

69V-40.245	Independent Contractors
69V-40.250	Documentation of Net Worth and Surety Bond
69V-40.260	Mortgage Lender Files
69V-40.265	Mortgage Brokerage and Lending Transaction Journal
69V-40.270	Financial Guaranty in Lieu of Uniform Single Audit
69V-40.285	Noninstitutional Investor Funds Account
69V-40.290	Acts Requiring Licensure as a Mortgage Broker, Mortgage Brokerage Business, Mortgage Lender or Correspondent Mortgage Lender

PURPOSE AND EFFECT: In 2009, the Florida Legislature passed Senate Bill 2226 to bring Florida law into compliance with the federal S.A.F.E. Mortgage Licensing Act of 2008, Title V of P.L. 110-289. SB 2226 was signed into law on June 29, 2009. See Chapter 2009-241, Laws of Florida. The Office of Financial Regulation is proposing rule changes to Rule Chapter 69V-40, F.A.C., to reflect the statutory changes to Chapter 494, F.S.

SUBJECT AREA TO BE ADDRESSED: Mortgage Brokering and Lending.

RULEMAKING AUTHORITY: 494.0011 FS.

LAW IMPLEMENTED: Chapter 494 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Andrea Moreland, Cabinet and Legislative Director, Office of Financial Regulation, 200 E. Gaines Street, The Fletcher Building, Tallahassee, FL 32399-0370, (850)410-9601, andrea.moreland@flofr.com

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

workers during the early voting period and election day. The proposed changes clarify procedures for voter intake at the polling place and for handling a ballot that has been overvoted. It also enhances the provisions governing persons with disabilities.

SUMMARY: The proposed changes clarify polling place procedures.

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: 20.10(3), 97.012(1), 102.014(5) FS.

LAW IMPLEMENTED: 102.014 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: June 22, 2010, 9:00 a.m.

PLACE: Florida Department of State, Florida Heritage Hall, R.A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399

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: Eddie Phillips, Executive assistant, General Counsel’s Office, at 1(850)245-6536 or elphillips@dos.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: Maria Matthews, Assistant General Counsel, Florida Department of State at: mimatthews@dos.state.fl.us or (850)245-6536. The incorporated form DS-DE #11 is available upon request.

THE FULL TEXT OF THE PROPOSED RULE IS:

1S-2.034 Polling Place Procedures Manual.

The Department of State, Division of Elections, is required to establish a polling place procedures manual to guide election officials and poll workers in the proper implementation of election procedures and laws. Form DS-DE 11 (eff. ___/___/08/08), entitled “Polling Place Procedures Manual,” is hereby incorporated by reference and available from the Division of Elections, R. A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250, by

Section II Proposed Rules

DEPARTMENT OF STATE

Division of Elections

RULE NO.: 1S-2.034
RULE TITLE: Polling Place Procedures Manual

PURPOSE AND EFFECT: The proposed changes are to the polling place procedures manual, DS-DE 11, incorporated by reference in the rule. This manual is used as a guide for poll

contact at (850)245-6200, or by download from the Division of Elections' rules webpage at: <http://election.dos.state.fl.us/index.html>.

Rulemaking Authority 20.10(3), 102.014(5) FS. Law Implemented 102.014(5) FS. History—New 7-4-02, Amended 1-25-04, 3-16-06, 1-1-08, 8-13-08,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Donald L. Palmer, Director, Division of Elections

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dawn K. Roberts, Interim Secretary of State for Florida Department of State

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 12, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 16, 2010

DEPARTMENT OF STATE

Division of Cultural Affairs

RULE NO.: RULE TITLE:
 IT-1.001 Division of Cultural Affairs
 IT-1.039 Cultural Facilities Program

PURPOSE AND EFFECT: The purpose of this amendment is to:

1. Create a new rule number, Cultural Facilities Program, Rule IT-1.039, F.A.C., that establishes eligibility criteria, application procedures, matching funds, panel review criteria, scoring criteria, Legislative review, reporting requirements, grant administration forms, program guidelines, and criteria related to compliance and the recordation of restrictive covenants for the Cultural Facilities Program.

2. Repeal subsection IT-1.001(3), F.A.C., and incorporate the program information into the new Cultural Facilities Program Rule IT-1.039, F.A.C.

SUMMARY: The proposed rule incorporates the program information from subsection IT-1.001(3), F.A.C., into Rule IT-1.039, F.A.C. The change consolidates information by incorporating by reference program guidelines, administrative forms, and restrictive covenants. The proposed rule repeals subsection IT-1.001(3), F.A.C.

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: 265.605(1), 265.608(1), 265.609(1), (4), 265.701(5) FS.

LAW IMPLEMENTED: 265.701, 286.011, 286.012, 286.25 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: Monday, June 14, 2010, 9:30 a.m.
 PLACE: Division of Cultural Affairs, R. A. Gray Building, 3rd Floor, 500 South Bronough Street, Tallahassee, Florida 32399-0250

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Donald R. Blancett, Division of Cultural Affairs, R. A. Gray Building, 3rd Floor, 500 South Bronough Street, Tallahassee, Florida 32399-0250

THE FULL TEXT OF THE PROPOSED RULE IS:

IT-1.001 Division of Cultural Affairs.

(1) through (2) No change.

~~(3) Cultural Facilities Program. The purpose of this program is to coordinate and guide the State of Florida's support and funding for the renovation, construction, or acquisition of cultural facilities. This program is not intended to fund project planning, such as feasibility studies and architectural drawings, or operational support.~~

~~(a) Administrative and Legal Eligibility. An eligible applicant for a cultural facilities grant must:~~

~~1. Be a public entity governed by either a municipality, county, or qualified corporation as defined in Section 265.701(2), F.S.~~

~~2. Have ownership of, or have an executed lease at the time of application for the undisturbed use of the land or buildings or both associated with the cultural facility for a minimum of 10 years following the recordation of the restrictive covenant or date of issue of a surety bond. In those cases where the land or building(s) or both, are leased by an eligible applicant, the owner(s) must also meet the requirements of Section 265.701(2) and (4), F.S. For the purposes of this program, an eligible applicant may lease state-owned land or building(s) or both.~~

~~3. Have satisfied the administrative requirements of previous grants received from the Division.~~

~~(b) Ownership of Improvements. The owner of the property or building(s) or both must retain ownership of the improvements made to the property or building(s) or both for at least 10 years following the recordation of the restrictive covenant or date of issue of a surety bond.~~

~~(c) Application Requirements. Applications shall consist of the following:~~

~~1. A completed Cultural Facilities Program Application shall be electronically submitted through the Division's on-line application website at www.florida-arts.org on or before the application deadline, which will be posted on the Division's website. The application is available through the Division's on-line application system.~~

~~2. A complete application shall include the following:~~

- a. General identification and contact information.
- b. A description of the Project Scope of Work, including a project narrative, the current phases, and the prior phases of the project.
- c. Project Budgets including a summary and detail, a matching funds statement, a match summary chart, and a donor profile.
- d. A description of the Need for the Project, including an operating forecast detail, a list of the organization staff, and a statement regarding the fiscal stability of the organization.
- e. A description of the project's impact on the city, county, or multi county region.
3. Application Support Materials. The following support materials are required. Directions for submission of support materials shall be available through the online application system.
- a. Documentation of unrestricted ownership or undisturbed use through an executed lease of the land or building(s) or both, related to the cultural facility for a minimum of 10 years following the recordation of the restrictive covenant or date of issue of a surety bond. Leases conditioned on the applicant's receipt of grant funds do not qualify.
- b. Documentation of the applicant's Total Support and Revenue and Total Expenses. Documentation shall consist of an independent certified audit or review, or certification of the organization's Total Support and Revenue and Total Expenses by an authorized official of the applicant. An authorized official shall be either the president of the board, board chair, or another board member authorized to enter into agreements for the organization. If the applicant is an entity of city or county government, the authorized official shall be an elected official of the city or county, or an individual designated by the official to act upon the behalf of the official.
- c. An 8 1/2" x 11" reduction of current architectural plans.
- d. Letters of Support: Submit letters or list of local officials lending support to this project.
- e. For municipalities and counties, a copy of the approved resolution or minutes from the commission meeting showing the dollar amount dedicated and available to the project if the grant is awarded, and the date the funds will be available.
- (d) Funding Request.
1. The applicant shall not request more than \$500,000 in a single application. There is no minimum amount.
2. An applicant from the same organization shall not submit more than one application under a single application deadline for the same facility, project, site, or phase.
3. An organization may not submit funding requests to both the Cultural Facilities Program and the Regional Cultural Facilities Program in the same fiscal year for the same project, facility, site, or phase.

4. An entity funded by the Legislature outside of the review of the Florida Arts Council or approval by the Secretary of State shall not be eligible to receive grant support for the same renovation, acquisition, or new construction project from the Division of Cultural Affairs within the same fiscal year in which Legislative funding is appropriated.

(e) Time Limits and Funding Cap. No project shall receive more than \$1.5 million during five (5) consecutive state fiscal years. "Receive" means measured from July 1 of the fiscal year in which grant funds for the Cultural Facilities Program were appropriated by the Legislature.

(f) Matching Funds:

1. For eligible organizations with total support and revenue of less than \$500,000, eligible matching funds provided by the applicant organization or by a third party shall be on at least a one to one match of the amount requested.

2. For eligible organizations with total support and revenue of \$500,000 or more, eligible matching funds provided by the applicant organization or by a third party shall be on at least a two to one match of the amount requested, except for eligible Rural Economic Development Initiative (REDI) applicants. REDI qualified means those counties or communities designated pursuant to Sections 288.0656 and 288.06561, F.S.

3. Eligible matching funds provided by eligible REDI applicants shall be at least a one to one match of the amount requested.

4. At least 50% of the required match must be in cash. For the purposes of this program, cash shall include cash on hand, and cash expenditures made on the project within the five year period prior to the application deadline.

5. At least 50% of the cash match must be cash on hand and dedicated to the project. For the purpose of this program, cash on hand includes funds identified in executed award letters or contracts from third parties, provided that those funds are expressly for the project for which the grant application is submitted.

6. No more than 50% of the match may be irrevocable pledges or in-kind contributions. Irrevocable pledges and in-kind contributions must be documented in the application. For the purpose of this program, in-kind contributions by the applicant are not eligible for match.

7. Municipalities and counties must submit a copy of the approved resolution or minutes from the commission meeting, with the required support material, which includes the dollar amount dedicated and available to the project if the grant is awarded and the date the funds will be available. Resolutions that have not been approved by the application deadline cannot be used as match documentation. Local funding, as indicated by the resolution, must be made available within 90 days of state award notification.

(g) Application Review Committee.

1. The application review committee shall review each eligible application based on the following criteria: Scope of Work (up to 15 points), Project Budget and Matching Funds (up to 25 points), Need for Program and Operating Forecast (up to 30 points), and Project Impact (up to 30 points).

2. All applications that receive an average score of at least 75 out of 100 possible points will be recommended for funding.

3. The committee shall develop a priority list based on the average score for each application.

4. The committee shall submit the priority list to the Florida Arts Council for review and recommendation.

(h) The Florida Arts Council shall review the priority list and submit the recommendations to the Secretary of State.

(i) The Secretary of State shall review the recommendations of the Council and provide the Legislature with an approved priority list with funding recommendations.

(j) Retaining Projects on the next grant cycle priority list.

1. Projects that are approved and recommended by the Secretary but are not funded by the Legislature shall be retained on the priority list for the next grant cycle only.

2. All applicants with projects that are retained on the priority list shall submit the information in sub-subparagraphs (c)2.a.-c. above to report the current status of the project.

3. The deadline for the receipt of updated information and directions for submission shall be posted on the Division's website.

4. Updated projects on the priority list shall not be re-scored, but will retain their original scores and recommended funding amounts, and be merged with the new applications for that year.

5. Projects that are rolled over to the priority list shall be ineligible for a grant if the updated information includes a change in scope, venue, or funding amount; or if all of the required update information is not provided by the deadline.

(k) No changes in project scope or venue will be permitted.

(l) Grant Award Agreement. The Grant Award Agreement (CA2E038, eff. 7/08) incorporated by reference and available from the Division, is the document by which the organization enters into a contract with the State of Florida for the management of grant funds which shall include:

1. An update of the application project narrative and budget.

2. A completed Assurance of Compliance and Signature Authorization Form (CA2E059, eff. 7/08, incorporated by reference and available from the Division at www.florida-arts.org).

3. A Request for Warrant (CA2E001, eff. 7/08) incorporated by reference and available on the Division's Website at www.florida-arts.org.

4. A Grant Amendment Request (CA2E047, eff. 7/08) incorporated by reference and available on the Division's Website at www.florida-arts.org.

5. Other provisions that shall be agreed to by both the grantee and the state.

(m) Grant Encumbrance Period and Expenditure Date:

1. Encumbrance Period.

a. For the purpose of this program, the encumbrance period is the state fiscal year in which grant funds are appropriated by the Legislature.

b. During the encumbrance period, but not later than the end date of the encumbrance period, the grantee shall execute all required contracts for all work to be accomplished with grant funds.

c. The Division will not release more than 25% of the total grant amount until the executed contract with an architect or contractor has been submitted. The Division shall maintain the signed contract in the grant files. The contract shall reference an amount equal to or in excess of the grant amount and shall be signed and dated by the grantee and the architect or contractor. Acquisition grants that were awarded for the purchase of land on which the cultural facility will be built or for the purchase of a facility are exempt from this provision.

d. Grant funds shall not be used for project expenditures that were incurred prior to the execution of the Grant Award Agreement.

e. The maximum extension of the encumbrance period is 120 days.

2. Expenditure Date.

a. Grant funds must be expended by April 1 of the fiscal year following the fiscal year in which grant funds were appropriated by the Legislature.

b. Grant funds shall not be used for project expenditures that were incurred later than the approved expenditure deadline.

c. The maximum extension of the expenditure date shall be 120 days.

3. The Division may further extend the encumbrance and expenditure deadlines by not more than an additional 120 days each, in the event that the grantee can clearly demonstrate extenuating circumstances. Extenuating circumstances encompass situations beyond the control of the grantee that prevent the timely completion of the project. Such circumstances include natural disaster, death or serious illness of the individual responsible for the completion of the project, litigation, or failure of the contractor or architect to provide the services for which they were hired. Extenuating circumstances do not include failure to read or understand grant administrative requirements or failure to raise sufficient matching funds.

(n) Reporting Requirements.

1. Interim Reports shall be submitted at six-month intervals until the project is complete. For the purpose of this program, a project is considered complete when all grant and match funds have been expended. The first Interim Report is due on January 31 of the state fiscal year in which the grant was awarded.

2. Final Report. A Final Report (CA2E048, eff. 7/08) incorporated by reference and available on the Division's Website at www.florida-arts.org, shall be submitted 45 days after the expenditure of grant and match, but no later than May 15th of the fiscal year following the fiscal year in which the grant was awarded.

3. All reports shall include the following:

a. A description of the work completed.

b. A financial statement showing the expenditure of grant and match.

c. A state grant expenditure log (CA2E119, eff. 7/08) incorporated by reference and available on the Division's Website at www.florida-arts.org, that includes check number, amount of check, date of check, name of payee, and a description of the expenditure.

(o) Definitions. For the purposes of this program, a "grantee" is an applicant that has received a Cultural Facilities Program Grant Award. "Property owner" refers to the owners of land or building(s) or both, and all improvements made with grant funds. Section 265.701(4), F.S., requires that the grantee and the property owner either record a restrictive covenant or purchase a surety bond to ensure that the facility is used as a cultural facility for ten (10) years following the recordation of the restrictive covenant or date of issue of the surety bond.

(p) Restrictive Covenant.

1. If the grantee chooses to record a restrictive covenant, the grantee, and the property owner(s) if the land or buildings or both are leased by the grantee, shall execute and file a restrictive covenant with the Clerk of the Circuit Court in the county where the property is located, prior to release of the grant funds.

