~~

~~8. Retainage in the amount of 10 percent per Draw shall be held by the servicer during construction until the Development is 50 percent complete. At 50 percent completion, no additional retainage shall be held from the remaining Draws. Release of funds held by the Corporation's servicer as retainage shall occur pursuant to the supplemental loan agreement.~~

(7)~~(8)~~ For purposes of this rule chapter, rent controls for ELI Households shall consist of the Gross Rent Floor, as defined in Section 42(g)(2)(A) of the IRC and in accordance with IRS Revenue Procedure 94-57, minus the lesser of (i) the utility allowance in effect by the applicable local Public Housing Authority (PHA) at the date the last building in the Development is placed-in-service or (ii) the current utility allowance applicable to the building (as outlined in 26 CFR 1.42-10, this may include either the local utility company estimate or the applicable PHA utility allowance). Notwithstanding the preceding sentence, the rent charged to any ELI Household may not exceed the maximum rent level permitted under Section 42(g)(2)(A) IRC for the applicable unit occupied by such household. IRS Revenue Procedure 94-57 and 26 CFR 1.42-10 are incorporated by reference and are available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links.

Rulemaking ~~Specific~~ Authority 420.507 FS. Law Implemented 420.5087, 420.5089, 420.5099 FS. History–New 2-7-05, Amended 1-29-06, 4-1-07, 3-30-08, _____.

67-48.009 SAIL General Program Procedures and Restrictions.

(1) Loans shall be in an amount not to exceed 25 percent of the Total Development Cost except as described in subsections (2) and (3) below, or the minimum amount required to make the Development economically feasible, whichever is less, as determined by the Credit Underwriter.

(2) The following types of Sponsors are eligible to apply for loans in excess of 25 percent of Total Development Cost pursuant to Section 420.507(22), F.S.:

(a) Non-Profit and public Sponsors which are able to secure grants, donations of land, or contributions from other sources collectively totaling at least 10 percent of Total Development Cost; and

(b) Sponsors that set aside at least 80 percent of their total units for residents qualifying as Farmworkers as defined in Section 420.503(18), F.S., Commercial Fishing Workers as defined in Section 420.503(5), F.S., or the Homeless as defined in Section 420.621(4), F.S., over the life of the loan.

(3) The following types of Sponsors are eligible to apply for loans that do not exceed 35 percent of Total Development Cost:

(a) Applicants requesting both SAIL and Competitive HC that commit to set aside more than 10 percent of the total units for ELI Households; and

(b) Applicants requesting SAIL without Competitive HC that commit to set aside at least 5 percent of the total units for ELI Households.

(4) At a minimum, the percentage of set-aside units committed to in the Application must be held for Very Low-Income persons or households for a period of time equal to the greater of the following:

(a) The term of the SAIL loan; or

(b) 12 years; or

(c) Such longer term agreed to by the Applicant in the Application.

(5) Unless the Board approves a competitive allocation process outside the Universal Cycle, an Applicant is not eligible to apply for SAIL Program funding if any of the following pertain to the proposed Development:

(a) Construction or construction-permanent financing of the costs associated with construction or Substantial Rehabilitation of the Development, including tax-exempt bonds or conventional financing with conversion clauses, has closed as of January 1, 2007 ~~2006~~.

(b) The proposed Development ~~Applicant~~ has received an allocation of Housing Credits or a Competitive Housing Credit commitment ~~for the proposed Development~~, unless (i) the Applicant is also applying for Corporation-issued tax exempt

bonds in the current Application cycle or provides evidence of a Local Government-issued tax exempt bond commitment as stated in the Universal Application Instructions, or (ii) ~~the Applicant has provided~~ written notice has been provided to the Corporation prior to the Application Deadline for the current cycle ~~that it is~~ withdrawing ~~its~~ acceptance of such allocation or commitment and returning the ~~its~~ HC funding from the prior cycle.

(c) ~~The Applicant has already accepted~~ A~~a~~ preliminary commitment of funding for the proposed Development through the SAIL Program has already been accepted, unless ~~the Applicant has provided~~ written notice has been provided to the Corporation prior to the Application Deadline for the current cycle ~~that it is~~ withdrawing such ~~its~~ acceptance and returning the ~~its~~ prior SAIL funding.

(d) ~~The Applicant has already accepted~~ A~~a~~ preliminary commitment of funding for the proposed Development through the 2005 or 2006 RRLP Program has already been accepted, unless ~~the Applicant has provided~~ written notice has been provided to the Corporation prior to the Application Deadline for the current cycle ~~that it is~~ withdrawing such ~~its~~ acceptance and returning the ~~its~~ RRLP funding ~~from such prior cycle~~.

(e) The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing intended to foster the development or maintenance of affordable housing, with the following ~~two~~ exceptions. Those exceptions being (i) a LURA recorded in conjunction with the Predevelopment Loan Program, and (ii) a LURA recorded in conjunction with a Multifamily Mortgage Revenue Bond Program loan closed after January 1, 2007 ~~2006~~, and (iii) a LURA or EUA, or both, for an existing building or buildings, originally constructed at least 25 years prior to the Application Deadline for the current Funding Cycle, where, in the current Application, the Applicant has selected and qualified for the Homeless demographic commitment with a Development category of Rehabilitation/Substantial Rehabilitation or Acquisition and Rehabilitation/Substantial Rehabilitation.

(6) The SAIL Minimum Set-Aside Requirement is:

(a) 20 percent of the SAIL Development's units set-aside for residents with annual household incomes at or below 50 percent of the area, metropolitan statistical area ("MSA") or state or county median income, whichever is higher, adjusted for family size, or

(b) 40 percent of the SAIL Development's units set-aside for residents with annual household incomes at or below 60 percent of the area, MSA or state or county median income, whichever is higher, adjusted for family size. Sponsors of SAIL-funded Developments shall have the option of selecting this minimum set-aside only if the SAIL Development is scheduled to be assisted with Housing Credits, in addition to the SAIL loan~~, or~~

~~(c) 100 percent of the SAIL Development's units set-aside for residents with annual household incomes below 120 percent of the state or local median income, whichever is higher, adjusted for family size. Sponsors of SAIL-funded Developments shall have the option of selecting this minimum set-aside only if the SAIL Development is located in the Florida Keys Area. This paragraph is derived from 420.5087(2)(d), F.S., and is scheduled to expire July 1, 2008.~~

Rulemaking ~~Specific~~ Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.009, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, _____.

67-48.0095 Additional SAIL Application Ranking and Selection Procedures.

(1) During the first six (6) months following the publication date of the first Notice of Funding Availability published each year within the state of Florida, SAIL funds shall be allocated in accordance with the ranking and selection process set forth in the Universal Application Package and based upon the requirements specified in Section 420.5087(3), F.S., which specifies the required funding within the four demographic categories of:

(a) Family;

(b) Elderly;

(c) Homeless; and

(d) Commercial Fishing Workers and Farmworkers.

(2) 10 percent of the funds reserved for Applicants in the Elderly category shall be reserved to provide loans to Sponsors of housing for the Elderly for the purpose of making life-safety or security-related repairs or improvements to such housing which are required by federal, state or local regulation, as further specified in Section 420.5087, F.S.

(3) Program funds designated for Commercial Fishing Workers and Farmworkers will be allocated through a request for proposal (RFP), the Universal Application Package, or both.

(4) The Corporation shall assign, in order of ranking, tentative loan amounts to the Applications in each demographic and geographic category, up to the total amount available. However, the Corporation shall make adjustments to ensure that minimum funding distribution levels by geographic category are met, as required by Section 420.5087(1), F.S., and further described in the SAIL Notice of Funding Availability.

(5) In the event that the 10 percent of program funds required to be allocated to counties with a population of 100,000 or less remains unallocated at the conclusion of a successive three-year cycle, the unallocated funds shall be equitably distributed pursuant to the instructions included in the Universal Application Package.

(6) Selection for SAIL Program participation is contingent upon fund availability at the conclusion of the appeals process as set forth in Rule 67-48.005, F.A.C.

Rulemaking ~~Specific~~ Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 12-23-96, Amended 1-6-98, Formerly 9I-48.0095, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, Repromulgated 3-30-08, _____.

67-48.010 Terms and Conditions of SAIL Loans.

(1) The proceeds of all SAIL loans shall be used for new construction or Substantial Rehabilitation of affordable, safe and sanitary multifamily rental housing units.

(2) The SAIL loan may be in a first, second, or other subordinated lien position. For purposes of this rule, mortgages securing a letter of credit as credit enhancement for the bonds financing the first mortgage shall be considered a contingent liability and part of the first mortgage lien, provided that the Applicant's counsel furnishes an opinion regarding the contingent nature of such mortgage satisfactory to the Corporation and its counsel.

(3) The loans shall be non-amortizing and shall have interest rates as follows:

(a) 0 percent simple interest per annum on loans to Developments that set aside at least 80 percent of their total units for residents qualifying as Farmworkers, Commercial Fishing Workers or Homeless, over the life of the loan;

(b) 0 percent simple interest per annum on loans based on the pro rata share of units set aside for Homeless residents if the total of such units is less than 80 percent of the units and 1 percent simple interest per annum on the remaining units;

(c) 1 percent simple interest per annum on loans to Developments other than those identified in paragraphs (a) and (b) above;

(4) Except as provided in Section 420.5087(5), F.S., the amount of any superior mortgages combined with the SAIL mortgage shall be less than the appraised value of the Development. Any debt service reserve requirement associated with a superior mortgage shall be excluded from the amount of the superior mortgage for purposes of this calculation.

(5) Payment on the loans shall be based upon the Development Cash Flow, as determined pursuant to the Financial ~~SAIL Cash Flow~~ Reporting Form SR-1, or shall be due annually as determined by the Corporation's Board of Directors. Such determination by the Board shall be based upon a written recommendation by the Credit Underwriter which has considered the economic and financial viability of the Development as well as the protection of the Corporation's repayment of principal and interest. Any distribution or payment to the Principal(s) of the Applicant or Developer or any Affiliate of the Principal of the Applicant or ~~to the~~ Developer or any Affiliate of the Applicant or Developer, whether paid directly or indirectly, which was not expressly disclosed in determining debt service coverage in the Board approved final credit underwriting report, will be added back to the amount of cash available for the SAIL loan interest payment, as calculated in the Financial ~~SAIL Cash Flow~~ Reporting Form SR-1, for the purpose of determining interest due. Interest may be deferred as set forth in subsection 67-48.010(8), F.A.C., without constituting a default on the loan.

(6) The loans described in subsection 67-48.010(3), F.A.C., above shall be repaid from all Development Cash Flow, and if the SAIL loan is not a first mortgage loan, each year, subject to the provisions of subsection (8) below, Development Cash Flow shall be applied to pay the following items in order of priority:

(a) All superior mortgage fees and debt service;

(b) Development Expenses on the SAIL loan, including up to 20 percent of total Developer fees per year;

(c) Interest payment on SAIL loan balance equal to 1 percent as stated in paragraphs (3)(b) and (c) above over the life of the SAIL loan;

(d) Interest payments on the SAIL loan deferred from previous years;

(e) Mandatory payment on subordinate mortgages.

After the full SAIL loan interest has been paid, the Applicant shall retain all remaining monies, unless the Applicant chooses to prepay a portion of the loan balance.

(7) If the SAIL loan is secured by a first mortgage lien, each year, subject to the provisions of subsection (8) below, Development Cash Flow shall be applied to pay the following items in order of priority:

(a) First mortgage fees and interest payment on the SAIL loan balance equal to the percentages stated in paragraph (3) above over the life of the SAIL loan;

(b) Development Expenses on the SAIL loan including up to 20 percent of total Developer fees per year;

(c) Interest payments on the SAIL loan deferred from previous years;

(d) Mandatory payment on subordinate mortgages.

After the full SAIL loan interest has been paid, the Applicant shall retain all remaining monies, unless the Applicant chooses to prepay a portion of the loan balance.

(8) The determination of Development Cash Flow, determination of payment priorities, and payment of interest on SAIL loans shall occur annually. Any payments of accrued and unpaid interest due annually on SAIL loans shall be deferred to the extent that Development Cash Flow is insufficient to make said payments pursuant to the payment priority schedule established in this rule chapter. If Development Cash Flow is under-reported and such report causes a deferral of SAIL interest, such under-reporting shall constitute an event of default on the SAIL loan. A penalty of 5 percent of any required payment shall be assessed.

(a) By May 31 of each year of the SAIL loan term, the Applicant shall provide the Corporation with audited financial statements and a certification detailing the information needed to determine the annual payment to be made. However, this certification requirement will be waived until May 31

following the calendar year within which the first unit is occupied. The certification shall require submission of audited financial statements and the ~~SAIL~~ annual reporting form, Financial ~~Cash Flow~~ Reporting Form SR-1~~, Rev. 9/05~~, which is incorporated by reference in Rule Chapter 67-53, F.A.C. ~~Form SR-1 can be obtained from the Credit Underwriter acting as the assigned servicer or on the Corporation's Website under the 2008 Universal Application link labeled Related Information and Links.~~ The audited financial statements are to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America ~~accounting principles~~ for the 12 months ended December 31 and shall include:

1. Comparative Balance Sheet with prior year and current year balances;

2. Statement of revenue and expenses;

3. Statement of changes in fund balances or equity;

4. Statement of cash flows; and

5. Notes.

The financial statements referenced above should also be accompanied by a certification of the Applicant as to the accuracy of such financial statements. A late fee of $500 will be assessed by the Corporation for failure to submit the required audited financial statements and certification by May 31 of each year of the SAIL loan term. If the Applicant has not submitted the required audited financial statements, the Corporation servicer shall deem the Development Cash Flow sufficient and issue a billing for interest due on the SAIL loan for the immediately preceding calendar year by July 31. After receipt of the audited financial statements, the Corporation servicer shall issue revised billing, if necessary. Failure to submit the required audited financial statements and certification by May 31 of each year of the SAIL loan term shall constitute an event of default on the SAIL loan. The Applicant shall furnish to the Corporation or its servicer, unaudited statements, certified by the Applicant's principal financial or accounting officer, covering such financial matters as the Corporation or its servicer may reasonably request, including without limitation, monthly statements with respect to the Development.

For SAIL loans applied for prior to February 22, 2001, the Corporation will extend the annual filing deadline for submission of the audited financial statements and certification detailing the information needed to determine the annual payment to be made, pursuant to subsection 67-48.010(8), F.A.C., to May 31 of each year of the SAIL loan term. The Corporation servicer shall issue a billing for interest due on the SAIL loan for the immediately preceding calendar year by July 31 of each calendar year of the SAIL loan. In addition, for SAIL loans applied for prior to December 23, 1996, so long as the executed loan agreements contain a provision to assess a late fee for failure to provide the audited financial statement and certification detailing the information needed to determine the annual payment due, such fee will be assessed by the Corporation as outlined above.

(b) The Corporation servicer shall issue a billing for interest due on the SAIL loan for the immediately preceding calendar year by July 31 of each calendar year of the SAIL loan.

(c) The Applicant shall remit the interest due to the Corporation servicer no later than August 31 of each year of the SAIL loan term. The first payment of SAIL interest will be due no later than August 31 following the calendar year within which the first unit is occupied. The first payment of interest shall include all interest for the period which begins accruing on the date of the first Draw and ends on December 31 of the calendar year during which the first unit is occupied.

(9) After maturity or acceleration, the Note shall bear interest at the Default Interest Rate from the due date until paid. Unless the Corporation has accelerated the SAIL loan, the Applicant shall pay the Corporation a late charge of 5 percent of any required payment that is not received by the Corporation within 15 days of the due date.

(10) The final billing for the purpose of payoff of the SAIL loan shall also include a billing for compliance fees to cover monitoring of SAIL Program requirements beyond the maturity date of the Note. Such fees shall be computed by determining the present value of the annual compliance monitoring fee and multiplying that by the number of years for which the Development will have a set-aside for Very Low-Income persons or households beyond the repayment date. The present value discount rate shall be 2 ~~2.75~~ percent per annum. Such amount shall be reduced by the amount of any compliance monitoring fees for other programs collected by the Corporation for the Development provided:

(a) The compliance monitoring fee covers some or all of the period following the anticipated SAIL loan repayment date; and

(b) The Development has substantially equivalent set-asides for Very Low-Income persons or households mandated through another Corporation program for which the compliance monitoring fee was collected.

(11) The SAIL loans shall be serviced either directly by the Corporation or by the servicer on behalf of the Corporation.

(12) The Corporation shall monitor compliance of all terms and conditions of the SAIL loan and shall require that certain terms and conditions be embodied in the Land Use Restriction Agreement and recorded in the public records of the county wherein the Development is located. Violation of any material term or condition of the documents evidencing or securing the SAIL loan shall constitute a default during the term of the SAIL loan. The Corporation shall take appropriate legal action to effect compliance if a violation of any material

term or condition relative to the set-asides of units for Very Low-Income persons or households is discovered during the course of compliance monitoring or by any other means.

(13) The Corporation shall require adequate insurance to be maintained on the Development as determined by the first mortgage lender or the Corporation's servicer, but which shall, in any case, include fire, hazard and other insurance sufficient to meet the standards established in Part V, Section 106 of the Fannie Mae DUS Guide, effective August 16, 2007 ~~10, 2006~~, which is adopted and incorporated herein by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links.

(14) The SAIL loan term shall be for a period of not more than 15 years. However, if both a SAIL loan and federal Housing Credits are to be used to assist a Development, the Corporation may set the SAIL loan term for a period commensurate with the investment requirements associated with the Housing Credit syndication. The term of the loan may also exceed 15 years if the lien of the Corporation's encumbrance is subordinate to the lien of another mortgagee, in which case the term may be made coterminous with the longest term of the superior loan.

(15) After accepting a preliminary commitment, the Applicant shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the SAIL mortgage without prior approval of the Corporation's Board of Directors. However, an Applicant may reduce the interest rate on any superior or inferior mortgage loan without the Board's permission, provided that no other terms of the loan are changed. The Corporation must be notified in writing of any such change.

Following construction completion, the Board shall deny requests to increase the amount of any superior mortgage, unless the criteria outlined in subsection 67-48.0105(5), F.A.C., are met, the original combined loan to value ratio for the superior mortgage and the SAIL mortgage is maintained or improved, and a proportionate amount of the increase in the superior mortgage is used to reduce the outstanding SAIL loan balance. To calculate the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the SAIL loan balance, the following calculation shall be used: divide the amount of the original SAIL mortgage by the combined amount of the original SAIL mortgage and the original superior mortgage; then multiply the quotient by the amount of the increase in the superior mortgage from the current balance after deducting refinancing costs. For example, if the amount of the original SAIL mortgage is $2,000,000, the original superior mortgage is $4,000,000, with a current balance of $3,000,000, a proposed new superior mortgage of $5,000,000, and refinancing costs of $200,000, then the amount of the increase in the superior mortgage after deducting refinancing costs would be $1,800,000, and the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the SAIL loan balance would be $594,000. This $594,000 would be applied first to accrued interest and then to principal.

(16) All SAIL loans shall be in conformance with applicable federal and state statutes, including the Fair Housing Act as implemented by 24 CFR Part 100, which is adopted and incorporated herein by reference, and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR Part 35, which is adopted and incorporated herein by reference. These provisions are available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links. The Corporation shall allow units dedicated to occupancy by the Elderly in a Development designed for occupancy by elderly households pursuant to authorization by HUD under the Fair Housing Amendments of 1988 as implemented by 24 CFR Part 100.

(17) Rent controls shall not be allowed on any Development except (i) as required in conjunction with the issuance of tax-exempt bonds or federal Housing Credits and (ii) when the Sponsor has committed to set aside units for ELI Persons, in which case rents for such units shall be restricted at the level applicable for federal Housing Credits.

(18) The documents creating, evidencing or securing each SAIL loan must provide that any violation of the terms and conditions described in Rule Chapter 67-48, F.A.C., constitutes a default under the SAIL loan documents allowing the Corporation to accelerate its loan and to seek foreclosure as well as any other remedies legally available to it.

(19) A failure to pay any principal or interest due under the terms of this section shall constitute a default on the SAIL loan.

(20) If, after a four-month rent-up period commencing after issuance of the last certificate of occupancy on the units, an Applicant is unable to meet the agreed-upon demographic commitment for Elderly, Homeless, Farmworker or Commercial Fishing Worker, the Applicant may request to rent such units to Very Low-Income persons or households without demographic restriction.

(a) The written request must provide documentation of marketing efforts implemented over the past four-month period which demonstrate the inclusion of sources of potential residents, advertising to be used, other means of encouraging residents to rent at the Development, and priority to the original targeted group of residents. If the Corporation determines that prior marketing efforts were insufficient, a revised plan which is satisfactory to the Corporation must be submitted and implemented for a four-month period prior to reconsideration.

(b) The Board will require Applicants to provide additional amenities or resident programs suitable for the proposed resident population.

(c) The Board will require Applicants with 0 percent loans, as described in paragraphs 67-48.010(3)(a) and (b), F.A.C., to modify loan documents to conform to the terms and conditions of 1 percent loans, as described in paragraphs 67-48.010(3)(b) and (c), F.A.C., or to accelerate payments of SAIL loan principal or interest.

(21) The Applicant shall provide to the Corporation an annual budget of income and expenses for the Development, certified as accurate by an officer of the Development, no later than 30 days prior to the beginning of the Development's fiscal year.

(22) Failure to provide the Corporation and its servicer with the SAIL available Cash Flow Statement detailing the information needed to determine the annual payment to be made pursuant to this rule chapter shall constitute a default on the SAIL loan.

(23) For SAIL loans applied for prior to March 17, 2002, at the borrower's request, the Corporation will include up to 20 percent of total Developer fees per year as a Development Expense when calculating the interest due on the SAIL loan for the 2003 calendar year for the billing issued in 2004 pursuant to paragraph 67-48.010(8)(b), F.A.C., and for the billing for interest due each calendar year thereafter. Development Expense will not include Developer fees for determination of payment of interest on SAIL loans applied for prior to March 17, 2002 for the 2002 calendar year or any previous calendar year. For purposes in this paragraph, Development Expense has the same meaning as Project Expense and Eligible Project Expense as those terms are used in SAIL loans applied for prior to March 17, 2002.

(24) The Compliance Period for a SAIL Development shall be, at a minimum, a period of 12 years from the date the first residential unit is occupied. For SAIL Developments that contain occupied units at the time of closing, the Compliance Period shall begin not later than the termination of the last lease executed prior to closing of the SAIL loan.

Rulemaking ~~Specific~~ Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.010, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, _____.

67-48.0105 Sale, Transfer or Refinancing of a SAIL Development.

(1) Any sale, conveyance, assignment, or other transfer of interest or the grant of a security interest in all or any part of the title to the Development other than a superior mortgage shall be subject to the Corporation's prior written approval. The Board shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant such request.

(2) The SAIL loan shall be assumable upon sale or transfer of the Development if the following conditions are met:

(a) The proposed transferee meets all specific Applicant identity criteria which were required as conditions of the original loan;

(b) The proposed transferee agrees to maintain all set-asides and other requirements of the SAIL loan for the period originally specified or longer; and

(c) The proposed transferee and release of transferor receives a favorable recommendation from the Credit Underwriter and approval by the Board of Directors of the Corporation.

All assumption requests must be submitted in writing to the Director of Special Assets and contain the specific details of the transfer and assumption. In addition to any related professional fees, the Corporation shall charge a non-refundable assumption fee as outlined in the Universal Application instructions.

(3) If the SAIL loan is not assumed since the buyer does not meet the criteria for assumption of the SAIL loan, the SAIL loan (principal and any outstanding interest) shall be repaid from the proceeds of the sale in the following order of priority:

(a) First mortgage debt service, first mortgage fees;

(b) SAIL compliance and loan servicing fees;

(c) An amount equal to the present value of the compliance monitoring fee, as computed by the Corporation and its servicer, times the number of payment periods for which the Development will have a set-aside for Very Low-Income persons or households beyond the repayment date. The present value discount rate shall be 2 ~~2.75~~ percent per annum. Such amount shall be reduced by the amount of any compliance monitoring fees collected by the Corporation for the Development, provided:

1. The compliance monitoring fee covers some or all of the period following the anticipated SAIL repayment date; and

2. The Development has substantially equivalent set-asides for Very Low-Income persons or households mandated through another program of the Corporation for which the compliance monitoring fee was collected.

(d) Unpaid principal balance of the SAIL loan;

(e) Any interest due on the SAIL loan;

(f) Expenses of the sale;

(g) If there will be insufficient funds available from the proposed sale of the Development to satisfy paragraphs (3)(a)-(f) above, the SAIL loan shall not be satisfied until the Corporation has received:

1. An appraisal prepared by an appraiser selected by the Corporation or the Credit Underwriter indicating that the purchase price for the Development is reasonable and consistent with existing market conditions;

2. A certification from the Applicant that the purchase price reported is the actual price paid for the Development and that no other consideration passed between the parties and that the Development Cash Flow reported to the Corporation during the term of the SAIL loan was true and accurate;

3. A certification from the Applicant that there are no Development funds available to repay the SAIL loan, including any interest due, and the Applicant knows of no source from which funds could or would be forthcoming to pay the SAIL loan; and

4. A certification from the Applicant detailing the information needed to determine the final billing for SAIL loan interest. Such certification shall require submission of financial statements and other documents that may be required by the Corporation and its servicer.

(4) The Corporation may renegotiate and extend the loan in order to extend or retain the availability of housing for the target population. Such renegotiations shall be based upon:

(a) Performance of the Applicant during the SAIL loan term;

(b) Availability of similar housing stock for the target population in the area;

(c) Documentation and certification by the Applicant that funds are not available to repay the Note upon maturity;

(d) A plan for the repayment of the loan at the new maturity date;

(e) Assurance that the security interest of the Corporation will not be jeopardized by the new term(s); and

(f) Industry standard terms which may include amortizing loans requiring regularly scheduled payments of principal and interest.

All loan renegotiation requests, including requests for extension, must be submitted in writing to the Director of Special Assets and contain the specific details of the renegotiation. In addition to any related professional fees, the Corporation shall charge a non-refundable renegotiation fee as outlined in the Universal Application instructions.

(5) The Board shall approve requests for mortgage loan refinancing only if Development Cash Flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation.

(6) The Board shall deny requests for mortgage loan refinancing which require extension of the SAIL loan term or otherwise adversely affect the security interest of the Corporation, unless the criteria outlined in subsection 67-48.0105(5), F.A.C., are met, the Credit Underwriter recommends that the approval of such a request is crucial to the economic survival of the Development, or unless the Board determines that public policy will be better served by the extension as a result of the Applicant agreeing to further extend the Compliance Period or provide additional amenities or resident programs suitable for the resident population. Further, the Board shall limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

The Board shall deny requests to increase the amount of any superior mortgage, unless the criteria outlined in subsection 67-48.010(15), F.A.C., are met, the original combined loan to value ratio for the superior mortgage and the SAIL mortgage is maintained or improved, and a proportionate amount of the increase in the superior mortgage is used to reduce the outstanding SAIL loan balance.

Rulemaking ~~Specific~~ Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 12-23-96, Amended 1-6-98, Formerly 9I-48.0105, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, 3-17-02, Repromulgated 4-6-03, Amended 3-21-04, Repromulgated 2-7-05, Amended 1-29-06, 4-1-07, Repromulgated 3-30-08, _____.

67-48.013 SAIL Construction Disbursements and Permanent Loan Servicing.

(1) SAIL loan proceeds shall be disbursed during the construction phase in an amount per Draw which does not exceed the ratio of the SAIL loan to the Total Development Cost, unless approved by the Credit Underwriter.

(2) Ten (10) business days prior to each Draw, the Applicant shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Applicant for a Draw. The request shall set forth the amount to be paid and shall be accompanied by documentation specified by the Corporation's servicer including claims for labor and materials to date of the last inspection.

(3) The Corporation and its servicer shall review the request for a Draw, and the servicer shall provide the Corporation with approval of the request or an alternative recommendation, after the title insurer provides an endorsement to the policy of title insurance updating the policy to the date of the current Draw and increasing the insurance coverage to an amount equal to the sum of all prior Draws and the current Draw, without additional exceptions, except those specifically approved in writing by the Corporation.

(4) The Corporation shall disburse construction Draws through Automated Clearing House (ACH). The Applicant may request disbursement of construction Draws via a wire transfer. The Applicant will be charged a fee of $10 for each wire transfer requested. This charge will be netted against the Draw amount.

(5) The Corporation shall elect to withhold any Draw or portion of any Draw, notwithstanding any documentation submitted by the Applicant in connection with the request for a Draw, if

(a) The Corporation or the Corporation's servicer determines at any time that the actual cost budget or progress of construction differs from that as shown on the loan documents; or

(b) The percentage of progress of construction of the improvements differs from that shown on the request for a Draw.

(6) The servicer may request submission of revised construction budgets.

(7) Based on the Applicant's progress of construction, if the Corporation determines that further analysis by the Credit Underwriter is required prior to the release of the final Draw, the Applicant shall pay to the Credit Underwriter a fee based on an hourly rate determined pursuant to the contract between the Corporation and the Credit Underwriter.

(8) Retainage in the amount of 10 percent per Draw shall be held by the servicer during construction until the Development is 50 percent complete. At 50 percent completion, no additional retainage shall be held from the remaining Draws. Release of funds held by the Corporation's servicer as retainage shall occur pursuant to the SAIL loan agreement.

Rulemaking ~~Specific~~ Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.013, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, 2-7-05, 1-29-06, Amended 4-1-07, Repromulgated 3-30-08, _____.

67-48.014 HOME General Program Procedures and Restrictions.

(1) Unless otherwise provided in the Application instructions, the Corporation shall utilize up to 10 percent of the HOME allocation for administrative costs pursuant to 24 CFR Part 92.