2. The restrictive covenant shall include the following provisions:

a. That the restrictive covenant shall run with title to the building(s) and the associated land and improvements made by grant funds, shall encumber them, and shall be binding upon the grantee and the owners, if different, and the successors in interest for ten (10) years from the date of the recordation of the restrictive covenant.

b. The owner of the improvements made to the building(s) and associated land funded in whole or in part by grant funds shall also execute the restrictive covenant.

c. The grantee shall permit the Division to inspect the facility and associated land at all reasonable times to determine whether the grantee is in compliance with the grant award agreement and the restrictive covenant or surety bond.

d. The grantee shall maintain the building(s) as a "cultural facility." For the purposes of this program, a "cultural facility" is a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the foregoing for any of the following cultural disciplines: music, dance, theatre, creative writing, literature, painting, sculpture, folk arts, photography, crafts, media arts, and historical and science museums.

e. The restrictive covenant shall also contain an amortization and schedule of the repayment of grant funds, should the grantee or owners or their successors in interest violate the restrictive covenant.

f. Other provisions as agreed upon by the Division and the grantee.

3. If the restrictive covenant is violated, the grantee shall reimburse the Division pursuant to the following amortization schedule:

a. If the violation occurs within five (5) years following the recordation of the restrictive covenant, 100% of the grant amount;

b. If the violation occurs more than five (5) but less than six (6) years following the recordation of the restrictive covenant, 80% of the grant amount;

c. If the violation occurs more than six (6) but less than seven (7) years following the recordation of the restrictive covenant, 65% of the grant amount;

d. If the violation occurs more than seven (7) but less than eight (8) years following the recordation of the restrictive covenant, 50% of the grant amount;

e. If the violation occurs more than eight (8) but less than nine (9) years following the recordation of the restrictive covenant, 35% of the grant amount; and

f. If the violation occurs more than nine (9) but less than ten (10) years following the recordation of the restrictive covenant, 20% of the grant amount.

1. If a surety bond is chosen in lieu of recording a restrictive covenant, the grantee must:

a. Purchase a surety bond from an insurer authorized to do business in Florida as a surety; and

b. Include the surety bond as an addendum to the grant award agreement;

2. The following shall be included in the surety bond;

a. That the facility described in the grant award agreement will be used as a cultural facility for ten (10) years following the date of issue of the surety bond, and that failure to do so shall constitute a violation of the surety bond;

b. That in the event of violation, the surety shall reimburse the Division pursuant to the amortization schedule set forth below.

3. A certified copy of the surety bond must be provided to the Division prior to the release of grant award funds.

4. If the surety bond is violated, the surety shall reimburse the Division pursuant to the following amortization schedule:
- a. If a violation occurs within three (3) years following the date of issue of the surety bond, 100% of the grant amount;
 - b. If a violation occurs more than three (3) but less than four (4) years following the date of issue of the surety bond, 80% of the grant amount;
 - c. If a violation occurs more than four (4) but less than five (5) years following the date of issue of the surety bond, 70% of the grant amount;
 - d. If a violation occurs more than five (5) but less than six (6) years following the date of issue of the surety bond, 60% of the grant amount;
 - e. If a violation occurs more than six (6) but less than seven (7) years following the date of issue of the surety bond, 50% of the grant amount;
 - f. If a violation occurs more than seven (7) but less than eight (8) years following the date of issue of the surety bond, 40% of the grant amount;
 - g. If a violation occurs more than eight (8) but less than nine (9) years following the date of issue of the surety bond, 30% of the grant amount; and
 - h. If a violation occurs more than nine (9) but less than ten (10) years following the date of issue of the surety bond, 20% of the grant amount.

Rulemaking Authority 265.605(1), 265.608(1), 265.609(1), (4), 265.701(5) FS. Law Implemented 265.285, 265.601-.603, 265.605-.606, 265.701 FS. History—New 11-23-82, Formerly IT-1.01, Amended 10-1-96, 10-31-96, 2-2-97, 6-2-97, 7-17-97, 9-10-97, 1-4-98, 7-26-98, 8-2-98, 10-5-98, 10-25-98, 8-17-99, 8-1-02, 12-29-02, 10-14-03(17), 10-14-03(20), 11-16-03, 2-2-05, 5-16-05, 6-21-05, 12-20-05, 5-22-06, 6-5-06, 6-27-06, 8-20-07, 9-16-07, 1-8-08, 7-8-08, 9-8-08, 3-5-09, 6-17-09, _____.

IT-1.039 Cultural Facilities Program.

(1) This rule provides the requirements for the Cultural Facilities Program administered by the Division of Cultural Affairs (Division). All grant applicants must meet the requirements set forth in the 2011-2012 guidelines, which are available from the Division at www.Florida-arts.org and are hereby incorporated by reference. The program guidelines contain eligibility requirements, application review procedures, evaluation and funding criteria, grant administration procedures, and application forms. All grant awards are subject to the approval of the Secretary of State and Legislative appropriation.

(2) The Cultural Facilities Program Application (Form CA2E147), effective 6/10; must be submitted on-line at www.Florida-arts.org, is available from the Division, and is hereby incorporated by reference.

(3) The following forms must be used in the administration of the Cultural Facilities Program and are hereby incorporated by reference and available at www.Florida-arts.org:

- (a) Cultural Facilities Report Form (Form CA2E048), effective 6/10;
- (b) State Funds Expenditure Log (Form CA2E119), effective 6/10;
- (c) Grant Amendment Request (Form CA2E047), effective 6/10;
- (d) Grant Award Agreement (Form CA2E038), effective 6/10;
- (e) Request for Warrant (Form CA2E001), effective 6/10.

Rulemaking Authority 265.701(5) FS. Law Implemented 265.701 FS. History—New _____.

Editorial Note: Formerly subsection IT-1.001(3), F.A.C.

NAME OF PERSON ORIGINATING PROPOSED RULE: Donald R. Blancett, Division of Cultural Affairs, R. A. Gray Building, 3rd Floor, 500 South Bronough Street, Tallahassee, Florida 32399-0250

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Sandy Shaughnessy, Division of Cultural Affairs, R. A. Gray Building, 3rd Floor, 500 South Bronough Street, Tallahassee, Florida 32399-0250

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 4, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 26, 2010; Vol. 36, No. 12

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.:	RULE TITLE:
6A-1.09422	Florida Comprehensive Assessment Test and End-of-Course Assessment Requirements

PURPOSE AND EFFECT: The purpose of the rule amendment is to specify the new statewide assessment requirements in order to comply with the passage of Senate Bill 4 and House Bill 105 by the 2010 Legislature. The amendments include the specification of new FCAT 2.0 and End-of-Course Assessment requirements, including new passing scores on those assessments required for course credit and high school graduation. In addition, obsolete language is deleted.

The primary effect is that students will be required to participate in new statewide assessments and earn at least the minimum scale score in achievement level 3 on assessments required for course credit and high school graduation.

SUMMARY: This rule is amended to specify new statewide assessment requirements, including new passing scores on those assessments required for course credit and high school graduation.

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: 1001.02, 1008.22(3)(c)5., 1008.22(11) FS.

LAW IMPLEMENTED: 1001.02, 1001.11, 1008.22, 1008.25, 1008.33 FS.

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

DATE AND TIME: June 15, 2010, 9:00 a.m.

PLACE: Orange County School Board, 445 West Amelia Street, Orlando, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kris Ellington, Assistant Deputy Commissioner, Accountability, Research, and Measurement, 325 W. Gaines Street, Suite 414, Tallahassee, Florida 32399, (850)245-0513

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.09422 Florida Comprehensive Assessment Test and End-of-Course Assessment Requirements.

(1) The statewide program of educational assessment required by Section 1008.22(3)(c), Florida Statutes, shall be developed under the direction and supervision of the Commissioner of Education and shall be ~~itled the Florida Comprehensive Assessment Test (FCAT). It shall be:~~

(a) Kept secured at all times.

(b) Provided to all school districts in the quantity needed for the students in the district.

(c) Administered in accordance with standard written instructions appropriate for the assessment examination. The written instructions shall ~~will~~ be issued by the Commissioner in the form of test administration manuals and other written communications, as required, and provided to school districts in sufficient time prior to each assessment test.

(d) Revised and updated as needed.

(e) Developed in consultation with teachers and other appropriate professionals and approved by the Commissioner prior to being administered to students.

(f) Be derived from the student performance standards adopted in Rule 6A-1.09401, F.A.C.

(2) The assessment program test shall include the Florida Comprehensive Assessment Test® (FCAT), the Florida Comprehensive Assessment Test® (FCAT) 2.0, and the Florida End-of-Course (EOC) Assessments ~~be developed in consultation with teachers and other appropriate professionals and shall be approved by the Commissioner prior to being administered to students. The FCAT shall:~~

(a) Before the 2010-2011 school year, the FCAT shall consist ~~Consist~~ of four (4) sections: one (1) measuring reading skills in grades three through ten;; one (1) measuring

mathematics skills in grades three through ten;; one (1) measuring writing skills in grades four, eight and ten;; and one (1) measuring science skills in grades five, eight, and eleven. Beginning with the 2010-2011 school year, the FCAT shall consist of three (3) sections: one (1) measuring mathematics skills in grade ten; one (1) measuring writing skills in grades four, eight, and ten; and one (1) measuring science skills in grades five, eight, and eleven. Beginning with the 2011-2012 school year, the FCAT shall consist of one (1) section measuring writing skills in grades four, eight, and ten. The FCAT Retake in reading shall continue to be administered through the 2011-2012 school year, and the FCAT Retake in mathematics shall continue to be administered through the 2012-2013 school year.

(b) Beginning with the 2010-2011 school year, the FCAT 2.0 shall consist of two (2) sections: one (1) measuring reading skills in grades three through ten, and one (1) measuring mathematics skills in grades three through eight. Beginning with the 2011-2012 school year, the FCAT 2.0 shall consist of three (3) sections: one (1) measuring reading skills in grades three through ten, one (1) measuring mathematics skills in grades three through eight, and one (1) measuring science skills in grades five and eight. ~~Be derived from the skills adopted in Rule 6A-1.09401, F.A.C.~~

(c) The Florida EOC Assessments shall consist of assessments measuring the skills specified in five (5) courses: Algebra 1, Biology 1, Geometry, United States History, and Civics.

(3) The statewide assessment program FCAT shall be administered as follows:

(a) Before the 2010-2011 school year, all ~~All~~ eligible students in grades three through ten shall take the FCAT Reading and Mathematics reading and mathematics tests. Beginning with the 2010-2011 school year, all eligible students in grades three through ten shall take the FCAT 2.0 Reading, and all eligible students in grades three through eight shall take the FCAT 2.0 Mathematics. All eligible students in grades four, eight, and ten shall take the FCAT Writing writing test. Eligible students are those who are not exempted from the assessment pursuant to Section 1008.22(3)(c), Florida Statutes. ~~All eligible students in grades five, eight, and eleven shall take the science test.~~

(b) Before the 2011-2012 school year, all eligible students in grades five, eight, and eleven shall take the FCAT Science. Beginning with the 2011-2012 school year, all eligible students in grades five and eight shall take the FCAT 2.0 Science. Eligible students are those who are not exempted from the assessment pursuant to Section 1008.22(3)(c), Florida Statutes.

(c) Beginning with the 2010-2011 school year, all students enrolled in a high school Algebra 1 or equivalent course must take the Algebra 1 EOC Assessment.

(d) Beginning with the 2011-2012 school year, all students enrolled in a high school Geometry or equivalent course must take the Geometry EOC Assessment, and all students enrolled in a high school Biology 1 or equivalent course must take the Biology 1 EOC Assessment.

(e) Beginning with the 2012-2013 school year, all students enrolled in a high school United States History or equivalent course must take the United States History EOC Assessment.

(f) Beginning with the 2013-2014 school year, all students enrolled in a middle school civics education course must take the Civics EOC Assessment.

(g)(b) Provisions shall be made by school districts to administer the assessment test to students who are absent on the designated testing dates according to directions specified by the Commissioner. The directions shall ~~will~~ be issued in the form of test administration manuals and other written communications, as required, and provided to school districts in sufficient time prior to each assessment test.

(h)(e) Provisions shall be made by the Commissioner to permit the assessment test to be administered to home school students and private school students pursuant to Sections 1002.39 and 1002.395, Florida Statutes, under conditions which preserve the security of the assessment test and require the public school districts to be responsible for the test administration procedures.

(i)(d) In accordance with the requirements of Section 1008.25(4)(c), Florida Statutes, provisions shall be made by the Commissioner to retest students the following year if they do not attain minimum performance expectations and are retained.

(j)(e) The assessments ~~FCAT~~ shall be administered to students ~~in grades 3 through 9~~ not less than one (1) time per year on a schedule approved by the Commissioner ~~and up to~~

~~three times per year for students who do not attain minimum performance expectations on the grade 10 FCAT as specified in subsection (7) of this rule.~~

(4) Examinee scores on the FCAT Reading and Mathematics ~~reading and mathematics~~ shall be reported on a score scale from 100 to 500 defined by the baseline assessment ~~test~~ administered during January and February 1998, and a developmental scale of approximately 0 to 3000 that defines performance across grades three 3 through ten 10. Examinee scores on the FCAT Science shall be reported on a score scale from 100 to 500 defined by the baseline assessment ~~test~~ administered during March 2003. Examinee scores on the FCAT Writing ~~writing~~ shall be reported on a score scale from 1 to 6 defined by the FCAT Writing ~~writing~~ holistic rubrics. ~~Each examinee shall receive a total score for each subject area in addition to part scores that can be reliably reported.~~

(5) The total scores on the FCAT Reading, Mathematics, and Science also are ~~also~~ reported on an achievement-level scale. Achievement levels range from 1 through 5, with level 1 being the lowest achievement level, level 5 being the highest achievement level, and level 3 indicating satisfactory performance on the assessment. The total scores that correspond to each achievement level are shown in the following paragraphs.

(a) ~~The Beginning with the effective date of this rule, until changes are recommended by the Commissioner of Education to the State Board of Education, the~~ achievement levels for the FCAT Reading and Mathematics ~~in the first phase of implementation (step 1)~~ shall be as shown in the following tables.