(2) The Corporation shall utilize at least 15 percent of the HOME allocation for CHDOs pursuant to 24 CFR Part 92. In order to apply under the CHDO set-aside, the CHDO must have at least 51 percent ownership interest in the Development held by the General Partner entity and meet all other CHDO requirements as defined by HUD in 24 CFR Part 92 and other Corporation requirements identified in the CHDO Checklist. The CHDO Checklist is adopted and incorporated herein by reference, effective 10-17-06, and is available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links or by contacting the HOME-Rental Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

(3) Within the rental cycle administered pursuant to Rule Chapter 67-48, F.A.C., the Corporation will distribute funds as provided in the Universal Application instructions, through a competitive request for proposal (RFP) process, or both.

(4) The maximum per-unit subsidy amount of HOME funds that the Corporation shall invest on a per-unit basis in affordable housing shall not exceed the per-unit dollar limits established by the Corporation as identified in the current Application instructions and included on the HOME Rental FHFC Subsidy Limits chart, which is adopted and incorporated by reference, effective 10-1-2007. A copy of such chart is available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links or by contacting the HOME-Rental Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

(5) The minimum amount of HOME funds that must be invested in a Rental Development is $1,000 times the number of HOME-Assisted Units in the Development.

(6) A Development qualifies as affordable housing and for HOME funds if, with respect to income and occupancy:

(a) 80 percent of the HOME-Assisted Units are occupied by families whose annual income does not exceed 60 percent of the median family income for the area, as determined by HUD, with adjustments for family size, and

(b) 20 percent of the HOME-Assisted Units are occupied by families whose annual income does not exceed 50 percent of the median family income for the area, as determined by HUD, with adjustments for family size.

(c) When the income of a resident increases above 80 percent of area median income, the next unit that becomes available in the Development must be rented to a HOME income-eligible resident. If the income of a Very Low-Income household increases above the limits for a Very Low-Income household, then the Developer must rent the next available unit to a Very Low-Income household. The amount of rent the resident whose income has increased must pay is the lesser of the amount payable by resident under state or local law or 30 percent of the adjusted monthly income for rent and utilities.

(d) High HOME rent means 80 percent of the HOME-Assisted Units in a Development must have rents set at no more than the lesser of the Section 8 Fair Market Rent (FMRs) or rents that are 30 percent for a Family at 65 percent of median income limit, minus resident-paid utilities. Low HOME rent means 20 percent of the HOME-Assisted Units in a Development must have rents set at no more than the lesser of the Section 8 Fair Market Rent (FMRs), or 30 percent of the gross income of a Family at 50 percent of the area median income, minus resident-paid utilities. With respect to rent limits, the HOME Rent Chart at 65 percent or 50 percent, or the Fair Market Rent, less the applicable utility allowance, is the maximum rent that can be charged for a HOME Rent-Restricted Unit. HOME-Assisted Units with Section 8 subsidy must compare the Section 8 gross rent (resident rent, subsidy amount, and utility allowance) to the maximum applicable HOME high or low rent limit minus utilities. However, Developments with project-based rental assistance may utilize the project-based rents as compared to the HOME High and Low rents. Compliance with the HOME rent restrictions will take precedence over the Developer's acceptance of a full Section 8 (resident-based) subsidy for the HOME-Assisted Units.

(e) The minimum Compliance Period for Rehabilitation Developments is 15 years from the date the first residential unit is occupied. For Developments that contain occupied units at the time of closing, the Compliance Period shall begin the earlier of (i) the termination of the last lease executed prior to closing of the HOME loan or (ii) at project completion as defined in 24 CRF § 92.2. The Compliance Period will be extended until the loan is repaid as enumerated in subsection 67-48.020(1), F.A.C.

(f) The minimum Compliance Period for newly-constructed rental housing is 20 years from the date the first residential unit is occupied. The Compliance Period will be extended until the loan is repaid as enumerated in subsection 67-48.020(1), F.A.C.

(g) The minimum percentage of HOME-Assisted Units within a Development must be at least equal to the percentage (ratio) calculated by dividing the HOME loan amount by the Total Development Cost. This percentage will be utilized to determine the minimum number of HOME-Assisted Units required within a Development. HOME-Assisted Units must be identified at the time of Application. For purposes of meeting affordable housing requirements for a Development, the HOME-Assisted Units counted may be changed over the Compliance Period, so long as the total number of HOME-Assisted Units remains the same, and the substituted units are, at a minimum, comparable in terms of size, features, and number of bedrooms to the original HOME-Assisted Units.

(h) The Development will remain affordable, pursuant to commitments documented within the executed Land Use Restriction Agreement without regard to the term of the mortgage or to transfer of ownership.

(7) The Development must comply with all applicable provisions of 24 CFR Part 92 and Rule Chapter 67-48, F.A.C.

(8) A Development that is under construction may be eligible to apply for HOME funds only if the final building permit is dated no earlier than six (6) months prior to the Application Deadline, the Development is able to provide evidence of compliance with federal labor standards (if 12 or more HOME-Assisted Units are developed under a single contract) for any work already completed, and the Development is able to provide evidence of compliance with HUD environmental requirements as well as all other federal HOME regulations as listed in Rule 67-48.014, F.A.C., and 24 CFR Part 92. The federal requirements may require completion of activities prior to submission of an Application for HOME funding.

(9) Any single contract for the development (rehabilitation or new construction) of affordable housing with 12 or more HOME-Assisted Units under the HOME Program must contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the United States Secretary of Labor pursuant to the Davis-Bacon Act, 40 U.S.C. §§ 3142 – 3144, 3146 and 3147 (2002), which is adopted and incorporated herein by reference, 24 CFR § 92.354, 24 CFR Part 70 (volunteers), which is adopted and incorporated herein by reference, and 40 U.S.C. § 3145 (2002), which is adopted and incorporated herein by reference, will be paid to all laborers and mechanics employed for the construction or rehabilitation of the Development, and such contracts must also be subject to the overtime provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3701 – 3706 and 3708 (2002), which is adopted and incorporated herein by reference, the Copeland Act (Anti-Kickback Act), 40 U.S.C. § 3145 (2002), and the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 et seq.), which is adopted and incorporated herein by reference. The foregoing provisions are available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links.

(10) All HOME Developments must conform to the following federal requirements which are available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links:

(a) Equal Opportunity and Fair Housing as enumerated in 24 CFR § 92.202 and 92.250, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), which is adopted and incorporated herein by reference, Fair Housing Act (42 U.S.C. §§3601-3620), which is adopted and incorporated herein by reference, Age Discrimination Act of 1975, as amended (42 U.S.C. §6101), which is adopted and incorporated herein by reference, Executive Order 11063 (amended by Executive Order 12259), which is adopted and incorporated herein by reference, and 24 CFR § 5.105(a), which is adopted and incorporated herein by reference.

(b) Affirmative Marketing as enumerated in 24 CFR § 92.351.

(c) Environmental Review as enumerated in 24 CFR § 92.352, 24 CFR Part 58, which is adopted and incorporated herein by reference, and National Environmental Policy Act of 1969, which is adopted and incorporated herein by reference.

(d) Displacement, Relocation, and Acquisition as enumerated in 24 CFR § 92.353, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4201-4655), which is adopted and incorporated herein by reference, 49 CFR Part 24, which is adopted and incorporated herein by reference, 24 CFR Part 42 (Subpart C), which is adopted and incorporated herein by reference, and Section 104(d) "Barney Frank Amendments," which is adopted and incorporated herein by reference.

(e) Lead-based Paint as enumerated in 24 CFR § 92.355, and 24 CFR Part 35, which is adopted and incorporated herein by reference.

(f) Conflict of Interest as enumerated in 24 CFR § 92.356, 24 CFR §§ 85.36 and 84.42, which are adopted and incorporated herein by reference.

(g) Debarment and Suspension as enumerated in 24 CFR Part 24, which is adopted and incorporated herein by reference.

(h) Flood Insurance as enumerated in Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4106), which is adopted and incorporated herein by reference.

(i) Handicapped Accessibility as enumerated in Section 504 of the Rehabilitation Act of 1973 (implemented in 24 CFR Part 8) and 24 CFR § 100.205, which are adopted and incorporated herein by reference.

(j) Americans with Disabilities Act as enumerated in 42 U.S.C. § 12131; and 47 U.S.C. §§ 155, 201, 218 and 225, which are adopted and incorporated herein by reference.

(k) Equal Opportunity Employment as enumerated in Executive Order 11246 (implemented in 41 CFR Part 60), which is adopted and incorporated herein by reference.

(l) Economic Opportunity as implemented in 24 CFR Part 135, which is adopted and incorporated herein by reference.

(m) Minority/Women Employment as enumerated in 24 CFR § 85.36(e) and Executive Orders 11625, 12432, and 12138, which are adopted and incorporated herein by reference.

(n) Site and Neighborhood Standards as enumerated in 24 CFR § 983.6(b), which is adopted and incorporated herein by reference.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.5089(2) FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.014, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, _____.

67-48.015 Match Contribution Requirement for HOME Allocation.

(1) The Corporation is required by HUD to match non-federal funds to the HOME allocation as specified in 24 CFR Part 92.

(2) A Match Credit Fund funded by the state of Florida has been appropriated to the Corporation. The funds are to be used for demonstration Developments, pilot programs, or other Developments selected and approved by the Corporation's Board of Directors. Such pilot programs or Developments shall be counted as the Corporation's required match for HUD purposes and may be any eligible activity acceptable to 24 CFR Part 92 and approved by the Corporation's Board of Directors.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.5089(4) FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.015, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, 3-17-02, 4-6-03, Repromulgated 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, _____.

67-48.017 Eligible HOME Activities.

HOME funds may be used for acquisition (must include new construction and/or Rehabilitation), new construction, reconstruction, or moderate or substantial rehabilitation of non-luxury housing with suitable amenities or for tenant based rental assistance pursuant to 24 CFR Part 92.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.5089(3) FS. History–New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 9I-48.017, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, 3-17-02, Amended 4-6-03, Repromulgated 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, _____.

67-48.018 Eligible HOME Applicants.

(1) Unless the Board approves a competitive allocation process outside the Universal Cycle, an Applicant is not eligible to apply for HOME Program funding if any of the following pertain to the proposed Development:

(a) The proposed Development ~~Applicant~~ has received an allocation of Housing Credits or a Competitive Housing Credit commitment ~~for the proposed Development~~, unless ~~the Applicant has provided~~ written notice has been provided to the Corporation prior to the Application Deadline for the current cycle ~~that it is~~ withdrawing ~~its~~ acceptance of such allocation or commitment and returning the HC funding from a prior cycle;

(b) ~~The Applicant has already accepted~~ A~~a~~ preliminary commitment of funding for the proposed Development through the HOME Program, the SAIL Program, or the RRLP Program has already been accepted, unless ~~the Applicant has provided~~ written notice has been provided to the Corporation prior to the Application Deadline for the current cycle ~~that it is~~ withdrawing such ~~its~~ acceptance and returning the ~~its~~ prior HOME Program, SAIL Program, or RRLP Program funding.

(c) The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing intended to foster the development or maintenance of affordable housing, with the following exceptions. Those exceptions being (i) a LURA recorded in conjunction with the ~~excluding~~ Predevelopment Loan Program ~~funds, intended to foster the development or maintenance of affordable housing~~ and (ii) a LURA or EUA, or both, for an existing building or buildings, originally constructed at least 25 years prior to the Application Deadline for the current Funding Cycle, where, in the current Application, the Applicant has selected and qualified for the Homeless demographic commitment with a Development category of Rehabilitation or Acquisition and Rehabilitation.

(2) Applicants for HOME loans may include CHDOs, public housing authorities, local governments, Non-Profit organizations, and private for-profit organizations. The Applicant must be a legally-formed, existing entity at the time

of Application Deadline. Pursuant to 24 CFR Part 92, Applicants may not request additional HOME funding during the period of affordability.

(3) For tenant based rental assistance, eligible public housing authorities shall be limited to those public housing authorities that provide a copy of their most recent Section Eight Management Assessment Program (SEMAP) and can demonstrate compliance with 24 CFR § 982.401, which is incorporated by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links.

(a) Eligible public housing authorities shall use the HOME Investment Partnership Program, state of Florida, TBRA Agreement (Rev. 09/06), which is incorporated herein by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links.

(b) An eligible public housing authority's request for funding shall be based upon demonstration of recipient need.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.5089(3) FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.018, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, Amended 3-17-02, 4-6-03, Repromulgated 3-21-04, Amended 2-7-05, 1-29-06, 4-1-07, 3-30-08, _____.

67-48.019 Eligible and Ineligible HOME Development Costs.

(1) HOME funds may be used to pay for the following eligible costs as enumerated in 24 CFR Part 92:

(a) Development hard costs as they directly relate to the identified HOME Assisted Units only for:

1. New construction, the costs necessary to meet local and state of Florida building codes and the Model Energy Code referred to in 24 CFR Part 92;

2. Rehabilitation, the costs necessary to meet local and state of Florida rehabilitation building codes and at a minimum, the Section 8 Housing Quality Standards under 24 CFR Part 92;

3. Both new construction and rehabilitation, costs to demolish existing structures, improvements to the Development site and utility connections;

(b) The cost of acquiring improved or unimproved real property. A HOME Development and HOME loan that involves acquisition must include Rehabilitation or new construction in order to be an eligible Development.

(c) Soft costs as they relate to the identified HOME-Assisted Units. The costs must be reasonable, as determined by the Corporation and the Credit Underwriter, and associated with the financing, development, or both. These costs may include:

1. Architectural, engineering or related professional services required to prepare plans, drawings, specifications or work write-ups;

2. Costs to process and settle the HOME financing for a Development, such as credit reports, fees for evidence of title, recordation, building permits, attorney fees, cost certifications, and estimates;

3. Developer's and General Contractor's fees as described in Rule 67-48.0072, F.A.C.;

4. Impact fees;

5. Costs of Development audits required by the Corporation;

6. Affirmative marketing and fair housing costs;

7. Temporary relocation costs as required under 24 CFR Part 92;

(2) HOME funds shall not be used to pay for the following ineligible costs:

(a) Development reserve accounts for replacements, unanticipated increases in operating costs, or operating subsidies, except as described in 24 CFR § 92.206(d)(5);

(b) Public housing;

(c) Administrative costs;

(d) Developer fees unless the HOME funds include Rehabilitation or new construction; or

(e) Any other expenses not allowed under 24 CFR Part 92.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.5089(3) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.019, Amended 11-9-98, 2-24-00, Repromulgated 2-22-01, Amended 3-17-02, 4-6-03, Repromulgated 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, _____.

67-48.020 Terms and Conditions of Loans for HOME Rental Developments.

All HOME Rental Development loans shall be in compliance with the Act, 24 CFR Part 92 and, at a minimum, contain the following terms and conditions:

(1) The HOME loan may be in a first, second, or subordinated lien position. The term of the loan shall be for a minimum period of 15 years for Rehabilitation Developments and 20 years for new construction Developments. The term of the HOME loan may be extended to coterminate with the first mortgage term upon the recommendation of the Credit Underwriter and approval by the Corporation.

(2) The annual interest rate will be determined by the following:

(a) All for-profit Applicants that own 100 percent of the ownership interest in the Development held by the general partner or managing member entity will receive a 1.5 percent per annum interest rate loan.

(b) All qualified non-profit Applicants that own 100 percent of the ownership interest in the Development held by the general partner or managing member entity will receive a 0 percent interest rate loan. For purposes of determining the annual HOME interest rate, the definition of Non-Profit found at Rules 67-48.002 and 67-48.0075, F.A.C., shall not apply;

instead, qualified non-profit Applicants shall be those entities defined in 24 CFR Part 92, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the IRC and organized under Chapter 617, F.S., if a Florida corporation, or organized under similar state law if organized in a jurisdiction other than Florida.

(c) All Applicants consisting of a non-profit and for-profit partnership will receive a 0 percent interest rate loan on the portion of the loan amount equal to the qualified non-profit's ownership interest in the Development held by the general partner or managing member entity. A 1.5 percent interest rate shall be charged for loans on the portion of the loan amount equal to the for-profit's interest in the Development held by the general partner or managing member entity. After closing, should the Applicant sell any portion of the Development ownership, the loan interest rate ratio will be adjusted to conform to the new percentage of ownership.

(3) The loans shall be non-amortizing and repayment of principal shall be deferred until maturity, unless otherwise recommended by the Credit Underwriter and approved by the Corporation. Interest payments on the loan shall be paid to the Corporation's servicer annually on the date specified in the Note.

(4) As approved by the Board of Directors, loans which finance demonstration Developments or Developments located in a state or federally declared disaster area may be provided with forgivable terms.

(5) The accumulation of all Development financing, including the HOME loan and all existing debt within a Development, may not exceed the Total Development Cost, as determined and certified by the Credit Underwriter.

(6) Before disbursing any HOME funds, there must be a written agreement with the Applicant ensuring compliance with the requirements of the HOME Program pursuant to this rule chapter and 24 CFR Part 92.

(7) A representative of the Applicant and the managing agent of the Development must attend a Corporation-sponsored training session on income certification and compliance procedures.

(8) If the Development has 12 or more HOME-Assisted Units to be developed under a single contract, the General Contractor and all available subcontractors shall attend a Corporation-sponsored preconstruction conference regarding federal labor standards provisions.

(9) The Corporation shall require adequate insurance to be maintained on the Development as determined by the first mortgage lender or the Corporation's servicer, but which shall, in any case, include fire, hazard and other insurance sufficient to meet the standards established in Part V, Section 106 of the Fannie Mae DUS Guide, effective August 16, 2007 ~~10, 2006~~, which is adopted and incorporated herein by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links.

(10) All loans must provide that any violation of the terms and conditions described in this rule chapter or 24 CFR Part 92 constitute a default under the HOME loan documents allowing the Corporation to accelerate its loan and seek foreclosure as well as any other remedies legally available to it.

(11) If a default on a HOME loan occurs, the Corporation will commence legal action to protect the interest of the Corporation. The Corporation shall acquire real and personal property or any interest in the Development if that acquisition is necessary to protect any HOME loan; sell, transfer, and convey any such property to a buyer without regard to the provisions of Chapters 253 and 270, F.S.; and, if that sale, transfer, or conveyance cannot be consummated within a reasonable time, lease the Development for occupancy by Eligible Persons.

(12) The Corporation or its servicer shall monitor the compliance of each Development with all terms and conditions of the HOME loan and shall require that such terms and conditions be recorded in the public records of the county where the Development is located. Violation of any term or condition shall constitute a default during the term of the HOME loan.

(13) The Applicant shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the HOME mortgage without prior approval of the Corporation's Board of Directors. However, an Applicant may reduce the interest rate on any superior or inferior mortgage loan without the Board's permission, provided that no other terms of the loan are changed. The Corporation must be notified of any such change. Following construction completion, the Board shall deny requests to increase the amount of any superior mortgage, unless the criteria outlined in subsection 67-48.0205(3), F.A.C., are met, the original combined loan to value ratio for the superior mortgage and the HOME mortgage is maintained or improved, and a proportionate amount of the increase in the superior mortgage is used to reduce the outstanding HOME loan balance. To calculate the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the HOME loan balance, the following calculation shall be used: divide the amount of the original HOME mortgage by the combined amount of the original HOME mortgage and the original superior mortgage; then multiply the quotient by the amount of the increase in the superior mortgage from the current balance after deducting refinancing costs. For example, if the amount of the original HOME mortgage is $2,000,000, the original superior mortgage is $4,000,000, with a current balance of $3,000,000, a proposed new superior mortgage of $5,000,000, and refinancing costs of $200,000, then the amount of the increase in the superior mortgage after deducting refinancing costs would be $1,800,000, and the proportionate amount of the increase in the superior mortgage which must be paid toward

the reduction of the HOME loan balance would be $594,000. This $594,000 would be applied first to accrued interest and then to principal.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.5089(7), (8), (9) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.020, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, _____.

67-48.0205 Sale, Transfer or Refinancing of a HOME Development.

(1) The HOME loan shall be assumable upon Development sale, transfer or refinancing if the following conditions are met:

(a) The proposed transferee meets all specific Applicant identity criteria which were required as conditions of the original loan;

(b) The proposed transferee agrees to maintain all set-asides and other requirements of the HOME loan for the period originally specified; and

(c) The proposed transferee and Application receives a favorable recommendation from the Credit Underwriter and approval by the Corporation's Board of Directors.

All assumption requests must be submitted in writing to the Director of Special Assets and contain the specific details of the transfer and assumption. In addition to any related professional fees, the Corporation shall charge a non-refundable assumption fee as outlined in the Universal Application instructions.

(2) If the Development is sold and the proposed transferee does not meet the criteria for assumption of the loan, the HOME loan shall be repaid from the proceeds of the sale. If there will be insufficient funds available from the proposed sale of the Development, the HOME loan shall not be satisfied until the Corporation has received:

(a) An appraisal prepared by an appraiser selected by the Corporation indicating that the purchase price for the Development is reasonable and consistent with existing market conditions;

(b) A certification from the Applicant that the purchase price reported is the actual price paid for the Development and that no other consideration passed between the parties and that the income reported to the Corporation during the term of the loan was true and accurate; and

(c) A certification from the Applicant that there are no Development funds available to repay the loan and the Applicant knows of no source from which funds could or would be forthcoming to pay the loan.

(3) The Board shall approve requests for mortgage loan refinancing only if Development cash flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation.

(4) The Board shall deny requests for mortgage loan refinancing which require extension of the HOME loan term or otherwise adversely affect the security interest of the Corporation unless the criteria outlined in subsection 67-48.0205(3), F.A.C., are met, the Credit Underwriter recommends that the approval of such a request is crucial to the economic survival of the Development or unless the Board determines that public policy will be better served by the extension as a result of the Applicant agreeing to further extend the Compliance Period or provide additional amenities or resident programs suitable for the resident population. Further, the Board shall limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.5089(7), (8), (9) FS. History–New 12-23-96, Amended 1-6-98, Formerly 9I-48.0205, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, Repromulgated 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, Amended 4-1-07, Repromulgated 3-30-08, _____.

67-48.022 HOME Disbursements Procedures and Loan Servicing.

(1) HOME loan proceeds shall be disbursed during the construction/rehabilitation phase in an amount per Draw on a pro-rata basis with the other financing unless otherwise approved by the Corporation or the Credit Underwriter.

(2) Ten (10) business days prior to each Draw, the Applicant shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Applicant for a Draw in a form and substance acceptable to the Corporation's servicer.

(3) The request shall set forth the amount to be paid and shall be accompanied by documentation as specified by the Corporation's servicer. Such documentation shall include invoices for labor and materials to date of the last inspection.

(4) The Corporation's servicer and the Corporation shall review the request for Draw and the Corporation's servicer shall provide the Corporation with approval of the request or an alternative recommendation of an amount to be paid after the title insurer provides an endorsement to the policy of title insurance updating the policy to the date of the current Draw and increasing the insurance coverage to an amount equal to the sum of all prior Draws and the current Draw, without additional exceptions, except those specifically approved in writing by the Corporation. For all Developments consisting of 12 or more HOME-Assisted Units to be developed under a single contract, the borrower shall submit weekly payrolls of the General Contractor and subcontractors in accordance with Federal Labor Standards as enumerated in 24 CFR § 92.354.

(5) Retainage in the amount of 10 percent per Draw shall be held by the servicer during construction until the Development is 50 percent complete. At 50 percent

completion, no additional retainage shall be held from the remaining draws. Release of funds held as retainage shall occur in accordance with the HOME loan documents.

(6) The Corporation or its servicer shall elect to withhold any Draw or portion of any Draw, in addition to the retainage, notwithstanding any documentation submitted by the borrower in connection with a request for a Draw, if:

(a) The Corporation or the servicer determines at any time that the actual cost budget or progress of construction differs from that shown on the loan documents.

(b) The percentage of progress of construction of improvements differs from that shown on the request for a Draw.

(c) Developments subject to and not in compliance with Federal Labor Standards.

(7) To the extent excess HOME funds in the budget remain unused, the Corporation has the right to reduce the HOME loan by that amount.

(8) If 100 percent of the loan proceeds have not been expended within six (6) months prior to the HUD deadline pursuant to 24 CFR § 92.500, the funds shall be recaptured by the Corporation.

(9) The request for final disbursement of HOME funds, excluding retainage, shall be submitted within 60 days of completion of construction as evidenced by certificates of occupancy.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.5089(1) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.022, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, Repromulgated 3-21-04, 2-7-05, 1-29-06, Amended 4-1-07, Repromulgated 3-30-08, _____.

67-48.023 Housing Credits General Program Procedures and Requirements.

(1) Unless the Board approves a competitive allocation process outside the Universal Cycle, an Applicant is not eligible to apply for Competitive Housing Credits if any of the following pertain to the proposed Development:

(a) The proposed Development ~~Applicant~~ has received an allocation of Housing Credits or a Competitive Housing Credit commitment ~~for the proposed Development~~, unless ~~the Applicant has provided~~ written notice has been provided to the Corporation prior to the Application Deadline for the current cycle ~~that it is~~ withdrawing ~~its~~ acceptance of such allocation or commitment and returning the HC funding from a prior cycle;

(b) ~~The Applicant has already accepted~~ A~~a~~ preliminary commitment of funding for the proposed Development through the SAIL Program, the HOME Program, or the RRLP Program has already been accepted, unless ~~the Applicant has provided~~ written notice has been provided to the Corporation prior to the Application Deadline for the current cycle ~~that it is~~ withdrawing such ~~its~~ acceptance and returning the prior SAIL Program, HOME Program, or RRLP Program funding.

(c) The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing intended to foster the development or maintenance of affordable housing, with the following exceptions. Those exceptions being (i) a LURA recorded in conjunction with ~~excluding~~ Predevelopment Loan Program the and (ii) a LURA or EUA, or both, for an existing building or buildings, originally constructed at least 25 years prior to the Application Deadline for the current Funding Cycle, where, in the current Application, the Applicant has selected and qualified for the Homeless demographic commitment with a Development category of Rehabilitation or Acquisition and Rehabilitation ~~funds, intended to foster the development or maintenance of affordable housing~~.

~~(2) Each Applicant shall comply with this rule chapter and with Section 42 of the IRC and federal regulations issued pursuant thereto and in effect at the time of the Funding Cycle. Noncompliance, outside of the compliance cure period, by an Applicant, or any Principal, Affiliate or Financial Beneficiary of an Applicant or Developer shall result in disqualification from participation in the current HC Funding Cycle and for a period of not less than one year. The Applicant and its Principals, Affiliates and Financial Beneficiaries will continue to be ineligible to participate in future HC Funding Cycles until such time as all noncompliance issues are cured.~~

(2)~~(3)~~ Each Housing Credit Development shall comply with the minimum Housing Credit Set-Aside provisions, as specified in Section 42(g)(1) of the IRC, with respect to the reservation of 20 percent of the units for occupancy by persons or families whose income does not exceed 50 percent of the area median income, or the reservation of 40 percent of the units for occupancy by persons or families whose income does not exceed 60 percent of the area median income. Further, each Housing Credit Development shall comply with any additional Housing Credit Set-Aside chosen by the Applicant in the Application.

(3)~~(4)~~ The Development shall provide safe, sanitary and decent residential rental housing and shall be developed, constructed and operated in accordance with the commitments made and the facilities and services described in the Application at the time of submission to the Corporation. Applications will not be considered approved to receive an allocation of Housing Credits until the Corporation issues a Preliminary Allocation/Preliminary Determination to the Applicant and all contingencies of such documents are satisfied. Allocations are further contingent on the Applicant complying with its Application commitments, Rule Chapter 67-48, F.A.C., and Section 42 of the IRC.

(4)~~(5)~~ All of the dwelling units within a Development shall be rented or available for rent on a continuous basis to members of the general public. The owner of the Development shall not give preference to any particular class or group in

renting the dwelling units in the Development, except to the extent that dwelling units are required to be rented to Eligible Persons. All Developments must comply with the Fair Housing Act as implemented by 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR Part 35, which are adopted and incorporated herein by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links.

(5)~~(6)~~ Each Competitive Housing Credit Development that receives a Carryover Allocation Agreement and each HC Development financed with tax-exempt bonds shall complete the Final Cost Certification Application within 75 Calendar Days after all the buildings in the Development have been placed in service. All other Developments shall complete the Final Cost Certification Application no later than the date that is 30 Calendar Days before the end of the calendar year for which the Final Housing Credit Allocation is requested. The Corporation may grant extensions for good cause upon written request.

(6) Prior to execution of the limited partnership agreement or limited liability company operating agreement between the Applicant and the limited partners/members, the Applicant must receive written approval from the Corporation or its Credit Underwriter that the Housing Credit Syndicator is in good standing with the Corporation. Proceeding with execution of a partnership agreement or operating agreement with a Housing Credit Syndicator that is not in good standing shall result in withdrawal of the Housing Credit Allocation.

(7) The Final Cost Certification Application (Form FCCA) shall be used by an Applicant to itemize all expenses incurred in association with construction or Rehabilitation of a Housing Credit Development, including Developer's and General Contractor's fees as described in Rule 67-48.0072, F.A.C. Such form shall be completed, executed and submitted to the Corporation, along with the executed Extended Use Agreement, IRS Forms 8821 for all Financial Beneficiaries, a copy of the syndication agreement disclosing the rate and all terms, the required certified public accountant opinion letter, an unqualified audit report prepared by an independent certified public accountant, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in the Form FCCA instructions. The Final Housing Credit Allocation will not be issued until such time as all required items are received and processed by the Corporation. The Final Cost Certification Application is adopted and incorporated herein by reference, effective January 2007, and is available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1321. IRS Form 8821, Rev. August 2008 ~~April 2004~~, is adopted and incorporated herein by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links.