FCAT Reading grade-level scale scores (100 to 500) for each achievement level ~~—step 1:~~

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	100-258	259-283	284-331	332-393	394-500
4	100-274	275-298	299-338	339-385	386-500
5	100-255	256-285	286-330	331-383	384-500
6	100-264	265-295	296-338	339-386	387-500
7	100-266	267-299	300-343	344-388	389-500
8	100-270	271-309	310-349	350-393	394-500
9	100-284	285-321	322-353	354-381	382-500
10	100-286	287-326	327-354	355-371	372-500

FCAT Reading developmental scale scores (86 to 3008) for each achievement level ~~—step 1:~~

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	86-1045	1046-1197	1198-1488	1489-1865	1866-2514
4	295-1314	1315-1455	1456-1689	1690-1964	1965-2638
5	474-1341	1342-1509	1510-1761	1762-2058	2059-2713
6	539-1449	1450-1621	1622-1859	1860-2125	2126-2758
7	671-1541	1542-1714	1715-1944	1945-2180	2181-2767
8	886-1695	1696-1881	1882-2072	2073-2281	2282-2790
9	772-1771	1772-1971	1972-2145	2146-2297	2298-2943
10	844-1851	1852-2067	2068-2218	2219-2310	2311-3008

FCAT Mathematics grade level scale scores (100 to 500) for each achievement level ~~—step 1:~~

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	100-252	253-293	294-345	346-397	398-500
4	100-259	260-297	298-346	347-393	394-500

5	100-287	288-325	326-354	355-394	395-500
6	100-282	283-314	315-353	354-390	391-500
7	100-274	275-305	306-343	344-378	379-500
8	100-279	280-309	310-346	347-370	371-500
9	100-260	261-295	296-331	332-366	367-500
10	100-286	287-314	315-339	340-374	375-500

~~FCAT Mathematics developmental scale scores (375 to 2709) for each achievement level—step 1:~~

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	375-1078	1079-1268	1269-1508	1509-1749	1750-2225
4	581-1276	1277-1443	1444-1657	1658-1862	1863-2330
5	569-1451	1452-1631	1632-1768	1769-1956	1957-2456
6	770-1553	1554-1691	1692-1859	1860-2018	2019-2492
7	958-1660	1661-1785	1786-1938	1939-2079	2080-2572
8	1025-1732	1733-1850	1851-1997	1998-2091	2092-2605
9	1238-1781	1782-1900	1901-2022	2023-2141	2142-2596
10	1068-1831	1832-1946	1947-2049	2050-2192	2193-2709

~~(b) The Commissioner of Education will review FCAT performance data after each test administration and make a recommendation to the State Board of Education about future implementation of the Reading and Mathematics step 2 achievement levels shown in the following tables.~~

~~Reading grade-level scale scores (100 to 500) for each achievement level—step 2:~~

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	100-271	272-296	297-344	345-406	407-500
4	100-287	288-311	312-351	352-398	399-500
5	100-268	269-298	299-343	344-396	397-500
6	100-277	278-308	309-351	352-399	400-500
7	100-279	280-312	313-356	357-401	402-500
8	100-283	284-322	323-362	363-406	407-500
9	100-297	298-334	335-366	367-394	395-500
10	100-299	300-339	340-367	368-384	385-500

~~Reading developmental scale scores (86 to 3008) for each achievement level—step 2:~~

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	86-1129	1130-1281	1282-1572	1573-1949	1950-2514
4	295-1395	1396-1536	1537-1770	1771-2046	2047-2638
5	474-1419	1420-1587	1588-1839	1840-2135	2136-2713
6	539-1525	1526-1697	1698-1936	1937-2202	2203-2758
7	671-1613	1614-1786	1787-2017	2018-2252	2253-2767
8	886-1761	1762-1947	1948-2137	2138-2347	2348-2790
9	772-1846	1847-2046	2047-2220	2221-2372	2373-2943
10	844-1925	1926-2142	2143-2293	2294-2385	2386-3008

~~Mathematics scale scores (100 to 500) for each achievement level—step 2:~~

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	100-265	266-306	307-358	359-410	411-500
4	100-272	273-310	311-359	360-406	407-500
5	100-300	301-338	339-367	368-407	408-500
6	100-295	296-327	328-366	367-403	404-500
7	100-287	288-318	319-356	357-391	392-500
8	100-292	293-322	323-359	360-383	384-500
9	100-273	274-308	309-344	345-379	380-500
10	100-299	300-327	328-352	353-387	388-500

~~Mathematics developmental scale scores (375 to 2709) for each achievement level—step 2:~~

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	375-1142	1143-1331	1332-1572	1573-1812	1813-2225
4	581-1337	1338-1503	1504-1717	1718-1923	1924-2330
5	569-1516	1517-1696	1697-1833	1834-2021	2022-2456
6	770-1613	1614-1750	1751-1918	1919-2078	2079-2492
7	958-1715	1716-1840	1841-1994	1995-2135	2136-2572
8	1025-1786	1787-1905	1906-2051	2052-2146	2147-2605
9	1238-1828	1829-1947	1948-2069	2070-2188	2189-2596
10	1068-1888	1889-2003	2004-2105	2106-2249	2250-2709

(b)(e) ~~The Beginning with the effective date of this rule, the achievement levels for the FCAT Science shall be as shown in the following table.~~

FCAT Science grade-level scale scores (100 to 500) for each achievement level:

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
5	100-272	273-322	323-376	377-416	417-500
8	100-269	270-324	325-386	387-431	432-500
11	100-278	279-323	324-379	380-424	425-500

(d) ~~The achievement levels for the 2007 and 2008 FCAT Writing+ shall be as shown in the following table.~~

Writing+ grade-level scale scores (100 to 500) for each achievement level:

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
4	100-239	240-289	290-364	365-426	427-500
8	100-249	250-298	299-355	356-415	416-500
10	100-249	250-299	300-341	342-402	403-500

~~The passing standard for the 2007 and 2008 Grade 10 FCAT Writing+ shall be a score equal to or greater than 300 on the 100 to 500 scale. The achievement levels and passing standard specified in this subsection shall apply only to the 2007 and 2008 administrations of FCAT Writing+.~~

(6) Examinee scores on the FCAT 2.0 Reading and Mathematics shall be reported by the use of scaled scores and achievement levels defined by the baseline assessment administered during the 2010-2011 school year. Examinee scores on the FCAT 2.0 Science shall be reported by the use of scaled scores and achievement levels defined by the baseline assessment administered during the 2011-2012 school year. Examinee scores on EOC assessments shall be reported by the use of scaled scores and achievement levels defined by the baseline assessment administered as follows: Algebra 1 EOC Assessment (2010-2011), Geometry EOC Assessment (2011-2012), Biology 1 EOC Assessment (2011-2012), United States History EOC Assessment (2012-2013), and Civics EOC Assessment (2013-2014). Achievement levels will range from 1 through 5, with level 1 being the lowest achievement level, level 5 being the highest achievement level, and level 3 indicating satisfactory performance on the assessment.

~~(7)(6) Pursuant to Section 1008.22(3)(e)5., F.S., students who entered were enrolled in grade nine during in the 1999-2000 school year through the 2008-2009 school year fall of 1999 and thereafter, shall be required to earn passing scores on the Grade 10 FCAT Reading grade ten Florida Comprehensive Assessment Test in reading and mathematics and students who entered grade nine during the 1999-2000 school year through the 2009-2010 school year shall be required to earn passing scores on the Grade 10 FCAT Mathematics. Students who entered grade nine during the 2009-2010 school year and thereafter, shall be required to earn passing scores on the Grade 10 FCAT 2.0 Reading.~~

~~(8)(7) For students who entered grade nine during the 2000-2001 school year through the 2009-2010 school year, in the graduating class of 2003-04 school year and beyond, the~~

passing score for the required reading and mathematics assessments tests shall be a score equal to or greater than 300 on the 100 to 500 scale, and 1926 for the reading assessment test and 1889 for the mathematics assessment test on the developmental scale, unless the student had previously qualified for the passing scores required for the 2002-2003 graduating class. For students entering grade nine during the 2010-2011 school year and beyond, the passing score for all assessments required for high school graduation or for course credit shall be the minimum scale score in achievement level 3.

~~(9)(8)~~ The Commissioner of Education shall review ~~annually~~ student performance levels annually and recommend to the State Board of Education whether to maintain the existing passing scores and achievement levels or to increase one or more of the requirements.

~~(10)(9)~~ The assessments test shall be administered according to a schedule approved by the Commissioner.

~~(11)(10)~~ Students with disabilities may be provided test modifications or accommodations in accordance with the provisions of Rule 6A-1.0943, F.A.C.

~~(12)(11)~~ Invalidity of a section of this rule shall not invalidate the remainder of the rule.

Rulemaking Specific Authority 1001.02, 1008.22 FS. Law Implemented 1001.02, 1001.11, 1008.22, 1008.25, 1008.33 FS. History--New 1-24-99, Amended 10-7-01, 1-22-02, 12-23-03, 3-27-06, 3-1-07, 2-25-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Jeff Sellers, Interim Deputy Commissioner, Accountability, Research and Measurement

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric Smith, Commissioner, Department of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 12, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 30, 2010

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: 6A-1.0995
RULE TITLE: Form of High School Diplomas and Certificates of Completion

PURPOSE AND EFFECT: This rule is amended to establish the format for the State of Florida High School Performance-Based Diploma. The effect will be the establishment of a format for the State of Florida High School Performance-Based Diploma consistent with the format for other high school diplomas.

SUMMARY: The rule establishes the format for the Florida High School Performance-Based Diploma.

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: 1001.02, 1003.435, 1003.438 FS.

LAW IMPLEMENTED: 15.03(3), 1001.02, 1003.43, 1003.435, 1003.438 FS.

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

DATE AND TIME: June 15, 2010, 9:00 a.m.
PLACE: Orange County School Board, 445 West Amelia Street, Orlando, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Nikolai Vitti, Deputy Chancellor for School Improvement and Student Achievement, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400; (850)245-0509

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.0995 Form of High School Diplomas and Certificates of Completion.

Pursuant to Sections 1003.43 and 1003.438, F.S., the form of the Standard Diploma, the Special Diploma, State of Florida High School Performance-Based Diploma, the Certificate of Completion and the Special Certificate of Completion shall contain the wording and be in the form prescribed herein.

- (1) through (2) No change.
(3) State of Florida High School Performance-Based Diploma:

Name of School
City, State
Florida Seal
This certifies that
(Name of Student)

having satisfactorily completed the requirements for the State of Florida High School Performance-Based Diploma as prescribed by the State Board of Education, and the District School Board is hereby awarded this

DIPLOMA

under the authority of the Florida Department of Education and by order of the County District School Board
(Date of Award)

Superintendent of Schools Chairman, School Board

Principal

(3) through (4) renumbered (4) through (5) No change.

(6)(5) Districts must determine designations for each of the following accomplishments and include on standard diplomas issued beginning in May 2009 as applicable:

(a) Completion of four credits in the same Major Area of Interest as provided in Section 1003.428, F.S.

(b) Completion of four or more accelerated college credit courses in Advanced Placement (AP), International Baccalaureate (IB), Advanced International Certificate of Education (AICE), or dual enrollment courses, provided that the student is eligible for college credit pursuant to Sections 1007.27 and 1007.271, F.S. Successful passage of AP, IB, and AICE exams are designated in the Articulation Coordinating Committee Credit-by-Exam Equivalencies list available from the Department's web site at http://www.fldoe.org/articulation/pdf/2007_ACC-CBE.pdf. Successful passage of dual enrollment coursework constitutes a grade of C or better.

(c) Industry Career education certification in accordance with Section 1003.431, F.S., and

(d) Florida Ready to Work Credential in accordance with Section 1004.99, F.S.

(6) through (9) renumbered (7) through (10) No change.

Rulemaking Specific Authority 1001.02, 1003.438 FS. Law Implemented 15.03(3), 1001.02, 1003.43.438 FS. History-New 11-14-78, Amended 6-9-81, Formerly 6A-1.995, Amended 4-3-90, 1-5-09.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Frances Haithcock, Chancellor, K-12 Public Schools

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric Smith, Commissioner, Department of Education.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 11, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009

DEPARTMENT OF EDUCATION**State Board of Education**

RULE NO.: 6A-6.0211
 RULE TITLE: Performance-Based Exit Option Model and State of Florida High School Performance-Based Diploma

PURPOSE AND EFFECT: This is a new rule to establish and specify the requirements for the Performance-Based Exit Option Model leading to a new Florida High School Performance-Based Diploma. The Performance-Based Exit Option Model will be a program strategy for students who are enrolled in high school classes, but are in jeopardy of not graduating with their kindergarten cohort group because they are overage-for-grade, behind in credits, or have a low GPA. Students will be awarded the State of Florida High School Performance-Based Diploma.

SUMMARY: The rule creates the Performance-Based Exit Option Model leading to a new Florida High School Performance-Based Diploma.

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: 1001.02, 1003.435, 1003.53 FS.

LAW IMPLEMENTED: 1003.435, 1003.53 FS.

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

DATE AND TIME: June 15, 2010, 9:00 a.m.

PLACE: Orange County School Board, 445 West Amelia Street, Orlando, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Nikolai Vitti, Deputy Chancellor for School Improvement and Student Achievement, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400; (850)245-0509

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-6.0211 Performance-Based Exit Option Model and State of Florida High School Performance-Based Diploma.
The Department of Education shall award a State of Florida High School Performance-Based Diploma pursuant to Section 1003.435, F.S., to a candidate who meets all of the requirements of the Performance-Based Exit Option Model, as prescribed herein.

(1) General and Administrative Components.

(a) The Department shall designate the authority of awarding the State of Florida High School Performance-Based Diploma to each approved school district participating in the Performance-Based Exit Option Model.

(b) This program is also known as the "GED Exit Option."

(c) School districts must apply and be approved by the Department in order to implement the Performance-Based Exit Option Model at all school sites. Beginning with the 2010/2011 school year, and bi-annually thereafter, each approved school district must submit a renewal application to continue to implement the Performance-Based Exit Option Model. School districts who are seeking initial approval to implement the Performance-Based Exit Option Model may apply during any given school year. The Performance-Based Exit Option Model Application, Form BFCO 001, effective July 2010, is incorporated by reference and made a part of this rule and may be obtained by contacting the Director of Dropout Prevention, Bureau of Family and Community Outreach, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400, or online at <http://www.fldoe.org/family/dropout/default.asp>.

(d) School districts may amend approved applications anytime during the school year by completing and submitting an amendment to the Department.

(e) The district shall identify a Performance-Based Exit Option Model administrator who is responsible for ensuring that each approved school site is provided with the appropriate number of GED Testing Authorization Forms. The district Performance-Based Exit Option Model administrator must contact the Department of Education for additional Testing Authorization forms throughout the school year.

(2) Eligibility and Admission Components.

(a) The Performance-Based Exit Option Model is not to be a preferred or accelerated means of completing high school. Thus, this model is not a vehicle for the early exit of students and may only be exercised for students who are off track to graduate with their kindergarten cohort due to being overage for grade, behind in credits or having a low Grade Point Average (GPA). Students participating in the Performance-Based Exit Option Model may not graduate prior to their kindergarten cohort. Participation in this model is voluntary and requires parental notification and consent. Entry and exit policies must conform to state compulsory attendance requirements, as well as district daily attendance policies.

(b) Any eligible student currently enrolled in a PK-12 program, including special programs such as exceptional student education, dropout prevention, teenage parent, Department of Juvenile Justice, and English for Speakers of Other Languages (ESOL) may participate in the Performance-Based Exit Option Model. To be eligible to participate in the Performance-Based Exit Option Model, a student must, at a minimum, be:

1. At least sixteen (16) years old and currently enrolled in a PK-12 program;

2. Enrolled in and attending high school courses that meet high school graduation requirements as specified in Section 1003.428 or 1003.43, F.S., whichever is applicable;

3. In jeopardy of not graduating with their kindergarten cohort because they are overage for grade, behind in credits, or have a low GPA;

4. Assessed at a seventh grade reading level or higher at the time of selection (ninth grade or higher at the time of GED testing), as documented by the Test of Adult Basic Education (TABE) reading component or other assessment to determine grade level proficiency.

(c) The student eligibility criteria articulated in this rule in paragraph (2)(b) are the minimum requirements to which each school district implementing the Performance-Based Exit Option Model must adhere.

(d) After the student's initial eligibility has been determined, a comprehensive review of student records by designated school personnel or a child study team, including, but not limited to grades, credits, attendance, behavior and education plans, must be completed to decide if the Performance-Based Exit Option Model is the most appropriate educational strategy.

(e) If the student is a minor, parents or guardian(s) must be informed and give written consent to a student's participation in the Performance-Based Exit Option Model. The student's record must include written notification of the student's eligibility, parents' or guardians' right to an administrative review of the proposed placement, and parental or guardian consent, in writing, for student's participation prior to utilizing this model. The student's parent or guardian must be informed of the results of the record review and provided clarification that the student's transcript will indicate an alternative graduation route.

(f) Counseling is required before program entry and during participation in the program. Counseling and advisement services must be provided to both students and parents or guardians regarding the Performance-Based Exit Option Model and other graduation options prior to participation so that they can make an informed decision regarding placement.

(3) Curriculum and Instruction.

(a) The curricula and instructional content for the Performance-Based Exit Option Model must be at the high school level and must be rigorous and relevant to the student's postsecondary goals. Each student must be enrolled in and attending K-12 high school courses that meet the high school graduation requirements specified in Section 1003.428 or 1003.43, F.S., whichever is applicable.

(b) The content of the Performance-Based Exit Option Model must be academic and may include career education instruction or activities. The school district must provide a full range of instruction that aligns with the State Standards and the

core content measured by GED Tests (high school mathematics, writing, social studies, reading, and science). Career Education instruction and activities should be directed at the knowledge, skills, and abilities required for securing and maintaining employment.