(8) After the final evaluation and determination of the Housing Credit Allocation amount has been made by the Corporation and the Extended Use Agreement has been executed in accordance with Rule 67-48.029, F.A.C., the Forms 8609 are issued to the Applicant of the Housing Credit Development, as provided below. IRS Low-Income Housing Credit Allocation Certification Form 8609, Rev. December 2008 ~~2006~~, is adopted and incorporated herein by reference and available on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links. The Corporation will issue only one complete set of Forms 8609 per Development which will be no earlier than total Development completion, the Corporation's acceptance and approval of the Development's Final Cost Certification Application, and determination by the Corporation that all financial obligations for which an Applicant or Developer, or Principal, Affiliate or Financial Beneficiary of an Applicant or Developer is in arrears to the Corporation or any agent or assignee of the Corporation have been satisfied.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.023, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, Repromulgated 4-6-03, Amended 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, _____.

67-48.027 Tax-Exempt Bond-Financed Developments.

(1) Tax-Exempt Bond-Financed Developments, as defined in Section 42(h)(4)(B) of the IRC, which applied for 4 percent Housing Credits when applying for tax exempt bonds from the Corporation in calendar year 2000 or later shall:

(a) Have 50 percent or more of the aggregate basis of any building and the land on which the building is located financed by tax-exempt bonds;

(b) Be subject to the monitoring and credit underwriting fees as stated in Chapter 67-21, F.A.C.; however, when the regulatory period for the tax-exempt bonds terminates prior to the expiration of the Housing Credit Extended Use Period, a separate compliance monitoring fee is required for the remainder of the Housing Credit Extended Use Period;

(c) Be deemed to have met all HC Program scoring threshold requirements upon the closing of the bonds with the Corporation;

(d) Receive a Preliminary Determination upon the Corporation's issuance of a loan commitment in reference to the tax-exempt bonds;

(e) Be subject to the provisions of this rule chapter, specifically the applicable provisions of Part I and Part IV, except for Rules 67-48.0072 and 67-48.028, F.A.C.;

(f) Receive Building Identification Numbers from the Corporation upon satisfying the requirements of this section and the Final Cost Certification Application requirements of Rule 67-48.023, F.A.C.;

(g) Provide an IRS Form 8821 for each Financial Beneficiary of the Development prior to Final Housing Credit Allocation; and

(h) Pay the assigned Credit Underwriter for a comprehensive market study of the housing needs of Low Income individuals in the area to be served by the Development. The market study must be completed by a disinterested third party and a copy of the completed market study must be on file with the Corporation prior to the Final Housing Credit Allocation.

(2) Tax-Exempt Bond-Financed Developments, as defined in Section 42(h)(4)(B) of the IRC, seeking to obtain Housing Credits from the Treasury receiving the bonds from the Corporation prior to calendar year 2000 or receiving bonds from another source other than the Corporation, and not competing for Housing Credits under the state of Florida Allocation Authority shall:

(a) Have 50 percent or more of the aggregate basis of any building and the land on which the building is located financed by tax-exempt bonds;

(b) Be subject to the Application fee specified in this rule chapter;

(c) Meet the HC Program threshold requirements pursuant to the Qualified Allocation Plan and shall have completed loan closings on all required financing;

(d) Participate in the credit underwriting process pursuant to this rule chapter, unless such Development has received its tax-exempt bond financing through the Corporation, in which case the Development must be underwritten to the extent necessary to determine Development feasibility and Housing Credit need;

(e) Be subject to the credit underwriting fees as set forth in this rule chapter;

(f) Be subject to the administrative fee specified in this rule chapter;

(g) Receive a Preliminary Determination from the Corporation upon satisfying the requirements of paragraphs (a) through (f) above. A Development may receive a Preliminary Determination prior to the bonds being issued and the submission of an Application, if the Corporation receives a credit underwriting report prepared by one of the Corporation's contracted Credit Underwriters which recommends a Housing Credit Allocation and the issuance of tax-exempt bonds, and receives evidence of a loan commitment in reference to the tax-exempt bonds. The administrative fee must be paid within seven days of the date of the Preliminary Determination;

(h) Be subject to a Developer fee limitation as specified in this rule chapter;

(i) Be subject to the provisions of this rule chapter, specifically the applicable provisions of Part I and Part IV, except for Rule 67-48.028, F.A.C.;

(j) Provide an IRS Form 8821 for each Financial Beneficiary of the Development prior to Final Housing Credit Allocation;

(k) Be subject to the provisions in this rule chapter, pertaining to the required Extended Use Agreement;

(l) Be subject to the monitoring fee specified in this rule chapter, unless such Development has received tax-exempt bond financing through the Corporation; however, when the regulatory period for Corporation-issued tax-exempt bond financing terminates prior to the expiration of the Housing Credit Extended Use Period, a separate compliance monitoring fee is required for the remainder of the Housing Credit Extended Use Period;

(m) After bonds are issued to the Development, make Application to the Corporation as required in Rules 67-48.004 and 67-48.0072, F.A.C. Applicant shall submit its Application completed in accordance with the Universal Application Package instructions for receipt by the Corporation no later than July 1 of the year the Development is placed in service; and

(n) Receive Building Identification Numbers from the Corporation upon satisfying the requirements of this section and the Final Cost Certification Application requirements of Rule 67-48.023, F.A.C.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.027, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, Repromulgated 4-6-03, 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, Amended 4-1-07, 3-30-08, _____.

67-48.028 Carryover Allocation Provisions.

(1) If an Applicant cannot complete its Development by the end of the year in which the Preliminary Allocation is issued, the Applicant must enter into a Carryover Allocation Agreement with the Corporation by December 31st ~~29th~~ of the year in which the Preliminary Allocation is issued. The Carryover Allocation allows the Applicant up to the end of the second year following the Carryover Allocation to have the Development placed-in-service.

(2) An Applicant shall have tax basis in the Housing Credit Development which is greater than 10 percent of the reasonably expected basis in the Housing Credit Development within six (6) months of the date of the execution of the Carryover Allocation Agreement, unless extended as provided in the Carryover Allocation Agreement, or the Housing Credits will be deemed to be returned to the Corporation. Certification that the Applicant has met the greater than 10 percent basis requirement shall be signed by the Applicant's attorney or certified public accountant.

(3) All supporting Carryover documentation and the signed certification evidencing the required basis must be submitted to the Corporation within six (6) months of the date of the execution of the Carryover Allocation Agreement, unless extended as provided in the Carryover Allocation Agreement, or the Housing Credits will be deemed to be returned.

(4) The Applicant for each Development for which a Carryover Allocation Agreement has been executed shall submit quarterly progress reports to the Corporation using Progress Report Form Q/M Report, which will be provided by the Corporation. If the Form Q/M Report does not demonstrate continuous and adequate development and construction progress, the Corporation will require monthly submission of Form Q/M Report until satisfactory progress is achieved, until the Development is placed in service, or until a determination is made by the Corporation that the Development cannot be placed in service by the Carryover deadline and the Housing Credits are returned to the Corporation in accordance with the terms of the Carryover Allocation Agreement. Form Q/M Report shall include a written statement describing the current status of the Development; the financing, construction and syndication activity since the last report; the reasons for any changes to the anticipated placed-in-service date; and any other information relating to the status of the Development which the Corporation may request. The first report shall be due to the Corporation by the first Monday in April of the calendar year following Carryover qualification.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 9I-48.028, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, Repromulgated 3-21-04, Amended 2-7-05, Repromulgated 1-29-06, Amended 4-1-07, Repromulgated 3-30-08, Amended _____.

67-48.029 Extended Use Agreement.

(1) Pursuant to Section 42(h)(6) of the IRC, the Applicant and the Corporation shall enter into an Extended Use Agreement. The purpose of the Extended Use Agreement is to set forth the Housing Credit Extended Use Period, the Compliance Period, and to evidence commitments made by the Applicant in the Application. Such commitments, for example, include the Housing Credit Set-Aside commitment, resident programs, and Development amenities.

(2) The following provisions shall be included in the Extended Use Agreement:

(a) The Applicable Fraction for Housing Credit Set-Aside units for each taxable year in the Housing Credit Extended Use Period shall not be less than the Applicable Fraction;

(b) Eligible Persons occupying set-aside units shall have the right to enforce in any state of Florida court the extended use requirement for set-aside units;

(c) The Extended Use Agreement shall be binding on all successors and assigns of the Applicant; and

(d) The Extended Use Agreement shall be executed prior to the issuance of a Final Housing Credit Allocation to an Applicant. Following execution, the Extended Use Agreement shall be recorded pursuant to Florida law as a restrictive covenant.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 9I-48.029, Amended 11-9-98, 2-24-00, Repromulgated 2-22-01, 3-17-02, 4-6-03, Amended 3-21-04, 2-7-05, Repromulgated 1-29-06, 4-1-07, 3-30-08, _____.

67-48.030 Sale or Transfer of a Housing Credit Development.

An owner of a Housing Credit Development, its successor or assigns which has been granted a Final Housing Credit Allocation shall not sell the Housing Credit Development without having first notified the Treasury of the impending sale and complying with the Treasury's procedure or procedures for completing the transfer of ownership and utilizing the Housing Credit Allocation. The owner of a Housing Credit Development shall notify the Corporation in writing of an impending sale and of compliance with any requirements by the Treasury for the transfer of the Housing Credit Development. The owner of a Housing Credit Development shall notify the Corporation in writing of the name and address of the party or parties to whom the Housing Credit Development was sold within 14 Calendar Days of the transfer of the Housing Credit Development.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 9I-48.030, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, Repromulgated 3-17-02, 4-6-03, 3-21-04, 2-7-05, 1-29-06, 4-1-07, 3-30-08, _____.

67-48.031 Termination of Extended Use Agreement and Disposition of Housing Credit Developments.

The Housing Credit Extended Use Period for any building shall terminate upon the date a building is acquired through foreclosure or instrument in lieu of foreclosure or if no buyer can be found who is willing to maintain the Housing Credit Set-Aside of the Development. In the event the Applicant is unable to locate a buyer willing to maintain the set-aside provisions of the Extended Use Agreement, the following steps shall be taken, as set forth in Section 42(h)(6) of the IRC, before a building is converted to market-rate use:

(1) After the fourteenth year of the Compliance Period, unless otherwise obligated under the Extended Use Agreement, a Land Use Restriction Agreement under another Corporation program, or if Applicant has already knowingly and voluntarily waived its right to request the Corporation find a buyer to acquire the Applicant's interest in the Housing Credit Set-Aside portion of the building, an Applicant may submit a written request to the Corporation to find a buyer to acquire the Applicant's interest in the Housing Credit Set-Aside portion of

the building. When submitting a written request, Applicants shall utilize the Qualified Contract Package in effect at the time of the written request and shall remit payment of the required Qualified Contract Package fee. The Qualified Contract Package consists of the forms and instructions, obtained from the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or on the Corporation's Website under the 2009 ~~2008~~ Universal Application link labeled Related References ~~Information~~ and Links, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to request the Corporation find a buyer to acquire the Applicant's interest in the Housing Credit Set-Aside portion of the building. The Qualified Contract Package, Rev. 09-07, is adopted and incorporated herein by reference.

(2) All information contained in a Qualified Contract Package request is subject to independent review, analysis and verification by the Corporation or its agents. The Corporation shall request additional information to document the qualified contract price calculation or other information submitted, if the submitted documentation does not support the price indicated by the certified public accountant (CPA) hired by the owner. The Corporation shall then engage its own CPA to perform a qualified contract price calculation. Cost of such service shall be paid for by the owner. Following the Corporation's receipt and complete review of the completed Qualified Contract Package, the Corporation shall have one year to present a "qualified contract", as defined in Section 42(h)(6)(F) of the IRC, for the Development. The one year time period shall commence upon the Corporation's receipt and final review of all of the accompanying information required by the Qualified Contract Package and the Corporation and the owner have agreed to the qualified contract price in writing.

(3) The Corporation shall not agree to the qualified contract price in writing until the Applicant or Developer has satisfied any financial obligations for which the Applicant or Developer, or Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer is in arrears to the Corporation or any agent or assignee of the Corporation.

(4) The Applicant is responsible for all real estate broker fees incurred from the sale of the Development.

(5) At the conclusion of the review process established by Rule 67-48.031, F.A.C., each Applicant will be provided with its qualified contract price calculation and notice of rights.

(6) Written arguments to any recommended order entered pursuant to a Section 120.57(2), F.S., proceeding concerning its qualified contract price calculation shall be typed and double-spaced with margins no less than one inch in either Times New Roman 14-point or Courier New 12-point font and may not exceed five (5) pages, excluding the caption and certificate of service. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m., Eastern Time, no later than five (5) Calendar Days from the date of issuance of the recommended order. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. The one year time period the Corporation has to present a "qualified contract" will toll upon the filing of a petition to contest a qualified contract price calculation and will recommence upon the issuance of the Board's final order.

(7) The Applicant shall cooperate with the Corporation and its agents with respect to the Corporation's efforts to present a "qualified contract" for the purchase of the Applicant's interest in the Housing Credit Set-Aside portion of the Development and the Applicant's failure to cooperate will toll the one year time period the Corporation has to present a "qualified contract". The Corporation shall actively seek to obtain a qualified buyer for acquisition of the Housing Credit Set-Aside portion of the building for an amount not less than the Applicable Fraction as specified in the Extended Use Agreement of:

(a) The sum of the outstanding indebtedness secured by the building;

(b) The adjusted investor equity in the building; and

(c) Other capital contributions not reflected in the amounts above, and reduced by cash distributions from the Development.

(8) If the Corporation presents a "qualified contract" and the Applicant fails to enter into a bona fide contract to acquire the Development, as defined in Section 42(h)(6)(F) of the IRC, the Applicant shall irrevocably waive any right to further request that the Corporation present a "qualified contract" for the purchase of the Applicant's interest in the Housing Credit Set-Aside portion of the Development and the Development will remain subject to the requirements of the Extended Use Agreement.

(9) In the event no buyer is found to acquire the Housing Credit Set-Aside portion of the building within one year as described herein, the Housing Credit Extended Use Period shall be terminated, and the units converted to market-rate.

(10) Pursuant to Section 42(h)(6)(E)(ii) of the IRC, the termination of an Extended Use Agreement shall not be construed to permit the termination of a tenancy, the eviction of any existing resident of any set-aside unit, or any increase in the gross rent with respect to any set-aside unit before the close of the three-year period following such termination. In no case shall any portion of a Housing Credit Development be disposed of prior to the expiration of the Extended Use Agreement.

Rulemaking ~~Specific~~ Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 9I-48.031, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, Amended 2-7-05, 1-29-06, 4-1-07, 3-30-08, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Deborah Dozier Blinderman, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: David Oellerich, Chairman of the Board, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 13, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 34, No. 36, September 5, 2008

FLORIDA HOUSING FINANCE CORPORATION

RULE NOS.:	RULE TITLES:
67-53.003	Compliance Procedures
67-53.0035	Florida Housing Finance Corporation
67-53.004	Right to Inspect and Monitor Elderly Housing Community Loan (EHCL) Funded Developments
67-53.006	Compliance and Monitoring Procedures for the Pre-Development Loan Program (PLP)
67-53.007	Compliance Procedures
67-53.008	Compliance and Reporting Requirements
67-53.009	Compliance and Reporting Requirements for State Apartment Incentive Loan (SAIL) Program, HOME Investment Partnerships (HOME) Rental Program, Multifamily Mortgage Revenue Bond (MMRB) Program, Housing Credit (HC) Program, Rental Recovery Loan Program (RRLP), and Elderly Housing Community Loan (EHCL) Program
67-53.010	Forms

PURPOSE AND EFFECT: The purpose of this Rule is to establish the compliance procedures by which Florida Housing or any duly authorized representative of Florida Housing shall be permitted at any reasonable time to inspect and monitor developments and tenant records and facilities.

SUMMARY: Florida Housing recognizes a need for technical revisions and to require developers to provide Florida Housing with audited statements and a cash flow form so Florida Housing can monitor the credit quality of the portfolio and to assist Florida Housing in making policy decisions as the markets dictate.

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: 420.507(12), 420.508(3)(a) FS.

LAW IMPLEMENTED: 420.507(4), (13), (14), 420.508, 420.509 FS.

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

DATE AND TIME: April 20, 2009, 2:00 p.m.

PLACE: Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 6000, Tallahassee, Florida 32301. The hearing will be accessible via phone at 1(888)808-6959, Conference Code #6884197

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: Laura Cox, Director of Asset Management & Guarantee Program, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 6000, Tallahassee, Florida 32301-1329, (850)488-4197. 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: Laura Cox, Director of Asset Management & Guarantee Program, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 6000, Tallahassee, Florida 32301-1329, (850)488-4197

THE FULL TEXT OF THE PROPOSED RULES IS:

67-53.003 Compliance Procedures.

~~(1) Any duly authorized representative of Florida Housing shall be permitted at any reasonable time to inspect and monitor Development and tenant records and facilities. All tenant records shall be maintained by the owner of the Development within 50 miles of the Development site.~~

~~(2) Florida Housing or its representative shall conduct on site Development inspections at least annually.~~

~~(3) Florida Housing must approve the selection or replacement of a management company prior to such company assuming responsibility for the Development, using the following criteria:~~

~~(a) Review of company information including key management personnel, management experience and procedures;~~

~~(b) Review of company forms such as application for apartment residence, income verification forms, lease, etc.;~~

~~(c) Key management company representative attendance at a Florida Housing compliance workshop; and~~

~~(d) A meeting between Florida Housing compliance staff and the key management company representative.~~

~~(4) Florida Housing shall document approval of the management company to the owner of the Development after successful completion of items (3)(a)-(d).~~

~~(5) The owner of the Development shall maintain complete and accurate income records pertaining to each tenant occupying a Set-Aside unit. Records for each occupied Set-Aside unit shall contain the following documentation:~~

~~(a) The tenant's application containing the name or names of each household member, employment and income information for each household member, and other information required by the owner of the Development;~~

~~(b) An executed lease agreement listing the term of the tenancy and all of the tenants residing in the unit;~~

~~(c) Verification of the income of each tenant as is acceptable to prove income under section 8 of the U.S. Housing Act of 1937, which is adopted and incorporated herein by reference, as in effect on the date of this rule chapter;~~

~~(d) Information as to the assets owned by each tenant; and~~

~~(e) Income Certification Form TIC-1 for each tenant.~~

~~(6) The Applicant shall submit Program Reports, pursuant to the following:~~

~~The initial Program Report shall be submitted prior to the time of Loan closing if the Development is occupied, or by the 25th of the month following rental of the initial unit in the Development. Subsequent Program Reports shall be submitted each month and are due no later than the 25th of each month thereafter. The Program Reports shall be accompanied by the Recap of Tenant Income Certification Information, Form AR 1, and the certificate of continuing program compliance and copies of all Tenant Income Certifications executed since the last Program Report and shall be sent to Florida Housing, the Trustee and the monitoring agent.~~

~~(7) The Developer shall, at least monthly, submit to Florida Housing, the Trustee and the monitoring agent, a certificate of continuing program compliance stating the percentage of dwelling units that are:~~

~~(a) Occupied by Lower-Income Residents.~~

~~(b) Being held vacant for occupancy by Lower Income Residents.~~

~~(c) Occupied by other persons.~~

~~(8) Florida Housing shall monitor compliance of all terms and conditions of the Loan and in the Land Use Restriction Agreement, which Land Use Restriction Agreement shall be recorded in the public records of the county wherein the Development is located. The Land Use Restriction Agreement shall be recorded first. Violation of any term or condition of the documents evidencing or securing the Loan shall constitute a default during the term of the Loan. Florida Housing shall take legal action to effect compliance if a violation of any term or condition relative to the Set-Aside of units for Lower Income Residents is discovered during the course of compliance monitoring or by any other means.~~

~~(9) Borrowers shall annually certify that the household gross income of each household occupying a unit set aside for Lower Income Residents meets income requirements specified in the Code. Should the annual recertification of such households result in noncompliance with income occupancy requirements, the next available unit must be rented to a qualifying household in order to ensure continuing compliance of the Development.~~

~~(10) The compliance monitoring for MMRB will begin following loan closing or, if the Development is occupied, prior to loan closing.~~

Rulemaking ~~Specific~~ Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507(4), (13), (14), 420.508, 420.509 FS. History–New 1-7-98, Formerly 9I-21.016, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, 4-6-03, Repromulgated 3-21-04, Formerly 67-21.016, Repealed _____.

67-53.0035 Florida Housing Finance Corporation.

For the purposes of this Rule Chapter, the "Corporation" means the Florida Housing Finance Corporation as defined in Section 420.503(10), F.S.

Rulemaking Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507(4), (13), (14), 420.508, 420.509 FS. History–New _____.

67-53.004 Right to Inspect and Monitor Elderly Housing Community Loan (EHCL) Funded Developments.

The Corporation ~~Florida Housing~~ or its agents shall have the right to inspect and monitor the records and facilities of all Elderly Housing Community Loan (EHCL), as established in Rule Chapter 67-32, F.A.C., funded d~~D~~evelopments. Inspections shall occur while the repairs or improvements are being made and may occur after completion of the repairs or improvements.

Rulemaking ~~Specific~~ Authority 420.5087(3)(d) FS. Law Implemented 420.5087(3)(d) FS. History–New 10-2-89, Formerly 9I-32.010, Amended 11-9-98,1-2-00, Repromulgated 12-31-00, Amended 3-17-02, Repromulgated 5-5-03, Formerly 67-32.010, Amended _____.

67-53.006 Compliance and Monitoring Procedures for the Pre-Development Loan Program (PLP).

(1) Units within the d~~D~~evelopment that are occupied at the time of the Pre-Development Loan Program ("PLP") Loan closing as defined in Rule Chapter 67-38, F.A.C., shall meet d~~D~~evelopment s~~S~~et-a~~A~~side requirements at that time.

(2) For new construction or rehabilitation of rental units not occupied at the time of PLP Loan closing, the Applicant shall notify the Corporation prior to the leasing of any units in the dDevelopment. The units shall be leased by income eligible tenants.

(3) For rental PLP dDevelopments which obtain subsequent construction or permanent financing from Corporation programs, the compliance and monitoring requirements of the program or programs under which funding is received shall apply.

(4) For rental PLP dDevelopments that obtain subsequent construction or permanent financing from sources other than Corporation programs and no Corporation funds remain in the dDevelopment:

(a) Any duly authorized representative of the Corporation shall be permitted at any reasonable time to inspect and monitor the records and facilities of the PLP dDevelopment for compliance with the following conditions:;

1. For home ownership PLP dDevelopments: The Corporation and or its representative shall perform an initial review to determine home buyer eligibility and verify permanent residency.

2. For multifamily rental PLP dDevelopments: The Corporation or its representative shall monitor tenant records and facilities for compliance during the Compliance Period with the following conditions:

a. All tenant records shall be maintained by the Applicant within 50 miles of the PLP dDevelopment sSite.

b. The Corporation or its representative shall conduct on-site PLP dDevelopment inspections at least annually.

c. The Corporation must approve the Applicant's selection of a management company prior to the company assuming responsibility for the PLP dDevelopment based upon the following criteria:

(i) Review of the company information including key management personnel, management experience and procedures;

(ii) Review of company forms such as application for apartment residence, income verification forms, lease, etc.;

(iii) Key management company representative attendance at a Corporation compliance workshop; and

(iv) A meeting between Corporation compliance staff and the key management company representative after the compliance workshop.

(b) The Applicant or an authorized representative, if any, shall attend a compliance training workshop or meet with a representative from the Corporation or the monitoring agent for a compliance training conference prior to initial leasing of any units.

(c) The Applicant shall maintain complete and accurate income records pertaining to each tenant occupying a set-aside unit. Records for each occupied set-aside unit shall contain at least the following documentation:

1. The tenant's application which shall contain the name or names of each household member, employment and income information for each household member, and other information required by the Applicant;

2. A copy of the lease agreement listing the term of the tenancy and each tenant residing in the unit;

3. Verification of the income of each tenant as is acceptable to prove income under Section 8 of the U.S. Housing Act of 1937, as amended;

4. Information as to the assets owned by each tenant; and

5. Income Certification Form TIC-1 for each tenant. ~~Form TIC-1, which is hereby incorporated by reference, can be obtained from the Corporation.~~ For dDevelopments participating in Section 8 and RD Programs, the HUD Forms 50058 or 50059 or RD (or FmHA) Form 1944-8 may be used in lieu of Form TIC-1 as long as proper documentation is maintained in the tenant files.

(d) With respect to rental PLP dDevelopments, program reports shall be submitted as follows:

1. Initial program reports for rehabilitation/acquisition PLP dDevelopments with units occupied at the time of the execution of the Invitation to Participate shall be submitted at the time of execution of the Invitation to Participate.

2. Initial program reports shall be submitted for dDevelopments with no units occupied at the time of the closing of the PLP Loan within 10 days following the end of the calendar quarter during which the leasing of any unit within the PLP dDevelopment occurred.

3. Subsequent program reports shall be submitted each year during the cCompliance pPeriod and are due on the dates assigned by the Corporation according to an alphabetical breakdown by property.

(5) For homeownership PLP dDevelopments, the initial sale of all units shall be to income eligible purchasers.

Rulemaking ~~Specific~~ Authority 420.528 FS. Law Implemented 420.528 FS. History–New 1-16-96, Formerly 9I-38.0145, Amended 3-26-98, 7-17-00, 7-21-03, Formerly 67-38.0145, Amended _____.

67-53.007 Compliance Procedures.

~~(1) The Corporation or the servicer shall inspect and monitor the records and facilities all of the funded Projects. Such inspections may occur without notice at any reasonable time. The information shall be reported in the format and time specified in the Florida Housing Finance Corporation's Compliance Manual which can be requested from the Corporation's Compliance Supervisor. Failure to meet the requirements related to compliance shall constitute a default on the loan by the borrower.~~

~~(2) At a minimum, the units specified in the minimum set-aside requirement must be held for very low income persons or households for a period of time equal to the longest of the following:~~

~~(a) The term of the SAIL/Hurricane Andrew Recovery and Rebuilding Program loan; or~~

~~(b) 12 years; or~~

~~(c) Such longer term agreed to by the Applicant.~~

Rulemaking ~~Specific~~ Authority 420.507 FS. Law Implemented 420.5087 FS., Chapter 93-186, Laws of Florida. History–New 1-25-94, Formerly 9I-43.011, 67-43.011, Repealed _____.

67-53.008 Compliance and Reporting Requirements for State Apartment Incentive Loan (SAIL) Program, HOME Investment Partnerships (HOME) Rental Program, Multifamily Mortgage Revenue Bond (MMRB) Program, Housing Credit (HC) Program, Rental Recovery Loan Program (RRLP), and Elderly Housing Community Loan (EHCL) Program.

(1) The Corporation shall monitor compliance of all terms and conditions of the Loans and of regulatory agreements, which regulatory agreements shall be recorded in the public records of the county wherein the development is located. Violation of any term or condition of the documents evidencing or securing the Loans shall constitute a default during the term of the Loans. The Corporation shall take legal action to effect compliance if a violation of any term or condition relative to the set-aside of units for qualified households is discovered during the course of compliance monitoring or by any other means. Any duly authorized representative of the Corporation shall be permitted at any time during normal business hours to inspect and monitor the construction or rehabilitation of any ~~a~~ d~~D~~evelopment that has received funding from the Corporation. Any duly authorized representative of the Corporation or the Treasury shall be permitted at any time during normal business hours to inspect and monitor d~~D~~evelopment and resident records and facilities. All resident records shall be maintained by the owner of the d~~D~~evelopment within 50 miles of the d~~D~~evelopment site.

(2) On-site inspections for Housing Credit ("HC") d~~D~~evelopments, as defined in Rule Chapter 67-48, F.A.C:

(a) An authorized representative of the Corporation will, at the Applicant's expense, conduct four on-site construction inspections during the construction or rehabilitation of a c~~C~~ompetitive HC d~~D~~evelopment. Any required re-inspection due to a finding of non-compliance will be at the Applicant's expense.

(b) An authorized representative of the Corporation will, at the Applicant's expense, conduct a minimum of one on-site construction inspection of a n~~N~~on-c~~C~~ompetitive HC d~~D~~evelopment which has not received any other Corporation ~~Florida Housing~~ financing. Any required re-inspection due to a finding of non-compliance will be at the Applicant's expense.

(3) For programs other than EHCL, t~~T~~he Corporation or its representative shall conduct a management review and physical inspection of each ~~on-site~~ d~~D~~evelopment ~~inspections~~ at a minimum of every three years, with a typical frequency of annual reviews, to inspect and monitor development and resident records, units, and facilities.

(4) The Corporation must approve the selection or replacement of a management company prior to such company assuming responsibility for the d~~D~~evelopment, using the following criteria:

(a) through (d) No change.

(5) The Corporation will document approval of the management company to the owner of the d~~D~~evelopment after successful completion of items (4)(a)-(d).

(6) The owner of the d~~D~~evelopment shall maintain complete and accurate income records pertaining to each resident occupying a Low-Income or Very Low-Income unit. Records for each occupied Low-Income or Very Low-Income unit shall contain the following documentation:

(a) The resident's rental application containing the name or names of each household member, employment and income information for each household member, and other information required by the owner of the d~~D~~evelopment;

(b) through (d) No change.

(e) ~~Income Certification Form~~ TIC-1 for each resident.