(c) Instruction for the Performance-Based Exit Option Model must be of sufficient intensity and duration to ensure that participating students have a fair opportunity to raise their skills to the level necessary to earn a State of Florida High School Performance-Based Diploma in a reasonable period of time. Appropriate curriculum materials must be provided in adequate quantities and must be available when students need them. Instructional strategies that focus on individual student progress are strongly encouraged.

(d) Students are required to adhere to district attendance and code of conduct policies.

(e) Districts must administer the official GED Practice Tests administered under student testing conditions, prior to testing students for the GED. Districts must provide academic interventions to students who do not earn acceptable scores on the official GED Practice Tests.

(4) Program Completion Requirements.

(a) For students to successfully complete the Performance-Based Exit Option Model, the student must:

1. Continue enrollment and attendance in high school courses that meet high school graduation requirements as specified in Section 1003.428 or 1003.43, F.S., whichever is applicable.

2. Pass the required sections of the FCAT, or receive a concordant score in accordance with Section 1008.22, F.S.;

3. Pass the GED Tests; and

4. Complete any additional requirements established by the school district.

(b) Students earning the State of Florida High School Performance-Based Diploma are not required to obtain the minimum credits and GPA that are required for a standard high school diploma.

(c) Students must successfully participate in the Performance-Based Exit Option Model for at least one full semester.

(d) Students who are participating in the Performance-Based Exit Option Model during their 13th year of school and their kindergarten cohort has already graduated are not required to continue classes until the end of the currently enrolled semester if they have:

1. Successfully passed the required sections of the FCAT or received a concordant score in accordance with Section 1008.22, F.S.;

2. Passed the GED Tests; and

3. Completed any additional requirements established by the school district.

(5) Official Recognition

(a) Performance-Based Exit Option Model students must receive official recognition. Students enrolled in the Performance-Based Exit Option Model are eligible to participate in all standard high school activities, including extracurricular activities, as well as graduation and other recognition ceremonies.

(b) A student completing the Performance-Based Exit Option Model who passes the GED Tests and the required sections of the FCAT, or receives a concordant score in accordance with Section 1008.22, F.S., must be awarded a State of Florida High School Performance-Based Diploma.

(c) A student completing the Performance-Based Exit Option Model who does not meet the graduation requirements established in Section 1003.28 or 1003.43, F.S., as applicable, does not qualify to receive a standard high school diploma.

(d) If a student passes the GED Tests but does not pass the FCAT, the student must only be awarded the State of Florida High School Diploma (GED).

(e) Rule 6A-1.0995, F.A.C., provides the allowable format for State of Florida High School Performance-Based Diploma.

Rulemaking Authority 1001.02, 1003.435, 1003.53 FS. Law Implemented 1003.435, 1003.53 FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Frances Haithcock, Chancellor, K-12 Public Schools

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric Smith, Commissioner, Department of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 11, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: 6A-14.095
 RULE TITLE: Site Determined Baccalaureate Access

PURPOSE AND EFFECT: The purpose of the new rule is to provide an outline of procedures and documents required for approval of new baccalaureate degree programs and authorized exemptions for Florida College System institutions. The effect is a rule to implement current statutes relating to baccalaureate degree access.

SUMMARY: This rule outlines approval procedures for new Baccalaureate Programs for colleges within the Florida College System. The rule also provides guidelines for the transfer of authority for approval of new programs from the State Board of Education to the local college Board of Trustees in certain circumstances as authorized in Section 1007.33, Florida 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: 1001.02, 1007.25, 1007.33(7) FS.

LAW IMPLEMENTED: 1007.25, 1007.33, 1008.32(1) FS.

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

DATE AND TIME: June 15, 2010, 9:00 a.m.

PLACE: Orange County School Board, 445 West Amelia Street, Orlando, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Patricia Frohe, Director of Postsecondary Academic Programs, (850)488-0555, patricia.frohe@fldoe.org.

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-14.095 Site Determined Baccalaureate Access.

(1) Purpose. This rule implements a uniform approval process for new baccalaureate degree programs proposed by Florida colleges, in accordance with Section 1007.33, F.S.

(2) Definitions. For the purposes of this rule, the following definitions shall be used.

(a) "Florida colleges" means institutions within The Florida College System.

(b) "SACS" means the Southern Association of Colleges and Schools Commission on Colleges.

(c) "Division" means the Division of Florida Colleges.

(3) Letter of intent. The following requirements shall apply to the Letter of Intent that is required pursuant to Section 1007.33(5)(a), F.S.

(a) The description of the program shall include:

1. The name of the program;
2. The type of degree to be conferred under the program;
3. Key skills expected of graduates; and
4. A description of the career path or potential employment opportunities for graduates of the program.

(b) The letter of intent shall include a summary of discussions with the state university in the Florida college's service district and other public and nonpublic postsecondary institutions in the region regarding evidence of need, demand, and economic impact.

(c) The letter of intent shall include the expected term and year of the first term of upper division enrollment in the proposed program.

(d) The letter of intent shall include a description of funds available for program startup costs, including promised support from local businesses and industries.

(4) Proposals by Florida colleges. Florida colleges seeking consideration of approval by the State Board of Education for a new baccalaureate degree proposal must complete and submit the Baccalaureate Proposal Approval Application, which is

hereby incorporated by reference in this rule to become effective July 2010. A copy of the form may be found at http://www.fldoe.org/cc/students/bach_degree.asp, or by writing to the Division at 325 West Gaines Street, Suite 1544, Tallahassee, Florida 32399.

(5) Alternative proposals by a Florida state university or regionally accredited private college or university. Alternative proposals must be submitted electronically by email to the Chancellor of the Florida College System at Chancellor.FloridaCollegeSystem@fldoe.org and must address all criteria specified in Section 1007.33(5)(c), F.S., and specifically include:

(a) A description of a proposed partnership agreement with the Florida college submitting the proposed baccalaureate program that includes joint approval of the curriculum.

(b) A calculation of the total tuition and fees for a student starting as a first-time, freshman student in the program and a total for completing the program as an upper division transfer student.

(6) Review / Approval Process.

(a) Upon receipt of a Florida college proposal, the Division shall review the proposal to determine compliance with criteria in Section 1007.33(5)(d), F.S. The proposal shall include:

1. Evidence of collaboration via internal and external planning processes or meetings that include need, demand, regional capacity, and impact discussions with postsecondary institutions in proximity to the college.

2. An analysis of data and a description of the employment gap between the number of job openings and the number of graduates in the discipline area in that service region, which demonstrate demand and unmet need for graduates of the program.

3. A description of both existing and planned facilities, equipment, library/media, and academic resources needed for the program demonstrating physical capacity to support the program.

4. An enrollment projection and funding requirements for the program, including start-up costs, required faculty salaries, library resources, facility renovations/remodeling, and other anticipated operational costs to develop and maintain the program over a four-year period. Supplemental funding from outside sources should be included in a budget plan within the proposal.

5. The program curriculum, including course numbers and titles, credit hours and established or proposed common course prerequisites demonstrating comprehensive academic content and adherence to requirements adopted pursuant to Section 1007.25, F.S.

(b) Absent deficiencies, upon notification of completed review, the Florida college may submit a revised proposal to replace the original or notify the Division that the original proposal is final.

(c) The Division shall forward the final proposal to the Commissioner of Education with a written analysis, which the Commissioner shall consider in his recommendation to the State Board of Education.

(7) Exemption from State Board of Education Approval. A Florida college board of trustees may submit an exemption request to the Division on or before July 1 of the year in which the college desires to be considered for an exemption. In the event that July 1 falls on a weekend or state holiday, the deadline shall move to the following business day.

(a) The exemption request must be submitted in the Application for Exemption from Baccalaureate Proposal Approval, which is hereby incorporated by reference in this rule to become effective July 2010, and may be accessed at http://www.fldoe.org/cc/students/bach_degree.asp, or by writing to the Division at 325 West Gaines Street, Suite 1544, Tallahassee, Florida 32399. The application must, at a minimum, include the following documentation:

1. The Florida college shall provide the Division with a copy of the SACS letter reflecting the date on which it was approved as a baccalaureate-degree-granting institution.

2. The Florida college shall demonstrate maintenance of qualified faculty and institutional resources upon the submission of:

a. A certification statement by the Florida college board of trustees that all faculty members meet Southern Association of Colleges and Schools Commission on Colleges' Principles of Accreditation: Foundations for Quality Enhancement, 2010 Edition, section 3.7.1, for postsecondary instructors in the course and discipline, which is hereby incorporated by reference. The document may be accessed at <http://www.sacscoc.org/pdf/2010principlesofacreditation.pdf>:

b. A certification statement by the Florida college board of trustees that financial resources are available to support faculty and other instructional resources such as libraries or support services.

3. The Division shall verify upper division enrollment based on an annual enrollment report that shall include:

a. An unduplicated upper division student headcount and enrolled semester hours.

b. An unduplicated upper division student enrollment headcount disaggregated by age, gender, and ethnicity.

4. The college shall provide evidence indicating the absence and/or correction of compliance or financial audit findings related to its baccalaureate programs for the 3 years immediately preceding the exemption request. The review process for audit findings shall be in accordance with the Division of Florida College's Procedures for Reviewing Audit Reports, as authorized in Section 1008.32(1), F.S., which are hereby incorporated by reference. These procedures may be accessed at http://www.fldoe.org/CC/policy/cc_gpm2.asp#audit.

5. The Florida college shall provide a copy of the relevant sections of the board of trustees policies and procedures for review, demonstrating compliance with the requirements of Sections 1007.33(2)(a) and (3), F.S.

6. The timely submission of an annual baccalaureate performance accountability report in the format prescribed by the Division, which is hereby incorporated by reference and may be accessed at <http://www.fldoe.org/cc/students/bach.degree.asp>, or by writing to the Division at 325 West Gaines Street, Suite 1544, Tallahassee, Florida 32399. The report shall include, at a minimum, retention and success rates, degree completion rates, and rates showing employment and/or enrollment in a graduate program of study.

a. Reports shall be considered timely if the Division has received a report for the most recent prior year on or before August 15.

b. Additional evidence of baccalaureate degree success may be included in the exemption application.

(8) Exempt Florida College Compliance Review. For compliance review of a new baccalaureate program approved by a Florida college board of trustees the college must submit to the Division:

(a) The name of the program and degree type;

(b) The Classification of Instructional Program (CIP) code assigned;

(c) The full upper division curriculum, including common-prerequisites and, if applicable, limited access request;

(d) A copy of the SACS letter reflecting the date on which it was approved as a baccalaureate-degree-granting institution.; and

(e) The expected implementation date.

(9) Compliance Review Feedback. Within thirty (30) days of receipt of a Florida college's completed baccalaureate program Compliance Review, the Chancellor of the Florida College System shall advise the President of the college, and the Commissioner of Education, in writing, if the criteria for implementation in Sections 1007.33(5)(d) and (6)(c), F.S., and subsection (8) of this rule have been met. If all criteria have not been met, a program may be resubmitted to the Division of Florida Colleges following correction of deficiencies for compliance review, or may be submitted to the State Board of Education for approval.

Rulemaking Authority 1001.02, 1007.25, 1007.33(7) FS. Law Implemented 1007.25, 1007.33, 1008.32(1) FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Will Holcombe, Chancellor, Florida College System

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric Smith, Commissioner, Department of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 12, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 12, 2010

DEPARTMENT OF TRANSPORTATION

RULE NOS.:	RULE TITLES:
14-22.0011	General Procedural Requirements
14-22.002	Regulations Covering Qualification of Contractors
14-22.003	Rating the Applicant
14-22.0041	Procedure for Qualification and Issuance of Certificate of Qualification
14-22.0042	Notification of Conviction of Contract Crime
14-22.005	Period of Validity of Qualification
14-22.006	Current Capacity Rating
14-22.007	Joint Ventures
14-22.008	Eligibility for Obtaining Proposal Documents
14-22.009	Over-Bidding
14-22.0101	Special Classes of Work
14-22.0111	Subletting
14-22.012	Suspension, Revocation, or Denial of Qualification
14-22.0121	Reapplication and Reinstatement
14-22.014	Emergency Suspension and Revocation
14-22.0141	Contractor Non-Responsibility
14-22.015	Forms

PURPOSE AND EFFECT: Amendments are being made in order to clarify and update the rule chapter, repeal outdated rules, and incorporate by reference additional forms needed for contractor qualification for certain work classes. The rule chapter title will be changed to "Contractor Certificate of Qualification and Non-Responsibility."

SUMMARY: These amendments update the conditions required for contractor qualification, and for non-responsibility.

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: 334.044(2), 337.14(1) FS.

LAW IMPLEMENTED: 337.11, 337.14, 337.164, 337.167 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: Deanna R. Hurt, Assistant General Counsel and Clerk of Agency Proceedings, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULES IS:

14-22.0011 General Procedural Requirements.

(1) Purpose. This rule chapter sets forth the requirements for applicants to be certified by the Department as qualified to bid for the performance of road, bridge, or public transportation construction contracts, in excess of \$250,000.

(2) Exceptions. Except for the provisions of Rules 14-22.012 and 14-22.0141, F.A.C., this rule chapter does not apply to bidders who wish to bid on construction contracts of \$250,000 or less, or other contracts not having to do with the construction of roads, bridges, or other public transportation projects, or where the Department has waived the qualification requirements for of construction projects having a contract price of less than \$500,000 based upon due to the determination that the projects are of a non-critical nature and that waiver of qualification requirements will not endanger public health, safety, or property.

(3) Time. The provisions of Chapter 28-106, F.A.C., shall apply in computing any period of time prescribed by this rule chapter.

(4) Request for Hearing. All requests for hearing shall be in writing and shall be filed with the Clerk of Agency Proceedings, Department of Transportation, MS 58, Haydon Burns Building, 605 Suwannee Street, Tallahassee, Florida 32399-0458. A request for hearing is filed when it is delivered to and received by the Clerk of Agency Proceedings at the above address and accordingly, is not timely filed unless it is received by the Clerk of Agency Proceedings within the appropriate time period.

(4)(5) Definitions.

(a) The following terms shall have the meanings set forth in Section 337.165, F.S.: "contractor," "contract crime," "convicted," or "conviction," and "affiliate."

(b) For matters not involving contract crimes, the term "Affiliate" shall mean business concerns, organizations, or individuals where, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indicia of control include interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the revocation, denial, or suspension or proposed revocation, denial, or suspension of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was revoked, denied, or suspended or proposed for revocation, denial, or suspension.

(c) ~~The term "Applicant" means the person, firm, or combination of either persons or firms for which qualification is requested desired. Joint ventures are addressed in Rule 14-22.007, F.A.C.~~

(d) ~~The term "Bidder" means an entity qualified under an entity which is qualified according to this rule chapter, and which possesses sufficient current capacity to obtain bid proposal documents from the Department.~~

(e) ~~The term "Construction assets" means resources assets used for the construction of roads, bridges, or public transportation projects. The term "non-construction assets" means assets not used for the construction of roads, bridges, or public transportation projects.~~

(f) ~~The term "Qualified equipment appraiser" means an individual employed by an equipment company that sells, rents, or leases the general type of equipment being appraised, or a company or individual(s) engaged in the business of appraising equipment regularly used in the construction of roads, bridges, or other transportation projects.~~

(g) ~~The term "Qualified real estate appraiser" means an individual who meets all of the requirements prescribed by of the laws of the state in which the appraisal occurs. Florida Real estate appraisals on Florida real estate must be performed by a "Certified General Appraiser," as described defined in Section 475.611, F.S Florida Statutes.~~

(h) ~~The term "Construction revenues" means all earnings received revenues earned through contracting for the performance of road, bridge, and other construction projects (including to include all earnings revenues derived from providing administration, labor, material, equipment, supplies, and services necessary to fulfill contractual obligations incurred in the performance of road, bridge, and other construction projects).~~

Rulemaking Specific Authority 334.044(2), 337.14(1) FS. Law Implemented 337.11 337.11(3)(b), 337.11(5)(a)1. 3., 337.11 (7)(b)1., 337.11(7)(e), 337.14, 337.16, 337.165, 337.167 FS. History—New 11-10-82, Amended 8-25-83, Formerly 14-22.011, Amended 12-20-89, 1-4-94, 7-1-95, Amended 8-6-96, 1-17-99, 7-8-01, 6-27-04, 1-23-08,_____.

14-22.002 Regulations Covering Qualification of Contractors.

(1) Application for Qualification.

(a) Persons or firms who request desire to qualify ~~with the Department in order~~ to bid for the performance of road, bridge, or public transportation construction projects in excess of \$250,000, shall file an annual annually ~~with the Department an~~ Application for Qualification, (Online Web Application), Form 375-020-38, Rev. 11/07 11/7/2007. An Application for Qualification shall be filed electronically at <http://www.dot.state.fl.us/cc-admin/PreQual Info/prequalified.shtm>. Information or assistance regarding the Application can be obtained from ~~by writing to~~ the Department at the address listed below. Persons or firms may obtain information on how

to obtain a user name and password to use the Application filing process by contacting the Contracts Administration Office at the address below. The Application will consist of requested information on the Applicant, Applicant's stakeholder, Applicant's affiliates, and ~~shall~~ ~~would~~ include the Applicant firm's background, current and historical contract detail, construction experience, and expertise, financial information, and requested work classes. Persons or firms shall also file two copies of audited financial statements, one copy to ~~accompany~~ ~~be accompanied with~~ the electronic application, ~~and as well as~~ one hard copy as required by this section via hand delivery or mail to Department of Transportation, Contracts Administration Office, 605 Suwannee Street, MS 55, Room B-1, Haydon Burns Building, Tallahassee, Florida 32399-0455, (850)414-4000 or contracts.admin@dot.state.fl.us.

(b) A separate application must be submitted for each person, firm, or combination thereof for which qualification is ~~requested~~ ~~desired~~.

(c) The applicant must indicate the classes of work for which qualification is ~~requested~~ ~~sought~~.

(d) All statements made by the applicant ~~in the application~~ shall be furnished under oath.

(e) The data in the applicant's financial statement ~~shall~~ ~~must~~ be reflected in the financial sections of the application.

(f) All applications must include the appropriate federal tax reference number.

1. For corporations (including Subchapter S corporations), partnerships, sole proprietorships, joint ventures, limited liability companies, and other entities, the appropriate tax reference number is the federal Employer Identification Number (EIN).

2. For individuals, the appropriate tax reference number is the Social Security Number (SSN) of the individual.

3. For foreign corporations organized outside the United States, the Department will assign a special identification number.

(g) In the event the Department finds a timely application is incomplete or contains inadequate or inaccurate information ~~needed~~ for processing of the application, or the Department needs more information to make a decision regarding the applicant's competency, responsibility, or financial resources, the Department shall verbally ~~request~~ or ~~request~~ in writing ~~request~~ that the applicant provide the necessary information or the source for verification of the information. If the requested information is not provided within 20 days, of the initial request, the Department shall request the information a second time via email or in writing express delivery, delivery receipt. If the information is not provided within 10 days of receipt of the second request, the application shall be denied.

(h) The Department shall act upon the application for qualification within 30 days ~~from when~~ ~~after~~ the Department determines that the application is complete.

(2) Financial Statements. Each application shall include the latest annual audited financial statements, including any supplementary information and schedules of the applicant that were completed within the last 12 months. Audited financial statements required to be submitted with the application shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP). If the audited annual financial statements show the financial condition of the applicant more than four months prior to the date on which the application is filed with the Contracts Administration Office, then an updated application and audited interim financial statements ~~shall~~ ~~must~~ also be submitted. The audited interim financial statements ~~shall~~ ~~must~~ cover the period from the ending date of the audited annual statements and ~~shall~~ ~~must~~ show the financial condition of the applicant no more than four months prior to the date on which the application is filed ~~Contracts Administration Office~~. ~~The~~ ~~These~~ annual and interim financial statements must be audited and accompanied by the opinion of a Certified Public Accountant.

(a) An adverse opinion or a disclaimer of an opinion shall result in disapproval of the application. A qualified opinion will result in adjustments to the financial portions of the application; if such qualification arises because of the use of an accounting principle at variance with GAAP, or the qualification is of such magnitude as to materially affect the current ratio, liabilities, or ~~the~~ adjusted net worth.

(b) When consolidated financial statements are required by GAAP, and qualification is ~~requested~~ ~~desired~~ for one or more of the subsidiary companies, a consolidating balance sheet is required and ~~shall~~ ~~must~~ be included by the Certified Public Accountant. When combined financial statements are allowed by GAAP, and qualification is desired for one of the combining affiliated entities, a combining balance sheet is required and must be included by the Certified Public Accountant.

1. For those applications described in paragraph (2)(b) ~~above~~, financial information entered in the Details Relative to Assets and Details Relative to Liabilities sections of the ~~a~~ Application ~~shall~~ ~~for~~ ~~Qualification~~ ~~must~~ be obtained from the consolidating or combining balance sheets, as appropriate, and reflect only those portions of the financial statements relative to the ~~qualifying~~ applicant.

2. Only the financial data of the applicant, as shown on the consolidating or combining balance sheets and reflected in the application, will be used in determining the applicant's Current Ratio Factor (CRF), Adjusted Net Worth, (ANW), and Maximum Capacity Rating (MCR), as defined in Rule 14-22.003, F.A.C.

(c) The financial statements shall include, ~~but shall not be~~ ~~restricted to~~ the following basic financial statements:

1. ~~The~~ ~~s~~Statements (sub-subparagraphs ~~a.~~ through ~~d.~~) shown below and the opinion of the certified public accountant on these statements.

- a. A balance sheet.
- b. An income statement.
- c. A statement of retained earnings or changes in stockholders equity.
- d. A statement of cash flows.

2. The ~~i~~Income ~~s~~Statement above shall provide separate totals for "construction revenues," ~~as defined by paragraph 14-22.0011(3)(h), F.A.C.,~~ and all revenues earned during the audit period.

3. Notes to financial statements. ~~Supplemental data including a schedule of selling, general and administrative expenses, and a schedule of contracts in progress.~~

4. Upon written request, any such additional financial information necessary for the Department to verify the financial adequacy of the applicant as presented in their financial statements and the opinion of the Certified Public Accountant.

(d) Applicants not qualified with the Department the previous year shall furnish audited financial statements for a minimum twelve (12) month period showing the financial condition of the applicant no more than four (4) months prior to the date on which the application is filed. Applicants established for less than one year shall furnish audited financial statements from establishment through a period no more than four months prior to the date on which the Application is filed.

(3) List of Equipment. Each major item of equipment owned by the applicant that is utilized in performing the requested classes of work shall be listed in the application with its book or salvage value, make, model, and description shown. Items held under capital lease agreements shall be identified so that the book value of these items can be readily determined. Items required for each class of work may be grouped together, but shall be listed separately. An applicant who requests ~~desires~~ that the value of the equipment owned be calculated on 50 percent of appraised value shall provide an additional list which includes an appraisal by a qualified equipment appraiser. For an appraisal to be valid, the appraiser shall ~~must~~ state that they have personally inspected and/or examined the equipment. Certified statements of availability of equipment from affiliated companies may be used for obtaining classes of work. The same equipment may be used to qualify no more than two affiliated applicants. Letters of commitment from at least two equipment rental companies may be used to obtain certification in classes of work in which the applicant has expertise. The letters of commitment must list the equipment that the applicant intends to lease for the classes of work sought, and commit the lessor for the maximum period of qualification requested ~~the applicant is seeking qualification~~.

(4) Experience Record.

(a) Each application shall include a current list of projects completed within the past three years by the applicant as prime or subcontractor stating the actual dollar amount of work executed and listing each class of work performed on those

projects by the applicant's own employees. The list shall not include work sublet to others or performed with rented equipment and operators. Résumés must be submitted to show the construction experience of personnel at a superintendent level or ~~and~~ above for each class of work for which the applicant is requesting qualification. The same list of personnel shall not be used to qualify more than two affiliated applicants.

(b) Newly established firms, applicants qualifying for the first time, and applicants whose Certificate of Qualification has been expired for more than two years, shall provide letters of recommendation from at least two agencies or firms with direct knowledge of the applicant's key personnel and work performance in sufficient detail to assist in rating the applicant's ability to perform road and bridge construction and services incidental thereto. The letters must contain specific information regarding the following:

- 1. Specific projects, including project numbers and location.
- 2. Size of projects by dollar value.
- 3. Description of projects and classes of work performed with applicant's own employees and equipment.
- 4. Whether projects were timely completed.
- 5. Whether the applicant was cooperative and facilitated changes to projects ~~the project~~ when required.

Rulemaking Specific Authority 334.044(2), 337.14(1), ~~337.167~~ FS. Law Implemented 337.11, 337.14, 337.164, 337.167 FS. History—Formerly Chapter 14-8, Amended 7-1-67, 8-20-68, 5-9-70, 1-6-72, 9-24-75, Formerly 14-22.01(1), (2), (3), Amended 3-23-79, 11-10-82, 8-25-83, 10-1-85, Formerly 14-22.02, Amended 12-20-89, 6-27-90, 1-4-94, 7-1-95, 6-27-04, 5-15-06, 1-23-08, _____.

14-22.003 Rating the Applicant.

(1) Verification of Information. The Department will make such inquiries and investigations as deemed necessary to verify and evaluate whether the applicant is competent, ~~is~~ responsible, and possesses the necessary financial resources to perform the ~~desired~~ work; based upon the following:

(a) Organization and management, including construction experience; and past work performance record of the applicant, or applicant's employees, whether with, or prior to their employment by the ~~that~~ applicant, including deficiency in quality of completed work, any history of payment of liquidated damages, any untimely completion of projects where liquidated damages were not paid, uncooperative attitude, contracts litigation, claims, unpaid bill(s), notices of non-payment filed by subcontractors or suppliers, or defaults in the State of Florida or other states.

(b) Equipment; as shown on the equipment list for the requested classes of work. Adequate equipment shall be basic equipment used by the industry in ~~the~~ normal construction for each class of work, or called for in the Standard Specifications for Road and Bridge Construction in force at the time of application.

(c) Integrity, including evaluation of truthfulness of statements in the application ~~or and in~~ other contractual documents.

(d) Financial resources, sufficient to establish a Maximum Capacity Rating (MCR) as set forth in (2) below. The Department will consider any other relevant financial information.

(2) MCR.

(a) Definition and Formula. The MCR shall be the total aggregate dollar amount of uncompleted work an applicant may have under contract at any one time as prime contractor and/or subcontractor, regardless of its location and with whom contracted. The MCR shall be established by the Department using the following formula, and consideration of the general qualification factors listed in subsection 14-22.0041(1), F.A.C.:

$$\text{MCR} = \text{AF} \times \text{CRF} \times \text{ANW}, \text{ in which}$$

$$\text{MCR} = \text{Maximum Capacity Rating}$$

AF = Ability Factor (determined from the Ability Score as provided below)

CRF = Current Ratio Factor (determined as provided below)

ANW = Adjusted Net Worth (~~for rating purpose,~~ determined as provided below).

1. Ability Score.

a. New applicants and applicants who have not been qualified under this rule for more than two years shall have their Ability Factor determined from the total Ability Score resulting from evaluations of the applicant's organization, management, work experience, and letters of recommendation. The maximum values used in determining the ability score for the above applicants are as follows:

ABILITY SCORE	
ORGANIZATION AND MANAGEMENT	MAXIMUM VALUE
Experience Of Principals	15
Experience Of Construction Supervisors	15
WORK EXPERIENCE	
COMPLETED CONTRACTS	
Highway and Bridge Related	25*
Non-highway and Bridge Related	10
ONGOING CONTRACTS	
HIGHWAY AND BRIDGE RELATED	25*
NON-HIGHWAY AND BRIDGE RELATED	10
TOTAL	100
*MAXIMUM VALUE SHALL BE INCREASED TO 35 IF APPLICANT'S EXPERIENCE IS EXCLUSIVELY IN HIGHWAY AND BRIDGE CONSTRUCTION.	

b. If the applicant has been qualified under this rule within the last two years, and ~~the Department has~~ three or more Contractor Past Performance Reports are on file for projects completed for the Department within five years of the application filing date, and which have not been previously used to determine an Ability Score, the applicant's Ability Score shall be calculated by adding the scores of these reports plus the average score from the previous application and dividing the this sum by the number of scores used. Contractor Past Performance Reports shall reflect the applicant's organization, management, and demonstrated work performance, including work sublet to others, as set forth in Form 700-010-25, Rev. 09/05, ~~which is incorporated by reference in Rule 14-22.015, F.A.C.~~

c. If the applicant has been qualified under this rule within the last two years, and the Department does not have three or more Contractor Past Performance Reports on file ~~for the applicant~~ for projects completed for the Department within five years of the application filing date, then the Ability Factor (AF) from the applicant's last successful application shall will be brought forward and used.

d. The average Ability Score determined in a. or b. above is converted to an AF pursuant to sub-subparagraph Rule Section 14-22.003(2)(a)2., F.A.C., or AF is brought forward as indicated in c. ~~above.~~ The AF is then used in the formula as described in pursuant to paragraph 14-22.003(2)(a), F.A.C. to compute the applicant's MCR.

2. Ability Factor. The Ability Score for new and active applicants shall determine the AF as follows:

Ability Score	AF
64 or less	1
65-69	2
70-73	3
74-76	4
77-79	5
80-84	8
85-89	10
90-93	12
94-97	14
98-100	15

a. Notwithstanding the requirements in paragraph 14-22.003(2)(a), sub-subparagraphs 14-22.003(2)(a)1.a., 1.b., 1.c., 1.d., and subparagraphs 14-22.003(2)(a)2., F.A.C., ~~above~~, the AF will be limited to a maximum of 4 if the applicant receives an ability score of 76 or less on the initial application, ~~or~~ receives an ability score of 76 or less on two or more Contractor Past Performance Reports ~~on file~~ for projects on file and completed during the 12 month period preceding the applicant's fiscal year ending date for which the Certificate of Qualification is being issued, unless the applicant's average ability score (inclusive of all scores received during the period) is 87 or greater. The use of a surety commitment letter to raise the MCR is prohibited.

b. ~~The~~ ~~This~~ AF limitation will remain in effect during the current qualification period.

3. Current Ratio Factor (CRF). The current ratio is the number resulting from dividing the adjusted current assets by the adjusted current liabilities. The calculated current ratio from 0.60 up to a maximum of 2.00 will be used as the CRF. The maximum current ratio of 2.00 will be used for the CRF, even if the actual value is greater. ~~For current ratios greater than 2.00, 2.00 will be used as the CRF.~~ The applicant will be denied qualification if its calculated current ratio is less than 0.60.

4. Adjusted Net Worth (ANW). The ANW must be a positive value for the applicant to be considered for qualification. The ANW used in the MCR formula will be the amount of capital and surplus (net worth) as adjusted.