(7) The Applicant shall submit Program Reports pursuant to the following:

(a) For those developments receiving competitive HC, t~~T~~he initial HC PR-1 ~~Program Report~~ shall be prepared as of the last day of the calendar month during which execution of the Carryover (as defined in Rule Chapter 67-48, F.A.C.) allocation agreement occurred, if the development is occupied; or the rental of the initial unit in the development occurred, whichever is later ~~submitted upon request of the compliance monitor or Florida Housing prior to the initial management review and physical inspection, but no later than 120 days following the leasing of any unit~~. For those developments receiving an allocation of non-competitive HC without any Corporation-issued loans, the initial HC PR-1 shall be prepared as of the last day of the calendar month during which final housing credit allocation occurred. Subsequent PR-1's ~~Program Reports~~ shall be prepared as of the last day of the calendar month ~~submitted each year of the Housing Credit Compliance Period and shall be~~ PR-1's are due no later than the 15th of each month throughout the regulatory period. Annually on dates assigned by the Corporation, ~~.~~ t~~T~~he monitoring agent's copy of each PR-1 ~~Program Reports~~ shall be accompanied by ~~copies of~~ TIC-1 ~~Tenant Income Certifications~~ copies for ten (10) percent of the executed TIC-1's that were effective during the reporting year ~~month since the last Program Report for at least 10% of the Housing Credit Set-Aside units in the Development (to be sent to the monitoring agent only).~~; ~~and~~ The ~~the~~ AOC-1 ~~Annual Owner Compliance Certification Form~~ shall, ~~to~~ be signed by the owner of the HC d~~D~~evelopment, certifying that for the preceding 12 month period the HC d~~D~~evelopment met its

Housing Credit sSet-aAside requirements (to be sent to the Corporation only). Forms PR-1 and AOC-1 shall be provided by the Corporation and shall be submitted for all HC dDevelopments receiving Housing Credit Allocations since January 1, 19908~~7~~.

(b) The failure of the initial or any subsequent HC Program Reports to confirm compliance as required in paragraph (a) above, shall, upon written notice of such failure from the Corporation ~~Florida Housing~~ or its agent to the Applicant, require correction of the failure within 90 days of such written notice. This shall be deemed the "correction period." During the correction period:

1. An Applicant may request a 60-day extension of the correction period by submitting a written request to the Corporation's Compliance Monitoring ~~Department~~ Administrator. Such written request must be r~~R~~eceived by the Corporation's Compliance Monitoring ~~Department~~ Administrator at least 7 days prior to the expiration of the correction period.

2. The Corporation ~~Florida Housing~~ shall consider the nature of the failure of compliance and the Applicant's past compliance history in determining whether to grant a 60-day extension of the correction period. The HC dDevelopment shall not be deemed non-compliant prior to the expiration of the correction period, unless otherwise required by 26 CFR 1.42-5. If the failure to comply is not, however, corrected within the correction period, or any extension of the correction period, such HC dDevelopment shall then be deemed to be in non-compliance and be reported to the Board.

(8)~~(c) If the Development is occupied at loan closing,~~ For HOME Investment Partnerships ("HOME") Rental Program, as defined in Rule Chapter 67-48, F.A.C., the ~~The~~ initial HOME PR-1 ~~Program Report~~ shall be prepared as of the last day of the calendar month during which the ~~submitted prior to the pre-loan closing review and an updated Program Report shall be submitted as of the date of~~ loan closing occurred, ~~or~~ if the development is ~~not~~ occupied ~~at loan closing;~~, or the rental of the initial ~~upon request of the compliance monitor or Florida Housing prior to the initial management review and physical inspection, but no later than 120 days following the leasing of any~~ unit in the development occurred, whichever is later. Subsequent HOME PR-1's shall be prepared as of the last day of each calendar month. HOME PR-1's are due no later than the 15th of each month throughout the regulatory period. Annually, on dates assigned by the Corporation, the monitoring agent's copy of each PR-1 shall be accompanied by TIC-1 copies for ten (10) percent of the executed TIC-1's that were effective during the reporting year. HOME PR-1's ~~HOME Program Reports~~ shall confirm compliance as follows:

(a)~~1.~~ If the dDevelopment is not occupied at loan closing, the initial HOME PR-1 ~~Program Report~~ and all subsequent HOME PR-1 ~~Program Report~~ shall confirm compliance with the set-aside requirements and other dDevelopment requirements, if any, as set forth in the LURA.

(b)~~2.~~ If the dDevelopment is occupied at loan closing, compliance with the set-aside requirements and other dDevelopment requirements, if any, as set forth in the LURA, shall be confirmed by the first HOME PR-1 ~~Program Report~~ submitted 12 months following the expiration of the last then-existing tenant lease, without regard to any extension of the term of any then-existing tenant lease. The calculation of the above 12-month period shall begin with the date of the HOME loan closing.

~~3. Subsequent Program Reports shall be submitted each year of the period of affordability and the Compliance Period and shall be due no later than the dates assigned by the Corporation. All subsequent HOME Program Reports shall confirm compliance with the set-aside requirements and other Development requirements, if any, as set forth in the LURA.~~

~~4. The Program Reports shall be accompanied by copies of Tenant Income Certifications executed since the last Program Report for at least 10% of the HOME-Assisted Units in the Development (to be sent to the monitoring agent only).~~

(c)~~5~~. The failure of the initial or any subsequent HOME PR-1 ~~Program Report~~ to confirm compliance as required in this subsection, shall, upon written notice of such failure from the Corporation ~~Florida Housing~~ or its agent to the borrower, require correction of the failure within 90 days of such written notice. This shall be deemed the "correction period." During the correction period:

1.~~a.~~ A borrower may request a 60-day extension of the correction period by submitting a written request to the Corporation's Compliance Monitoring ~~Department~~ Administrator. Such written request must be r~~R~~eceived by the Corporation's Compliance Monitoring ~~Department~~ Administrator at least 7 days prior to the expiration of the correction period.

2.~~b.~~ The Corporation ~~Florida Housing~~ shall consider the nature of the failure of compliance and the borrower's past compliance history in determining whether to grant a 60-day extension of the correction period. The dDevelopment shall not be deemed non-compliant prior to the expiration of the correction period. If the failure to comply is not, however, corrected within the correction period, or any extension of the correction period, such dDevelopment shall then be deemed to be in non-compliance and be reported to the Board.

(9)~~(d)~~ For State Apartment Incentive Loan ("SAIL") Program ~~If the~~ dDevelopments, as defined in Rule Chapter 67-48, F.A.C. and Rental Recovery Loan Program ("RRLP") as established in Rules 67ER06-13 through 67ER06-24 and 67ER06-25 through 67ER06-41, ~~is not occupied at loan closing,~~ the initial SAIL or RRLP PR-1 ~~Program Report~~ shall

be prepared as of the last day of the calendar month during which loan closing occurred, ~~15th of the month after the first unit is occupied and submitted by the 25th of that month.~~ ~~i~~If the SAILor RRLP d~~D~~evelopment is occupied; or the rental of the initial unit occurred, whichever is later ~~at the time of loan closing, the initial SAIL Program Report shall be submitted prior to the time of the pre-loan closing review and an updated Program Report shall be submitted as of the date of the loan closing~~. Subsequent SAIL or RRLP PR-1's shall be prepared as of the last day of each calendar month. SAIL or RRLP PR-1's are due no later than the 15th of each month throughout the regulatory period. Annually, on dates assigned by the Corporation, the monitoring agent's copy of each SAIL or RRLP PR-1 shall be accompanied by TIC-1 copies for ten (10) percent of the executed TIC-1's that were effective during the reporting year. SAIL or RRLP PR-1's ~~Program Report~~ shall confirm compliance as follows:

(a)~~1.~~ If the d~~D~~evelopment is not occupied at loan closing, the initial SAIL or RRLP PR-1 ~~Program Report~~ and all subsequent SAIL or RRLP PR-1 ~~Program Report~~s shall confirm compliance with the set-aside requirements and other SAIL d~~D~~evelopment requirements, if any, as set forth in the regulatory agreement ~~LURA~~.

(b)~~2.~~ If the SAIL or RRLP d~~D~~evelopment is occupied at the time of loan closing, compliance with the set-aside requirements and other SAIL or RRLP d~~D~~evelopment requirements, if any, as set forth in the regulatory agreement ~~LURA~~, shall be confirmed by the first SAIL or RRLP PR-1 ~~Program Report~~ submitted 12 months following the expiration of the last then-existing tenant lease, without regard to any extension of the term of any then-existing tenant leases. The calculation of the above 12-month period shall begin with the date of the loan closing.

~~3. Subsequent Program Reports shall be prepared as of the 15th of each month and are due no later than the 25th of each month thereafter. All subsequent SAIL Program Reports shall confirm compliance with the set-aside requirements and other Development requirements, if any, as set forth in the LURA.~~

~~4. The Program Reports shall be accompanied by copies of all Tenant Income Certifications executed since the last Program Report for at least 10% of the Development's SAIL set-aside units (to be sent to the monitoring agent).~~

(c)~~5~~. The failure of the initial or any subsequent SAIL or RRLP PR-1's ~~Program Reports~~ to confirm compliance as required in this subsection, shall, upon written notice of such failure from the Corporation ~~Florida Housing~~ or its agent to the borrower, require correction of the failure within 90 days of such written notice. This shall be deemed the "correction period." During the correction period:

1.~~a.~~ A borrower may request a 60-day extension of the correction period by submitting a written request to the Corporation's Compliance Monitoring ~~Department~~ Administrator. Such written request must be r~~R~~eceived by the Corporation's Compliance Monitoring ~~Department~~ Administrator at least 7 days prior to the expiration of the correction period.

2.~~b.~~ The Corporation ~~Florida Housing~~ shall consider the nature of the failure of compliance and the borrower's past compliance history in determining whether to grant a 60-day extension of the correction period. The SAIL or RRLP d~~D~~evelopment shall not be deemed non-compliant prior to the expiration of the correction period. If the failure to comply is not, however, corrected within the correction period, or any extension of the correction period, such SAIL or RRLP d~~D~~evelopment shall then be deemed to be in non-compliance and be reported to the Board.

(10) For those developments receiving Multifamily Mortgage Revenue Bond Program ("MMRB"), as defined in Rule Chapter 67-21, F.A.C., funds from the Corporation, the initial MMRB PR-1 shall be prepared as of the last day of the calendar month during which bond closing occurred, if the MMRB development is occupied; or rental of the initial unit in the development occurred, whichever is later. Subsequent MMRB PR-1's shall be prepared as of the last day of each calendar month. MMRB PR-1's are due no later than the 15th of each month throughout the regulatory period. The monitoring agent's and Trustee's copy of each MMRB PR-1 shall be accompanied by the certificate of continuing program compliance. Annually, on dates assigned by Corporation, the monitoring agent's and Trustee's copy of the MMRB PR-1 shall be accompanied by TIC-1 copies for ten (10) percent of the executed TIC's that were effective during the reporting year.

(a) The failure of the initial or any subsequent MMRB PR-1 to confirm compliance as required in this subsection, shall, upon written notice of such failure from the Corporation or its agent to the borrower, require correction of the failure within 90 days of such written notice. This shall be deemed the "correction period." During the correction period:

(b) A borrower may request a 60-day extension of the correction period by submitting a written request to the Corporation's Compliance Monitoring Administrator. Such written request must be received by the Compliance Monitoring Administrator at least 7 days prior to the expiration of the correction period.

(c) The Corporation shall consider the nature of the failure of compliance and the borrower's past compliance history in determining whether to grant a 60-day extension of the correction period. The development shall not be deemed non-compliant prior to the expiration of the correction period. If the failure to comply is not, however, corrected within the correction period, or any extension of the correction period, such development shall then be deemed to be in non-compliance and be reported to the Board.

(11)~~(8)~~ HC d~~D~~evelopments shall ~~will~~ submit copies of each building's completed IRS Low-Income Housing Credit ~~Allocation~~ Certification Form 8609, Rev. 12-2008 ~~1-2000~~, Part II – First-Year Certification, and ~~Schedule A,~~ Annual Statement for Low-Income Housing Credit~~,~~ Form 8609-A, Rev. 12-2008 ~~1-2000~~, for the first year housing credits are claimed to the Compliance Section of Florida Housing Finance Corporation. These forms are adopted and incorporated herein by reference and are due at the same time they are filed with the Internal Revenue Service. Form 8609 and ~~Schedule A (~~Form 8609-A~~)~~ can be obtained from the Internal Revenue Service by calling 1(800)829-4477. Additionally, correspondence shall accompany these forms which indicates the first taxable year in which the Housing Credits were claimed, ~~and~~ the fiscal operating year for the property, and for each building that is (or will be) part of a multiple building project attach a statement containing the name and address of the project and each building in the project.

(12)~~(9)~~ Compliance monitoring for each program will begin:

(a) For the SAIL Program, regardless of whether the d~~D~~evelopment also received an HC allocation, following the SAIL loan closing or, if the d~~D~~evelopment is occupied, prior to the SAIL loan closing.

(b) For the HOME Program, regardless of whether the d~~D~~evelopment also received an HC allocation, following the HOME loan closing or, if the d~~D~~evelopment is occupied, prior to the HOME loan closing.

(c) For d~~D~~evelopments receiving an allocation of non-competitive HC without any Corporation ~~FHFC~~-issued loans, following f~~F~~inal h~~H~~ousing c~~C~~redit a~~A~~llocation.

(d) For d~~D~~evelopments receiving c~~C~~ompetitive HC without any Corporation ~~FHFC~~-issued loans, following execution of the Carryover a~~A~~llocation a~~A~~greement.

(e) For MMRB, regardless of whether the developments also received an HC allocation, following the bond closing or, if the development is occupied, prior to the bond closing.

(13)~~(10)~~ Household Income Certification

(a) SAIL, MMRB, RRLP and HC ~~loan~~ a~~A~~pplicants shall initially ~~annually~~ certify that the household gross income, adjusted for family size, of each household occupying a unit set aside for Low-Income, Very Low-Income or Extremely Low-Income persons or households meets income requirements specified in Section 142(d)(3)(B) of the Internal Revenue Code, which is adopted and incorporated herein by reference. Copies may be obtained by contacting the Corporation's Compliance Monitoring Administrator. The determination of whether the income of a household occupying a unit in a development exceeds the applicable income limit shall be made at least annually on the basis of the current income of the household, except for any year if during such year no residential unit in the development is occupied by a new household whose income exceeds the applicable income limit. A development which certifies 100% of its units as low-income shall perform one annual income recertification effective upon the first anniversary of any household's move-in or initial certification. No additional income recertification shall be required by the Corporation. However, annual determination of student status shall be required for households comprised entirely of students. Should the annual income recertification of such households result in noncompliance with income occupancy requirements, the next available unit must be rented to a ~~household~~ qualifying household ~~under the provisions of Section 420.5087(2), F.S.,~~ in order to ensure continuing compliance of the d~~D~~evelopment.