5. The following adjustments shall be applied in the establishment of the CRF and ANW:

a. ~~The~~ ~~v~~Value allowed for equipment shall be the book value, or 50 percent of actual value given by a qualified equipment appraiser, whichever is greater. Equipment appraisals must be dated no earlier than six months prior to receipt of the application.

b. ~~The~~ ~~v~~Value allowed for real estate used for business purposes (road, bridge, or public transportation construction) shall be:

(I) The book value or the value given by a qualified real estate appraiser, ~~(real estate appraisals shall be dated no earlier than two years prior to receipt of the date the application is filed),~~ less

(II) Encumbrances against same, ~~(such encumbrances will not also be deducted elsewhere).~~

c. No value will be allowed for investments, real estate, or any other property not used in road, bridge, or public transportation construction, and no allowance shall be given for homesteads or personal property. Encumbrances against these assets shall be eliminated entirely. ~~Calculation for real estate adjustments will be the book value less any encumbrances against the same.~~

d. Assets of doubtful value, ~~as more fully defined by GAAP,~~ are recorded transactions that, based upon the known facts and circumstances, do not lead to the realization of value for use in the contractor's operations in the current operating period. These assets shall be eliminated in part or entirely.

e. Contingent liabilities, ~~as more fully defined by GAAP,~~ are debts or obligations that would require the use of the contractor's resources within the current operating period, given that certain events take place in the future. These shall be treated as actual liabilities, wholly or in part, depending on the probability of such liabilities becoming actual liabilities.

f. Patents, organizational expense, non-compete agreements, goodwill, and intangible assets, ~~as defined by GAAP,~~ shall be eliminated entirely.

g. Past due receivables or unexplained receivables, ~~officer and employee receivables, or other related party receivables,~~ unsecured notes receivable, and the interest for these notes shall be eliminated entirely. ~~Subsidiary or affiliate receivables, based upon the known facts and circumstances that do not lead to the realization of value for use in the contractor's operations shall be eliminated in part or entirely.~~

h. Officer and employee receivables, or other related party receivables, where it is determined that one party can exercise control or significant influence over the management and/or operating policies of the other party, shall be eliminated entirely. Furthermore, subsidiary or affiliate receivables, based upon the known facts and circumstances, that do not lead to the realization of value for use in the contractor's operations shall be eliminated in part or entirely.

~~i. Prepaid expenses, deposits, prepaid taxes, and deferred interest, and the excess of deferred tax assets over deferred tax liabilities shall be eliminated entirely.~~

~~j. The book value of leasehold improvements and the excess of book value over liabilities for capital lease assets shall be eliminated entirely. Cash surrender value life insurance shall be eliminated entirely.~~

k. Construction claims included as current assets associated with contracts shall be eliminated entirely.

6. MCR. The calculated MCR shall be rounded off according to the following scale:

Up to \$500,000 – round off to nearest \$10,000

Above \$500,000 to \$2,000,000 – round off to nearest \$25,000

Above \$2,000,000 – round off to nearest \$50,000

(b) Bonding Capacity.

1. Except for the provisions of sub-subparagraph 14-22.003(2)(a)2.a., F.A.C., above, an applicant qualifying for a positive rating, or a contractor having a current certificate of qualification, has an Ability Score of 80 or higher, and has a Current Ratio Factor of at least 1.00, is eligible to request an increase in its MCR upon receipt of evidence of a current bonding capacity exceeding the calculated MCR from a surety company authorized to do business in the State of Florida. Such evidence shall be in the form of a Surety Commitment

Letter and executed by an officer of the surety, ~~who is~~ authorized to bind the surety, with a power of attorney attached. The Surety Commitment Letter must be dated within four months of the request, and cover the certification period. The limit for an MCR issued on the basis of such bond

commitment for applicants with an Ability Score of 80 through 90 will be determined by the following “Surety Capacity” formula:

$$SC = SM \times MCR \times (CRV \div TRV)$$

In which:

- SC = Surety Capacity
- SM = Surety Multiplier (Determined from Ability Score – Surety Multiplier Table as provided below)
- MCR = Maximum Capacity (Determined as provided in paragraph 14-22.003(2)(a), F.A.C.)
- CRV = Construction Revenues (As set forth in applicant’s financial statements per subparagraph 14-22.002(2)(c)2., F.A.C.)
- TRV = Total Revenues (As set forth in applicant’s financial statements)

ABILITY SCORE – SURETY MULTIPLIER TABLE	
Ability Score	Surety Multiplier
80	3.0
81	3.4
82	3.8
83	4.2
84	4.6
85	5.0
86	5.6
87	6.2
88	6.8
89	7.4
90	8.0

2. Except for the provisions of sub-subparagraph 14-22.003(2)(a)2.a., F.A.C., ~~above~~, the MCR for firms that have an Ability Score of 91 or greater will be the “Aggregate of Contracts” amount stipulated in the surety commitment letter. An MCR established through the use of a surety commitment letter shall not exceed the “Aggregate of Contracts” amount stipulated in the surety commitment letter.

3. Except for the provisions of sub-subparagraph 14-22.003(2)(a)2.a., F.A.C., ~~above~~, use of a surety commitment letter to increase an applicant’s MCR will only be considered if at the time of application the ~~applicant’s~~ CRF is at least 1.00, as defined in subparagraph 14-22.003(2)(a)3., F.A.C., and the applicant has an Ability Score of 80 or higher. No event(s) during the qualification period, subsequent to the ending date of the audited financial statements used for qualification, will be considered in determining an applicant’s CRF. However, the Department will evaluate ~~consider~~ the general qualification factors listed in subsection 14-22.004(1), F.A.C., in consideration of an increase to the applicant’s MCR through the use of a surety commitment letter.

(3) Classification of Work.

(a) Applicant request for class(es) of work. Applicants shall indicate each class of work for which they request ~~desire~~ qualification. The Department will consider qualification ~~qualifying the applicant~~ only in the specific class or classes of work requested.

(b) The major classes of work are as follows:

1. Bascule Bridge Rehabilitation, Major Bridges:

- a. ~~Bridges which includes bascule spans~~
- b. ~~Bridges which include curved steel girders~~
- c. ~~Bridges with multi-level roadways~~
- d. ~~Bridges of concrete segmental construction~~
- e. ~~Bridges which include steel truss construction~~
- f. ~~Bridges which include cable stayed construction~~
- g. ~~Bridges of conventional construction over a water opening of 1,000 feet or more~~
- h. ~~Cast in-place post-tensioned superstructure~~

2. Bridge Deck Overlays, Intermediate Bridges ~~are bridges that contain none of the types of construction listed under Major Bridges and span lengths exceeding 50 feet (center to center of cap):~~

3. Bridge Painting, Minor Bridges ~~are bridges with span lengths not exceeding 50 feet (center to center of cap) and total length not exceeding 300 feet. A Minor Bridge shall not contain any type of construction listed under Major Bridges or Intermediate Bridges.~~

4. Cathodic Protection, Bascule Bridge Rehabilitation

5. Computerized Traffic Control, Repair and Rehab (R&R) Major Bridges

- a. ~~BRIDGES OF CONVENTIONAL CONSTRUCTION WHICH ARE OVER A WATER OPENING OF 1,000 FEET OR MORE~~
- b. ~~CABLE STAYED CONSTRUCTION~~
- c. ~~CONCRETE SEGMENTAL CONSTRUCTION~~
- d. ~~MULTI-LEVEL ROADWAY~~
- e. ~~STEEL TRUSS CONSTRUCTION~~
- f. ~~CURVED STEEL GIRDERS~~

6. Debris Removal (Emergency)* (Form # 375-020-70), Repair and Rehab (R&R) Intermediate Bridges.

7. Drainage (includes all storm drains, pipe culverts, culverts, etc.). Repair and Rehab (R&R) Minor Bridges.

8. Electrical Work (includes roadway, bridge, and runway lighting). Grading (includes clearing and grubbing, excavation, and embankment).

9. Fencing. Drainage (includes all storm drains, pipe culverts, culverts, etc.).

10. Flexible Paving (includes limerock, shell base and other optional base courses, soil-cement base, mixed-in-place bituminous paving, bituminous surface treatments and stabilizing). Flexible Paving (includes limerock, shell base and other optional base courses, soil-cement base, mixed-in-place bituminous paving, bituminous surface treatments and stabilizing)

11. Grading (includes clearing and grubbing, excavation, and embankment). Portland Cement Concrete Paving.

12. Grassing, Seeding and Sodding. Hot Plant Mix Bituminous (includes structural and surface courses)

13. Guardrail. Debris Removal

14. Hot in Place Resurfacing * (Form # 375-020-71). Specialty Classes

a. Electrical work (includes roadway, bridge, and runway lighting)

b. Fencing

e. Guardrail

d. Grassing, Seeding, and Sodding

e. Landscaping

f. Traffic Signals

g. Computerized Traffic Control Systems

h. Bridge Painting

i. Bridge Deck Overlays

j. Pavement Markings (includes delineators, traffic stripe painting, and thermoplastics)

k. Roadway Signing

l. Cathodic Protection

m. Hot in place resurfacing

n. Other Specialty class not otherwise noted

15. Hot Plant-Mixed Bitum. Course (includes structural and surface courses).

16. Intelligent Transportation Systems * (Form # 375-020-73).

17. Intermediate Bridges that contain none of the types of construction listed under Major Bridges and span lengths exceeding 50 feet (center to center of cap).

18. Landscaping * (Form # 375-020-72).

19. Major Bridge – Bascule Spans.

20. Major Bridge – Bridges of conventional construction which are over a water opening of 1,000 feet or More.

21. Major Bridge – Cable Stayed Construction.

22. Major Bridge – Cast in Place/Post-Tensioned/ Super-Structure.

23. Major Bridge – Concrete Segmental Construction.

24. Major Bridge – Curved Steel Girders.

25. Major Bridge – Multi-Level Roadways.

26. Major Bridge – Steel Truss Construction.

27. Minor Bridges that contain span lengths not exceeding 50 feet (center to center of cap) and total length not exceeding 300 feet. A Minor Bridge shall not contain any type of construction listed under Major Bridges or Intermediate Bridges.

28. Pavement Marking (includes delineators, traffic stripe painting, and thermoplastics).

29. Portland Cement Concrete Roadway Paving.

30. R&R Intermediate Bridges as defined in Number 17.

31. R&R Major Bridge – Bridges of conventional construction which are over a water opening of 1,000 feet or more.

32. R&R Major Bridge – Cable Stayed Construction.

33. R&R Major Bridge – Concrete Segmental Construction.

34. R&R Major Bridge – Multi-Level Roadways.

35. R&R Major Bridge – Steel Truss Construction.

36. R&R Major Bridge – Curved Steel Girders.

37. R&R Minor Bridges as defined in Number 27.

38. Roadway Signing.

39. Traffic Signal.

40. Other Specialty Work Classes Requested.

(c) For work classes identified with an asterisk, provide additional information required in referenced forms (375-020-70; 375-020-71; 375-020-72; 375-020-73, as applicable).

(d)(e) For the Work Class of Debris Removal (Emergency), the contractor(s) shall complete the Application for Qualification accompanied by a Reviewed Financial Statement. See Form # 375-020-70.

Rulemaking Specific Authority ~~120.53(1)(a)~~; 334.044(2), 337.14(1) FS. Law Implemented ~~337.11, 337.11(3)(b), 337.11(5)(a) 1, 3, 337.11(7)(b)1., 337.11(7)(e)~~; 337.14, 337.167 FS. History—Formerly Chapter 14-8, Amended 7-1-67, 8-20-68, 5-9-70, 1-6-72, 9-24-75, Formerly 14-22.01(4), Amended 3-23-79, 11-10-82, 8-25-83, 1-9-84, 10-1-85, Formerly 14-22.03, Amended 12-20-89, 4-22-92, 1-4-94, 7-1-95, 7-2-95, 7-8-01, 6-27-04, 5-15-06, 11-5-06, _____.

14-22.0041 Procedure for Qualification and Issuance of Certificate of Qualification.

(1) General Qualification Requirements. General qualification factors the Department will consider in determining qualification include:

(a) Adequacy of financial resources as set forth in subparagraphs 14-22.003(2)(a)3. and 4., F.A.C.

(b) History of conviction for contract crime by an applicant or its affiliate(s).

(c) History of suspension or revocation of Certificate of Qualification.

(d) ~~Unsatisfactory~~ Record of past work performance or payment of obligations.

(e) Employment of, or otherwise providing compensation to, any employee or officer of the Department.

(f) Evidence of willfully offering an employee or officer of the Department any pecuniary or other benefit with the intent to influence the employee's or officer's official action or judgment.

(g) Whether the applicant or its affiliate is currently delinquent or has been delinquent on any contract previously awarded by the Department.

(2) Certificate of Qualification. The Certificate of Qualification shall state the applicant's Maximum Capacity Rating, the class or classes of work approved for bidding, the applicant's name for submitting bids, and the expiration date of the qualification.

(3) Revision of Certificate of Qualification.

(a) The Department may issue a Revised Certificate of Qualification that expires no later than the expiration date of the previous valid Certificate of Qualification. A revised Certificate of Qualification ~~shall~~ will be issued when at least one of the following occurs: changes in classes of work, Maximum Capacity Rating, company name, ~~or~~ and correction of technical errors.

1. Written requests for additional classes of work shall ~~will~~ be considered according to paragraph Section 14-22.0041(2)(a), F.A.C.

2. Written requests for raising the Maximum Capacity Rating must conform to subparagraph Section 14-22.003(2)(b), F.A.C.

3. Revisions to the Ability Score of non-active contractors ~~shall~~ will be made by the Department using the procedure described in sub-subparagraph Section 14-22.003(2)(a)1.a., F.A.C.

4. Name changes will be made if consistent with paragraph Section 14-22.005(4), F.A.C.

(b) Denial, or partial denial, of written requests for Revised Certificates of Qualification shall be processed according to paragraph Section 14-22.0041(2), F.A.C.

Rulemaking Specific Authority 334.044(2), 337.14(1), ~~337.164, 337.165, 337.167~~ FS. Law Implemented ~~120.53(1)(a), 120.57, 120.62,~~ 337.14, 337.164, 337.165, 337.167 FS. History--New 11-10-82, Amended 8-25-83, 10-1-85, Formerly 14-22.041, Amended 12-20-89, 1-4-94, 7-1-95, 6-27-04, _____.

14-22.0042 Notification of Conviction of Contract Crime.

A contractor who is currently qualified, or seeking to be qualified, shall notify the Contracts Administration Office in writing within 30 days ~~of~~ after the filing of a criminal Information ~~or~~ an Indictment, or the conviction of a contract

crime applicable to the contractor, or any affiliates, officers, directors, executives, shareholders active in management, employees, or agents of the contractor.

Rulemaking Specific Authority 334.044(2), 337.14(1) FS. Law Implemented ~~337.11,~~ 337.164, 337.165(5), (6) FS. History--New 8-25-83, Amended 10-1-85, Formerly 14-22.042, Amended 12-20-89, 1-4-94, 5-15-06, _____.

14-22.005 Period of Validity of Qualification.

(1) The applicant's period of qualification shall be 18 months from the ending date ~~of represented by~~ the audited annual financial statements included in the application. For good cause, the Department ~~shall~~ will approve a period of qualification less than 18 months. Good cause shall mean as ~~set forth defined~~ in Rule ~~14-22.012~~ 14-22, F.A.C. The Certificate of Qualification shall expire on the expiration date of the certificate, regardless of whether ~~an administrative or not a~~ hearing has been requested concerning the Department's action on the application. Submission of an application shall not affect ~~the~~ expiration of the Certificate of Qualification. Issuance of a new Certificate of Qualification will determine the new Ability Factor and Maximum Capacity Rating that is effective on the date of issuance and supersedes the current Certificate of Qualification.

(2) Qualified applicants in good standing ~~will~~ shall be notified of the impending deadline date for submittal of their application ~~for qualification~~ at least 45 days prior to that date. Failure of notification shall not affect the deadline date for submittal of applications ~~for qualification~~.

(3) Qualified applicants entities shall submit a new application with financial statements as required by subsection 14-22.002(2), F.A.C., within four months from the date ~~that~~ a change of ownership or incorporation of a non-incorporated firm occurs. ~~A Also,~~ a new application shall also be required whenever the Department has reason to believe that the position of a qualified applicant entity is less favorable than at the time of its last application, ~~or that~~ a subsequent, material event has occurred which that is material and adversely affects the financial position of the applicant entity.

(4) A qualified applicant entity need not submit a new application solely ~~based on a~~ because of any change in the officers or ~~the~~ name of a corporation, but such information shall be certified to the Department within 10 days of the event such events.

(5) A qualified applicant entity shall notify the Department, in writing, within 10 days of the decrease in its available surety performance bond credit amount.

(6) A Certificate of Qualification shall not be issued to an applicant or affiliate that is insolvent.

(7) A qualified ~~entity or~~ applicant or affiliate shall notify the Contracts Administration Office in writing upon the filing of a bankruptcy petition. The notice ~~must shall~~ be received by the Contracts Administration Office within 10 days of the initial filing.

(8) A qualified applicant entity, upon written request from the Department (stating the reasons for this request), shall submit updated or other additional financial information necessary for the Department to verify ~~the~~ financial adequacy ~~of the qualified entity~~ during the period of validity of qualification.

Rulemaking Specific Authority 334.044(2), 337.14(1) FS. Law Implemented ~~337.11, 337.14, 337.164~~ FS. History—Formerly Chapter 14-8, Amended 7-1-67, 8-20-68, 5-9-70, 1-6-72, 9-24-75, Formerly 14-22.01(7), Amended 3-23-79, 11-10-82, 8-25-83, 10-1-85, Formerly 14-22.05, Amended 12-20-89, 1-4-94, 6-27-04, 5-15-06, _____.

14-22.006 Current Capacity Rating.

(1) The Certificate of Qualification shall establish an applicant's entity's Maximum Capacity Rating, which will be reduced by the total value of their current uncompleted work, regardless of its location and with whom it may be contracted, to determine ~~the their~~ bidding capacity at any particular time. Current Capacity is the applicant's bidding capacity. Current capacity shall be amended immediately upon issuance of a new Certificate of Qualification, regardless of whether the existing Certificate of Qualification has expired. This bidding capacity shall be called Current Capacity.

(2) In determining the Current Capacity of a prospective bidder, the deduction for uncompleted work shall include work subcontracted from others. The bidder will be given credit for work sublet to others; provided, for contracts with the Department, the request for authorization to sublet the work has been approved in writing. The Department, in determining the bidder's eligibility to be issued a bid proposal, will decrease a bidder's uncompleted work by deducting ten percent per month from the AStatus of Contracts on Hand@ report in the Certification of Current Capacity form submitted with the bidder's most recent bid, or the uncompleted work listed in the bidders's Application for Qualification, whichever is most current and, which will increase the Current Capacity accordingly.

(3) All bidders must certify their total dollar amount of work underway and submit Form 375-020-39, or a spreadsheet in a similar and accepted format prior to submitting a bid. This information must be submitted within thirty (30) days of submitting a bid or at least once during the month a bid is due via the "Work Underway" link in the Contractor Pre-Qualification System. Failure to submit the Certification of Work Underway shall result in the bidder being prohibited from receiving bidding documents, submitting bids, or receiving contract awards until the certification is submitted. If a Form 375-020-39 is submitted, and the contractor is awarded

a contract during that month that exceeds 25% of the total dollar amount of work underway, a revised Form 375-020-39 must be submitted prior to submitting another bid during that month.

~~In order for the Department to have the information required to determine a bidder's Current Capacity, it is necessary that the bidder certify the total dollar amount of all work the bidder has underway. This certification shall be accomplished electronically by submitting the Certification of Work Underway (Online Web Application), Form 375-020-39, 11/7/2007, to the Department concurrently with the bid submittal for the first letting in the calendar month that the bidder submits a bid.~~

~~(4) In submitting this certification the following shall apply.~~

~~(a) If the letting is not later than the 25th day of the month, the certification and report shall reflect the uncompleted work as of the 15th day of the month preceding the month of the letting.~~

~~(b) If the letting is after the 25th day of the month, the certificate and report shall reflect the uncompleted work in progress as of the 15th day of the month of the letting.~~

(4) In determining a bidder's Current Capacity, any projects in a prior letting pending award by the Department to such bidder shall also ~~shall~~ be debited against the bidder's Current Capacity, unless the award is to be delayed for an indefinite period of time. Further, no credit shall be given for proposed subcontracting of any work included in such proposal pending award.

Rulemaking Specific Authority 334.044(2), 337.14(1) FS. Law Implemented ~~337.11 337.11(3)(b), 337.11(5)(a) 1-3, 337.11 (7)(b)1, 337.11(7)(e), 337.14, 337.164~~ FS. History—Formerly Chapter 14-8, Amended 7-1-67, 8-20-68, 5-9-70, 1-6-72, 7-24-75, Formerly 14-22.01(8), Amended 3-23-79, 11-10-82, 8-25-83, 10-1-85, Formerly 14-22.06, Amended 12-20-89, 6-27-90, 1-4-94, 7-1-95, 7-2-95, 12-18-05, 5-15-06, 1-23-08, _____.

14-22.007 Joint Ventures.

(1) Two or more qualified bidders may bid jointly provided ~~that~~ each party has requested ~~that~~ the proposal document be issued to the joint venture; ~~that~~ the combined joint venture meets the requirements of subsection 14-22.008(1), F.A.C., and ~~that~~ the combined Current Capacity of the parties to the joint venture equals or exceeds the budget estimate of the project. The parties to a joint venture shall submit, ~~prior to the issuance of the proposal document~~, a statement in the name of the joint venture signed by each party, indicating the percentage of proposed contract work to be debited against each one's Current Capacity. The total of these percentages must equal one hundred percent. No party in the joint venture may exceed its Current Capacity by virtue of the percentage of work to be debited against its available capacity, as expressed on the signed statement and using the budget estimate as the comparison figure. To comply with this

~~Section, the parties to a joint venture shall submit Form 375-020-18 and receive approval prior to the due date of the letter of interest, the request for proposal, or issuance of the proposal, whichever is due or occurs first. If any party exceed(s) its Current Capacity, by virtue of the percentage of the work to be debited against its available capacity, as expressed on the signed statement and using the budget estimate as the comparison figure, then the party must take action prior to the issuance of a proposal document in the name of the joint venture which results in their percentage being within their Current Capacity.~~

(2) If the joint venture parties are affiliated in any way as to ownership, officers, or key employees, they may indicate the desired apportionment of the capacity debit; however, the Department reserves the right to change such apportionment as justified by the circumstances.

(3) The provisions of this section regarding the apportionment of the debit ~~for a joint venture~~ among the parties ~~to the joint venture~~ shall in no way divide the responsibility for the joint venture bid or contract among the parties ~~hereto~~.

(4) Qualified parties who form a joint venture under the provisions of this ~~rule section~~ must have a federal Employer Identification Number (EIN) for the joint venture or give proof that ~~the EIN has been requested they have requested same. The joint venture shall provide~~ The Department ~~must be provided~~ this number to the Department before the contract award can be made.

Rulemaking Specific Authority 334.044(2), 337.14(1) FS. Law Implemented ~~337.11 337.11(3)(b), 337.11(5)(a) 1-3, 337.11 (7)(b)1, 337.11(7)(e), 337.14, 337.164~~ FS. History—Formerly Chapter 14-8, Amended 7-1-67, 8-20-68, 5-9-70, 1-6-72, 9-24-75, Formerly 14-22.01(9), Amended 3-23-79, 11-10-82, 8-25-83, Formerly 14-22.07, Amended 12-20-89, 1-4-94, 7-1-95, _____.

14-22.008 Eligibility for Obtaining Proposal Documents.

(1) Proposal documents for a specific project shall be issued only to a prospective bidder who has a Current Capacity equal to or greater ~~larger~~ than the budgeted contract amount and a Certificate of Qualification, which expires on or after the date proposals are to be received, covering one or more classes of work, as identified in paragraph 14-22.003(3)(b), F.A.C., which, in the aggregate, comprise 50 percent or more of the percentage of the Department's budget estimate of the major classes of work in the specific contract.

(2) If the Department's budget estimate for a specific project has a majority ~~of~~ percentage of speciality classes of work, as identified in paragraph 14-22.003(3)(c), F.A.C., then a contractor must be qualified in 50 percent or more of the ~~percentage of the~~ Department's budget estimate for the total classes of all work in the specific project.

(3) In determining whether a contractor shall receive proposal documents, the Department shall ~~will~~ automatically credit all contractors as being qualified in 50 percent of the Maintenance of Traffic percentage of the Department's budget estimate for a specific project.

~~(4) The term "Current Capacity" as used herein is as defined in Rule Section 14-22.006(1), F.A.C.~~

~~(4)(5)~~ Eligibility for obtaining proposal documents shall have no effect on determination of the Current Capacity.

~~(5)(6)~~ A qualified bidder will be issued proposal documents for any number of projects, provided the estimated contract amount of any individual project requested does not exceed their Current Capacity. Except for the provisions of sub-subparagraph ~~Rule Section~~ 14-22.003(2)(a)2.a., F.A.C., ~~above~~, qualified firms that desire to bid for a project which exceeds their Current Capacity, but whose CRF was at least 1.00, based on the financial statements used for current qualification, and that have an Ability Score of 80 or higher, shall ~~will~~ be allowed to bid that specific project if the firm furnishes a commitment letter from a surety company, authorized to do business in the State of Florida; that the project amount does not exceed the firm's Surety Capacity ~~as established by Rule Section 14-22.003(2)(b)1, F.A.C.~~ Issuance of proposal documents by the Department shall ~~will~~ be subject to the payment of applicable costs by the qualified bidder.

~~(6)(7)~~ The bid shall be signed by the owner for sole proprietorships; ~~the~~ partner(s) authorized to bind the entity for ~~a~~ partnerships, partnership; the president or vice president for corporations; and the authorized executing official for limited liability companies ~~an authorized executing official~~. Bids submitted by a joint venture shall be signed by the authorized executing officials of the business entities comprising the joint venture and the attorney-in-fact for the joint venture.

Rulemaking Specific Authority 334.044(2), 337.14(1) FS. Law Implemented ~~337.11 337.11(3)(b), 337.11(5)(a) 1-3, 337.11 (7)(b)1, 337.11(7)(e), 337.14~~ FS. History—Formerly Chapter 14-8, Amended 7-1-68, 8-20-68, 5-9-70, 1-6-72, 9-24-75, Formerly 14-22.01(11), Amended 3-23-79, 11-10-82, 8-25-83, Formerly 14-22.08, Amended 12-20-89, 1-4-94, 7-1-95, 7-2-95, 7-8-01, 5-15-06, _____.

14-22.009 Over-Bidding.

(1) Any bid that exceeds the Current Capacity of the bidder based upon the most recently issued Certificate of Qualification shall be rejected unless the bidder fulfills the requirements of subsection ~~Rule Section~~ 14-22.009(3), F.A.C. Pursuant to subsection 14-22.006(1), F.A.C. Current Capacity is amended immediately upon issuance of a new Certificate of Qualification.

(2) In the event a bidder submits the low bid on two or more projects in the same letting, where the aggregate dollar amount of the bids is greater than the Current Capacity of the bidder, and the bidder is unable to increase its Current Capacity by fulfilling the requirements of subsection ~~Rule Section~~

14-22.009(3), F.A.C., the Department shall select the particular project or projects for award that will result in the least cost to the Department.

(3) Before the Department takes action under the provisions of either of the preceding two paragraphs, the bidder shall be notified in writing of the Department's action, and, except for the AF provisions of sub-subparagraph Rule Section 14-22.003(2)(a)2.a., F.A.C., above, shall be allowed a ~~period of~~ 10 days from the date the bid was opened to submit a certification of work underway pursuant to Rule 14-22.006, F.A.C.

(4) The determination of the successful bidder on any project or projects in which bids have been rejected ~~under the provisions of this section,~~ shall be made without consideration of the rejected bid(s).

Rulemaking Specific Authority 334.044(2), 337.14(1) FS. Law Implemented ~~337.11 337.11(3)(b), 337.11(5)(a) 1-3, 337.11(7)(b)1, 337.11(7)(c),~~ 337.14, FS. History—Formerly Chapter 14-8, Amended 7-1-67, 8-20-68, 5-9-70, 1-6-72, 9-24-75, Formerly 14-22.01(11), Amended 3-23-79, 11-10-82, 8-25-83, Formerly 14-22.09, Amended 12-20-89, 1-4-94, 7-1-95, 7-2-95, 7-8-01, 12-18-05, 1-23-08, _____.

14-22.0101 Special Classes of Work.

Rulemaking Specific Authority 334.044(2), 337.105, 337.14(1) FS. Law Implemented 337.105, 337.11, 337.14, 337.164 FS. History—New 12-20-89, Amended 1-4-94, Repealed _____.

14-22.0111 Subletting.

Rulemaking Specific Authority 334.044(2), 337.14(1) FS. Law Implemented 337.14, 337.164 FS. History—New 12-20-89, Amended 1-4-94, Repealed _____.

14-22.012 Suspension, Revocation, or Denial of Qualification.

(1) As provided in Section 337.16(2), F.S., ~~t~~The Department will, for good cause, may deny, suspend, or revoke a, or deny any contractor's Certificate of Qualification to bid. A suspension, revocation, or denial for good cause pursuant to this rule shall prohibit the contractor from bidding on any Department construction contract for which qualification is required by Section 337.14, F.S., shall constitute a determination of non-responsibility to bid on any other Department construction or maintenance contract, and shall prohibit the contractor from acting as a material supplier or subcontractor on any Department contract or project during the period of suspension, revocation, or denial. ~~As provided in Section 337.16(2), F.S., such~~ Good cause shall include the following; but shall not be limited to,

(a) One of the circumstances specified under Section 337.16(2), F.S. Florida Statutes, has occurred.

(b) Affiliated contractors submitted more than one proposal for the same work. In this event the Certificate of Qualification of all of the affiliated bidders will be revoked, suspended, or denied. All bids of affiliated bidders will be rejected.

(c) The contractor made or submitted ~~to the Department~~ false, deceptive, or fraudulent statements, certifications, or materials in any claim for payment or any information required by any Department contract, including the Certification of Work Underway ~~to the Department.~~

(d) The contractor or its affiliate defaulted on any contract; or a contract surety assumed control of financial responsibility for; any contract of the contractor.

(e) The contractor's qualification to bid is suspended, revoked, or denied by any other public or agency, semi-public agency.

(f) The contractor failed to comply with contract or warranty requirements, or failed to follow Department direction in the performance of a contract.

(g) The contractor failed to timely furnish all contract documents required by the contract specifications, ~~or~~ special provisions, or by any state or federal statutes or regulations. If the contractor fails to furnish any of the subject contract documents by the expiration of the period of suspension, revocation, or denial set forth above, the contractor's Certificate of Qualification shall remain suspended, revoked, or denied until the documents are furnished ~~by the contractor.~~

(h) The contractor failed to notify the Department's Contracts Administration Office within 10 days of the contractor, or any of its affiliates, being declared in default or otherwise not completing work on a contract, or being suspended from qualification to bid or denied qualification to bid by any other public or agency, semi-public agency, ~~or private entity.~~

(i) The contractor did not pay its subcontractors or suppliers in a timely manner or in compliance with contract documents.

(j) The contractor has demonstrated instances of poor or unsatisfactory performance, deficient management resulting in project delay, poor quality workmanship, a history of payment of liquidated damages, untimely completion of projects, uncooperative attitude, contract litigation, inflated claims or defaults.

(k) An affiliate of the contractor has previously been determined by the Department to be non-responsible, and the specified period of suspension, revocation, denial, or non-responsibility remains in effect.

(l) The contractor or affiliate(s) has been convicted of a contract crime, as provided in Section 337.165, F.S.

(m) Any other circumstance constituting "good cause" under Section 337.16(2), F.S., exists.

(2) The Department shall deny or revoke the Certificate of Qualification to bid of any contractor and its affiliates for a period of 36 months, pursuant to Section 337.165, F.S., when it is determined by the Department that the contractor has, subsequent to January 1, 1978, been convicted of a contract crime within the jurisdiction of any state or federal court. Any such contractor shall not act as a prime contractor, material supplier, subcontractor, or consultant on any Department contract or project during the period of denial or revocation.