(b) HOME applicants shall initially certify that the household gross income, adjusted for family size, of each household occupying a unit set aside for Low-Income, Very Low-Income or Extremely Low-Income persons or households meets income requirements specified in the Code of Federal Regulations, Title 24, Section 92.203, which is adopted and incorporated herein by reference. Copies may be obtained by contacting the Corporation's Compliance Monitoring Administrator. The determination of whether the income of a household occupying a unit in a development exceeds the applicable income limit shall be made at least annually on the basis of the current income of the household, except for any year if during such year no residential unit in the development is occupied by a new household whose income exceeds the applicable income limit. A development which certifies 100% of its units as low-income shall perform one annual income recertification effective upon the first anniversary of any household's move-in or initial certification. Additional income recertification shall be performed as specified in the Code of Federal Regulations, Title 24, Section 92.252, which is adopted and incorporated herein by reference. Copies may be obtained by contacting the Corporation's Compliance Monitoring Administrator.

~~(11) The Corporation shall approve the SAIL loan Applicant's selection of a management company prior to such company assuming responsibility for the Development. The SAIL loan Applicant, its designated representative, or the managing agent of the Development must attend a Corporation-sponsored training workshop on certification and compliance procedures prior to the leasing of any units in the Development.~~

(14) Any Applicant obtaining funding from SAIL, RRLP, or supplemental loan, as established in Rule Chapter 67-48, F.A.C. ("Group 1 Applicants"), shall provide the Corporation with an audited financial statement and a fully completed and executed Financial Reporting Form (SR-1), Rev. 02/09, ("Form SR-1") annually by its submission deadline to the Corporation's servicer. The submission deadline for Group 1 Applicants is May 31st of each year. A late fee of $500 will be assessed by the Corporation to any Group 1 Applicant for failure to submit these documents by the submission deadline

of each year. Group 1 Applicants shall complete all Parts (Parts 1-5) of Form SR-1 prior to its submission to the Corporation's servicer.

(15) Any Applicant obtaining funding from HOME, MMRB, HC or EHCL ("Group 2 Applicants") shall provide the Corporation with an audited financial statement and a fully completed and executed Form SR-1 annually by its submission deadline. The submission deadline for Group 2 Applicants is 120 days following their fiscal year end and shall be submitted to financial.reporting@floridahousing.org. A late fee of $250 will be assessed by the Corporation to any Group 2 Applicant for failure to submit these documents by the submission deadline of each year. Group 2 Applicants shall complete only Parts 1, 2, and 5 of Form SR-1 prior to its submission.

(16) The initial submission of the audited financial statement and a fully completed and executed Form SR-1 will be due for all Applicants following the fiscal year which the first unit is occupied. For both Group 1 and Group 2 Applicants, the Submission Documents shall include the Form SR-1 in its electronic form as a Microsoft Excel spreadsheet. The audited financial statements are to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America for the twelve (12) months ended December 31st and shall include:

(a) Comparative Balance Sheet with prior year and current year balances;

(b) Statement of revenue and expenses;

(c) Statement of changes in fund balances or equity;

(d) Statement of cash flows; and

(b) Notes.

The Applicant shall furnish to the Corporation or its servicer, unaudited statements, certified by the Applicant's principal financial or accounting officer, covering such financial matters as the Corporation or its servicer may reasonably request, including monthly statements with respect to the development.

Rulemaking ~~Specific~~ Authority 420.507 FS. Law Implemented 420.5087, 420.5089, 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.006, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, 4-6-03, 3-21-04, Formerly 67-48.00, Amended 1-17-05, _____.

67-53.009 Compliance and Monitoring for Homeownership Assistance Program (HAP) and Homeownership Programs.

For those developments who received funding from the Corporation's Homeownership Assistance Program ("HAP"), as established by Rule Chapter 67-45, F.A.C., and Homeownership Programs, as established by Rule Chapter 67-50, F.A.C.:

(1) The Servicer shall inspect and monitor the d~~D~~evelopment's construction site and records, as necessary, with inspections occurring during regular business hours.

(2) The Servicer shall monitor the sale of houses and determine homebuyer eligibility at initial purchase. Failure to comply with the agreed upon set-aside requirements shall result in a retroactive interest rate adjustment from the HAP or HOME Construction Loan interest rate to the current market rate.

Rulemaking ~~Specific~~ Authority 420.507(12), (23) FS. Law Implemented 420.507(23), 420.5088, 420.5089 FS. History–New 9-5-02, Formerly 67-50.100, Amended _____.

67-53.010 Forms.

The following forms are hereby incorporated by reference. Copies are available on the Corporation's Website at http://www.floridahousing.org/Home/PropertyOwnersManagers/Forms or may be obtained by contacting the Compliance Department, Florida Housing Finance Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329:

AOC-1 – Annual Owner Compliance Certification Form

PR-1 – Program Report

TIC-1 – Tenant Income Certification

HUD Forms 50058 or 50059 or RD (or FmHA) Form 1944-8

Form SR-1 – Financial Reporting Form may be obtained from the Credit Underwriter acting as the assigned servicer or on the Corporation's Website at http://www.floridahousing.org/Home/PropertyOwnersManagers/Forms.

Rulemaking ~~Specific~~ Authority 420.507 FS. Law Implemented 420.5087, 420.5089,420.509, 420.5099. 420.524, 420.9072 FS. History–New 1-17-05, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Laura Cox, Director of Asset Management & Guarantee Program, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 6000, Tallahassee, Florida 32301-1329, (850)488-4197

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: David Oellerich, Chairman of the Board, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 13, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 35, No. 5, February 6, 2009

DEPARTMENT OF FINANCIAL SERVICES

Division of State Fire Marshal

RULE NOS.:	RULE TITLES:
69A-53.0052	Fire Sprinkler Requirements for Nursing Homes
69A-53.0053	State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program: Application Procedures

PURPOSE AND EFFECT: To extend the deadline for submission of an application for participation in the State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program from June 30, 2006 to July 1, 2009.

SUMMARY: Section 633.022, F.S., requires each nursing home licensed under part II of Chapter 400, F.S., to be protected throughout by an approved supervised automatic sprinkler system no later than December 31, 2010. This date represents an extension from the previous date of December 31, 2008. The Chapter directs the Department to provide assistance to nursing homes through the State Fire Marshal Fire Protection Loan Guarantee Program. The deadline for submission of an application to participate in the loan guarantee program was also extended by statute to July 1, 2009. The rule amendment makes the rule consistent with the amended statutes.

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: 633.01(1), 633.022(1), 633.0245(11) FS.

LAW IMPLEMENTED: 633.022, 633.022(4), 633.024, 633.0245 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: April 20, 2009, 10:00 a.m.

PLACE: Third Floor Conference Room, The Atrium Building, 325 John Knox Road, 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: Arlan Davis, Bureau of Fire Prevention, Division of State Fire Marshal, Department of Financial Services, 325 John Knox Road, Tallahassee, Florida; (850)413-3688. 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: Arlan Davis, Bureau of Fire Prevention, Division of State Fire Marshal, Department of Financial Services, 325 John Knox Road, Tallahassee, Florida (850)413-3688

THE FULL TEXT OF THE PROPOSED RULES IS:

69A-53.0052 Fire Sprinkler Requirements for Nursing Homes.

(1) Section 633.022(4), F.S., requires that nursing homes licensed under Part II of Chapter 400, F.S., be protected throughout by an approved supervised automatic sprinkler system in accordance with Chapter Nine (9) of the Florida Edition of NFPA 101, the Life Safety Code adopted in Rule 69A-3.012, F.A.C., no later than December 31, 2010. ~~pursuant to the following schedule:~~

~~(a) Each hazardous area of each nursing home shall be protected by an approved supervised automatic fire sprinkler system by no later than December 31, 2008~~.

~~(b) Each nursing home, in its entirety, shall be protected by an approved supervised automatic fire sprinkler system by no later than December 31, 2010.~~

(2) The Division may grant a maximum of two one-year extensions to the final date of compliance ~~with paragraphs (1)(a) and (b) above, for the hazardous area portion of the retrofitting project,~~ only after establishing that the nursing home has been prevented from complying for reasons beyond its control. Such reasons may include:

(a) through (c) No change.

(3) A request for extension under subsection (2) must:

(a) Be received by the Division prior to the expiration of the deadline ~~in question~~,

(b) through (c) No change.

Rulemaking ~~Specific~~ Authority 633.01(1), 633.022(1), 633.0245(11) FS. Law Implemented 633.022 FS. History–New 2-18-07, Amended _____.

69A-53.0053 State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program: Application Procedures.

(1) No change.

(2) All properly completed applications, which must include acceptable documentation for the conceptual design, for participation in the State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program must be received by the State Fire Marshal on or before July 1, 2009 ~~June 30, 2006~~.

(3) through (9) No change.

Rulemaking ~~Specific~~ Authority 633.01(1), 633.022(1), 633.0245(11) FS. Law Implemented 633.022(4), 633.024, 633.0245 FS. History–New 2-18-07, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jim Goodloe, Chief, Bureau of Fire Prevention, Division of State Fire Marshal, Department of Financial Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink, Chief Financial Officer, State of Florida Department of Financial Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 1, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 31, 2008, February 27, 2009

DEPARTMENT OF FINANCIAL SERVICES

Division of Funeral, Cemetery, and Consumer Services

RULE NO.:	RULE TITLE:
69K-5.0125	Minimum Records to be Maintained by Burial Rights Brokers; Inspection of Records

PURPOSE AND EFFECT: Section 497.281(3), F.S., requires the Department to establish by rule the minimum records to be maintained by brokers of burial rights. Section 497.281(3), F.S., states that the purpose of maintaining such records is to prevent "confusion and error by the licensee or by the cemeteries in which the burial rights are located as to the status as sold or unsold, and as to the identity of the owner, of the burial rights and related interment spaces in the cemetery." Section 497.281(4), F.S., authorizes the Department by rule to require inspections of the records of brokers of burial rights.

SUMMARY: The proposed rule specifies the minimum records to be maintained by burial rights brokers and provides for the inspection of such records by the Department.

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: 497.103(5)(b), 497.281 FS.

LAW IMPLEMENTED: 497.103(2)(a), 497.281 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: April 20, 2009, 2:00 p.m.

PLACE: Alexander Building, 2020 Capital Circle S.E., 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: Doug Shropshire, (850)413-3039 or doug.shropshire@myfloridacfo.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: Doug Shropshire, Director, Division of Funeral, Cemetery, and Consumer Services, Alexander Building, 2020 Capital Circle S.E., Tallahassee, Florida 32399-0361, (850)413-3039 or doug.shropshire@myfloridacfo.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

69K-5.0125 Minimum Records to be Maintained by Burial Rights Brokers; Inspection of Records.

(1) Definitions. As used in this rule, the following definitions apply:

(a) "Person" includes natural persons, corporations, limited liability companies, trusts, and partnerships.

(b) "Department" refers to the Florida Department of Financial Services.

(2) A Person involved in the sale or transfer of burial rights under Section 497.281, F.S., shall maintain the following records for each sale or transfer of a burial right:

(a) The name, address, and phone number of the person selling or transferring the burial right.

(b) The name, address, and phone number of the person acquiring the burial rights.

(c) The date of the sale or transfer.

(d) The price paid or to be paid for the sale or transfer of the burial rights.

(e) The total amount of compensation paid to the burial rights broker for the sale or transfer, with identification of who has paid the burial rights broker; that is, the acquirer, the seller, or other (named) person.

(f) The name and address of the cemetery where the burial space is located.

(g) A record identifying the type of burial rights: an in-ground interment space, a mausoleum, a columbarium, an ossuary, or a scattering garden.

(h) A record providing detailed identification of the specific location in the cemetery of the burial space, using location identification nomenclature in current use by the cemetery where the burial right is located.

1. Regarding in-ground interment spaces, such detailed identification shall include the name of the garden, lot, plot, and space number of the space.

2. Regarding interment spaces in a mausoleum or columbarium, such detailed identification shall include the unique name or number of the mausoleum or columbarium building or structure, and the location of the crypt or niche within that building or structure.

(i) A list of any merchandise or services that were sold or transferred with the burial rights, if any, including identification of any preneed contract that was transferred or sold.

(j) If the cemetery where the burial space is located requires a burial right transfer form, documentation that such a form has been filed, by whom, and on what date.

(k) If the cemetery where the burial space is located requires payment of a burial rights transfer fee, documentation that the burial rights transfer fee has been paid, by whom, and on what date.

(l) A copy of any written or printed agreement or agreements relating to the sale or transfer of the burial right.

(m) Copies of all correspondence to or from the burial rights broker regarding the sale or transfer of the burial right.

(n) The complaint log and related records required under Section 497.151, F.S.

(3)(a) The records required to be maintained by this rule shall be maintained at the burial rights broker's address identified on the most recent licensure application or renewal form under Section 497.281, F.S. The records shall be maintained in written or in electronic form. If the records are maintained in electronic form, the burial rights broker shall at all times have available at the same place where the records are maintained, all equipment and software needed to allow the immediate viewing of such records upon request by the Department's inspector.

(b) When a Person licensed under the provisions of Chapter 497, F.S., other than Section 497.281, F.S., engages in activity as a burial rights broker under Section 497.281, F.S., such Person shall maintain the records required by subsection (2) of this rule, at such Person's primary place of business in Florida.

(4) Records required to be maintained under this rule shall be kept until the later of the following dates:

(a) Five years after the date a final interment has occurred using the burial rights that were the subject of the sale or transfer;

(b) Twelve months after the most recent inspection of the records by the Department under this rule.

(5) The Department of Financial Services shall inspect the records of each burial rights broker at least once every two years.

Rulemaking Authority 497.103(5)(b), 497.281 FS. Law Implemented 497.103(2)(a), 497.281 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Doug Shropshire, Director, Division of Funeral, Cemetery, and Consumer Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink, Chief Financial Officer

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 10, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 6, 2009

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF STATE

Division of Historical Resources

RULE NOS.:	RULE TITLES:
1A-31.0015	Definitions
1A-31.0042	Diving on Historic Shipwreck Sites
1A-31.0045	Non-permittable Areas and Sites
1A-31.0052	Security
1A-31.0062	Types of Permit
1A-31.0082	Duration of Permit
1A-31.0092	Permit Area
1A-31.011	Boats to Carry Identification
1A-31.020	Inspection by Permitting Agency
1A-31.030	Project Archaeologist Qualifications
1A-31.036	Project Archaeologist Responsibilities
1A-31.040	Application Procedures
1A-31.046	Applicatin Review
1A-31.050	Permit Issuance
1A-31.055	Notice of Approval or Denial
1A-31.060	Requirements for All Permits
1A-31.065	Additional Requirements for Exploration Permits
1A-31.085	Permit Suspension and Revocation
1A-31.090	Transfer of Archaeological Materials, Title to Archaeological Materials Conveyed

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. 34, No. 39, September 26, 2008 issue of the Florida Administrative Weekly.

These changes respond to comments from interested parties and to suggestions made during public hearing held on October 21, 2008.

PROCEDURES FOR CONDUCTING EXPLORATION AND RECOVERY OF HISTORIC SHIPWRECK SITES

1A-31.0015 Definitions.

(1) through (5) No change.

(6) "Historic Shipwreck Site" means the remains of a sunken or abandoned ship or other watercraft on or below the seabed including but not limited to ships' structure and rigging, hardware, tools, utensils, cargo, personal items of crew and