(3) The Certificate of Qualification of a contractor found delinquent under Section 337.16(1), ~~F.S. Florida Statutes~~, shall be denied, suspended, or revoked. A suspension or revocation shall prohibit the contractor from being a subcontractor on Department work during the period of denial, suspension, or revocation, except when a prime contractor's bid has used prices of a subcontractor who becomes disqualified after the bid, but and before the request for authorization to sublet is presented.

~~In order to be timely, when the Department's intent is to deny a Certificate of Qualification for reasons other than delinquency or conviction for contract crime, the petition must be filed with the Department's Clerk of Agency Proceedings within 10 days after receipt of the Department's notice, in accordance with Sections 337.14 and 337.16, F.S. When the Department's intent is to revoke or suspend a Certificate of Qualification or deny a Certificate of Qualification for delinquency or conviction for contract crime, the petition shall be filed within 21 days of receipt of the Department's notice, pursuant to Rule 28-106.111, F.A.C.~~

(4) If a contractor's Certificate of Qualification is revoked, suspended, or denied and the contractor receives an additional period of revocation, suspension, or denial of its Certificate of Qualification, the time periods will run consecutively.

(5) The revocation, denial, or suspension of a contractor's Certificate of Qualification under this Section shall be for a specific period of time based on the seriousness of the deficiency.

(a) Examples of factors affecting the seriousness of a deficiency are:

1. Impacts on project schedule, cost, or quality of work,
2. Unsafe conditions allowed to exist,
3. Complaints from the public,
4. Delay or interference with the bidding process,
5. The potential for repetition,
6. Integrity of the public contracting process,
7. Effect on the health, safety, and welfare of the public.

~~Rulemaking Specific Authority 334.044(2), 337.14(1) FS. Law Implemented 337.11, 337.14, 337.16, 337.165, 337.167 FS. History—Formerly Chapter 14-8, Amended 7-1-67, 8-20-68, 5-9-70, 1-6-72, 9-24-75, Formerly 14-22.01(11), Amended 3-23-79, 11-10-82, 8-25-83, 10-1-85, Formerly 14-22.12, Amended 12-20-89, 1-4-94, 7-1-95, 7-2-95, 2-16-99, 7-8-01, 6-27-04, 1-23-09, _____.~~

14-22.0121 Reapplication and Reinstatement.

(1) A contractor whose qualification to bid has been revoked or denied because of contract crime may, at any time after revocation or denial, file a petition for reapplication or reinstatement. However, a contractor may not petition for reapplication or reinstatement for a period of 24 months after revocation or denial for a subsequent conviction occurring within 10 years of a previous revocation or denial for contract crime.

~~(a) The petition for reapplication or reinstatement shall be in writing and shall be filed with the Clerk of Agency Proceedings, Department of Transportation, Burns Building, MS 58, 605 Suwannee Street, Tallahassee, Florida 32399-0458 and shall include:~~

- ~~1. The name and address of the party making the request.~~
- ~~2. A statement of the specific grounds upon which the petition is based and the proposed terms and conditions upon which reapplication or reinstatement is sought.~~
- ~~3. A list of all witnesses and exhibits to be presented.~~
- ~~4. A statement whether the contractor requests the hearing be held by the Division of Administrative Hearings (formal hearing).~~

~~(b) Upon the filing of a petition for reapplication or reinstatement the Department shall:~~

- ~~1. If the hearing is before the Department (informal hearing), schedule a hearing within 30 days following receipt of the petition unless otherwise stipulated by the parties, or~~
- ~~2. Notify the Division of Administrative Hearings within five days following receipt of the petition for scheduling of the hearing in accordance with Section 337.165(2)(d) and 120.57, Florida Statutes. As required by Section 337.165(2)(d), F.S., the Director of the Division of Administrative Hearings shall assign a hearing officer within five days after notice by the Department. This officer shall conduct the hearing within 30 days thereafter, unless otherwise stipulated by the parties.~~

(2) If the petition for reapplication or reinstatement is denied, the contractor cannot petition for a subsequent hearing for a period of nine months following the date of the final order of revocation or denial.

(3) If the petition for reapplication or reinstatement is granted, the contractor must file a current Application for Qualification with the Contracts Administration Office. Reinstatement shall not be effective until issuance of a Certificate of Qualification. The financial statements submitted with the reinstatement application must comply with paragraph 14-22.002(2), F.A.C.

~~Rulemaking Specific Authority 334.044(2), 337.14(1), 337.167(2) FS. Law Implemented 337.14, 337.16, 337.164, 337.165, 337.167 FS. History—New 8-25-83, Amended 10-1-85, Formerly 14-22.121, Amended 12-20-89, 1-4-94, 1-23-08, _____.~~

14-22.014 Emergency Suspension and Revocation.

(1) The Department may summarily issue an emergency suspension of a contractor's qualification to bid if it finds that imminent danger exists to the public health, safety, or welfare.

(2) The written notice of emergency suspension shall state the specific facts and reasons for finding an imminent danger to the public health, safety, or welfare exists.

(3) The Department, within 10 days of after the emergency suspension, shall initiate formal suspension or revocation proceedings in compliance with Rule 14-22.012, F.A.C., ~~except that the 10 day notice requirement in Rule 14-22.012, F.A.C. shall not be construed to prevent a hearing at the earliest time practicable upon request of the aggrieved party.~~

Rulemaking Specific Authority ~~120.57, 334.044(2), 337.14(1), 337.167(2) FS. Law Implemented 337.11 120.57, 337.14, 337.16, 337.164, 337.167 FS. History--New 11-10-82, Amended 8-25-83, Formerly 14-22.14, Amended 12-20-89, 1-4-94,_____.~~

14-22.0141 Contractor Non-Responsibility.

(1) Contractors who do not possess a Certificate of Qualification shall be determined non-responsible if the Department determines that good cause exists. Good cause shall exist when ~~which shall include the following:~~

(a) any one of the circumstances specified in subsection 14-22.012(1), F.A.C., occurs;~~;~~

(2) Determination of Contractor Non-Responsibility. The Contractor will be determined to be non-responsible based upon good cause as set forth in subsection 14-22.012(1), F.A.C., for a specific period of time; based on the factors specified in subsection 14-22.012(5), F.A.C.

(a) This rule does not limit the Department's ability to reject a bid ~~submitted by a contractor~~, or cancel an award; for a particular contract based upon the contractor being non-responsible.

(b) A determination of non-responsibility shall prohibit a ~~the~~ contractor from bidding, subcontracting, or acting as a material supplier on any Department contracts or projects during the period of non-responsibility.

(c) If a contractor is declared non-responsible and the contractor receives an additional determination of non-responsibility, the time periods shall run consecutively.

~~(3) Notice of intended agency action under this section will be provided in accordance with Rule 28 106.111, F.A.C. The Department's action will become final unless a timely petition for a hearing is filed in accordance with Rules 28 106.104, 28 106.201 and 28 106.301, F.A.C. In order to be timely, the petition must be filed with the Department's Clerk of Agency Proceedings within 21 days after receipt of the Department's notice, in accordance with Rule 28 106.111, F.A.C.~~

Rulemaking Specific Authority 334.044 (2) FS. Law Implemented 337.11, 337.16 (2) FS. History--New 4-11-95, Amended 12-7-97, 7-8-01, 6-27-04, 1-23-08,_____.

14-22.015 Forms.

The following forms are incorporated by reference as part of the rules of the Department and are available from the Contracts Administration Office, 605 Suwannee Street, Mail Station 55, Room B-1, Tallahassee, Florida 32399-0455:

Form Number	Date	Title
375-020-38	<u>11/07</u> 11/7/2007	Application for Qualification (Online Web Application)
375-020-39	<u>11/07</u> 11/7/2007	Certification of Current Capacity (Online Web Application)
700-010-25	09/05	Contractor Past Performance Report
375-020-37	07/06	Application for Qualification for Emergency Debris Removal
<u>375-020-18</u>	<u>03/09</u>	<u>Declaration of Joint Venture and Power of Attorney For Bidding On Specified Project(s)</u>
375-020-70	02/10	<u>Debris Removal (Emergency) -- Contractor Additional Experience</u>
<u>375-020-71</u>	<u>02/10</u>	<u>Hot-in-Place Resurfacing-Contractor Additional Experience</u>
<u>375-020-72</u>	<u>02/10</u>	<u>Landscaping-Contractor Additional Experience</u>
<u>375-020-73</u>	<u>02/10</u>	<u>Intelligent Transportation Systems (ITS) -- Contractor Additional Experience</u>

Rulemaking Specific Authority 334.044(2), 337.14(1) FS. Law Implemented 337.11, 337.14, 337.167 FS. History--New 11-10-82, Amended 8-25-83, Formerly 14-22.15, Amended 12-20-89, 1-4-94, 7-1-95, 7-2-95, 7-8-01, 6-27-04, 12-18-05, 5-15-06, 11-5-06, 1-23-08, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: David A. Sadler, Director, Office of Construction
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Stephanie C. Kopelousos, Secretary
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 12, 2010
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 2, 2010

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."

STATE BOARD OF ADMINISTRATION

RULE NO.: 19-8.028
 RULE TITLE: Reimbursement Premium Formula
 PURPOSE AND EFFECT: This rule is promulgated to implement Section 215.555, Florida Statutes, regarding the Florida Hurricane Catastrophe Fund, for the 2010-2011 contract year.

SUMMARY: Proposed amended Rule 19-8.028, F.A.C., establishes the premium formula and adopts the rates for the 2010-2011 contract year.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Board has prepared a statement and found the cost to be minimal.

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: 215.555(3) FS.

LAW IMPLEMENTED: 215.555(2), (3), (4), (5), (6), (7) 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: Tracy Allen, Senior Attorney, Florida Hurricane Catastrophe Fund, State Board of Administration, P.O. Box 13300, Tallahassee, FL 32317-3300, telephone (850)413-1341, tracy.allen@sbafla.com

THE FULL TEXT OF THE PROPOSED RULE IS:

19-8.028 Reimbursement Premium Formula.

(1) through (2)(b) No change.

(c) Citizens Property Insurance Corporation or “(Citizens)” means the entity formed under Section 627.351, F.S., and refers to both Citizens Property Insurance Corporation High Risk Account and Citizens Property Insurance Corporation Personal Lines and Commercial Lines Accounts.

(d) through (3)(l) No change.

(m) For the 2010-2011 Contract Year, the Formula developed by the Board’s Independent Consultant, “Florida Hurricane Catastrophe Fund: 2010 Ratemaking Formula Report Presented to the State Board of Administration of Florida, March 18, 2010” is hereby adopted and incorporated by reference into this rule. The basic premium rates developed in accordance with the Premium Formula methodology approved by the Board on April 13, 2010, are hereby adopted and incorporated by reference in Form FHCF-Rates 2010, “Florida Hurricane Catastrophe Fund Proposed 2010 Rates, Presented to the State Board of Administration of Florida, March 18, 2010” and is hereby adopted and incorporated by reference into this rule. These incorporated documents may be obtained directly from the SBA website: www.sbafla.com/fhcf or by contacting the SBA by mail, P. O. Box 13300, Tallahassee, FL 32317-3300, with a request for the documents.

(a) through (c)3.a., No change.

b. On or before March 1 of the Contract Year, the Company shall report its actual exposure as of December 31 of the Contract Year to the Administrator on Form FHCF-D1A, “Florida Hurricane Catastrophe Fund Data Call” which is

hereby adopted and incorporated by reference in Rule 19-8.029, F.A.C., and is available from the Administrator as described in subsection (5), below. The Administrator shall calculate the Company’s actual Reimbursement Premium for the period specified in subparagraph (c)2. based on its actual exposure. To recognize that New Participants have limited exposure during this period, the actual Premium as determined by processing the Company’s exposure data shall then be divided in half, the provisional Premium shall be credited, and the resulting amount shall be the total Premium due for the Company for the remainder of the Contract Year. However, if that amount is less than \$1,000, then the Company shall pay \$1,000. The Premium payment is due no later than May 1 of the Contract Year. The Company’s retention and coverage will be determined based on the total Premium due which is the Premium calculated based on the Company’s December 31 ~~12/31~~ exposure and divided in half as described in this sub-subparagraph.

4. This subparagraph applies to Companies writing new business on or after December 1 but up to and including May 31 of the Contract Year. All New Participants writing new business during this period shall pay a Premium of \$1,000 to provide consideration for the Contract. The Company shall pay no other Premium for the remainder of the Contract Year. The Company shall not report its exposure data for this period to the Board. The Premium shall be paid upon signing the Reimbursement Contract.

5. through 7. No change.

(5) All the forms adopted and incorporated by reference in this rule may be obtained from: Administrator, Florida Hurricane Catastrophe Fund, Paragon Strategic Solutions Inc., 8200 Tower, 5600 West 83rd Street, Suite 1100, Minneapolis, MN 55437 ~~8200 Norman Center Drive, Abominating, Minnesota 55437.~~

Rulemaking Authority 215.555(3) FS. Law Implemented 215.555(2), (3), (4), (5), (6), (7) FS. History—New 9-20-99, Amended 7-3-00, 9-17-01, 7-17-02, 7-2-03, 7-29-04, 7-17-05, 7-6-06, 7-17-07, 6-16-08, 8-2-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jack E. Nicholson, FHCF Chief Operating Officer, State Board of Administration

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Trustees of the State Board of Administration of Florida

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 11, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009, Val. 35, No. 51

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-302.105
 RULE TITLE: Probation and Parole – Use of Force

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to incorporate Form DC3-210, Community Corrections Report of Force Used, and Form DC3-225, Community Corrections Incident Report.

SUMMARY: The proposed rule incorporates by reference Form DC3-210, Community Corrections Report of Force Used, and Form DC3-225, Community Corrections Incident Report.

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: 944.09 FS.

LAW IMPLEMENTED: 944.35 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: Kendra Lee Jowers, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

- 33-302.105 Probation and Parole – Use of Force.
- (1) Physical force shall not be used on offenders under supervision in the performance of duty unless required:
 - (a) In self-defense or the protection of others; ~~or~~
 - (b) To prevent damage to property owned or leased by the department; ~~or~~
 - (c) To quell a disturbance on property owned or leased by the department; ~~or~~
 - (d) To overcome physical resistance to application of handcuffs or authorized restraining devices; ~~or~~
 - (e) through (f) No change.
 - (2) No change.
 - (3) Whenever force is used, the highest ranking official involved or the most senior highest ranking official shall inform the circuit administrator immediately. Whenever force is used, except as provided in paragraph (4)(e), a detailed written report of force used shall be prepared, dated, and signed by the initial employee using force. This report shall be completed within one working day (Monday through Friday) of the incident.
 - (4) through (7) No change.

(8) The following forms are hereby incorporated by reference. Copies of these forms are available from the Forms Control Administrator, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

(a) DC3-210, Community Corrections Report of Force Used, effective _____.

(b) DC3-225, Community Corrections Incident Report, effective _____.

Rulemaking Specific Authority 944.09 FS. Law Implemented 944.35 FS. History–New 5-28-86, Amended 8-6-90, 2-15-98, Formerly 33-24.017, Amended 10-2-01, 2-19-03, 8-13-03, 12-6-04, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Shari Britton, Bureau Chief – Probation and Parole Field Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Walter McNeil, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 9, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 16, 2010

**WATER MANAGEMENT DISTRICTS
 Southwest Florida Water Management District**

RULE NO.: 40D-8.041
 RULE TITLE: Minimum Flows

PURPOSE AND EFFECT: The amendment will add a minus sign that was dropped from the formula used to convert well data when calculating minimum flows for the Weeki Wachee River System.

SUMMARY: Minimum flows for the Weeki Wachee River System became effective in 2009. Since then, staff found a typographical error in the formula used to convert well data to flow. A minus sign was dropped from the formula. The Joint Administrative Procedures Committee is requiring that the typographical error be corrected through a rule amendment. The proposed amendment will add the minus sign in the formula.

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: 373.044, 373.113, 373.171 FS.

LAW IMPLEMENTED: 373.036, 373.0361, 373.042, 373.0421 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: Dianne Lee, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, ext. 4657 (OGC#20100020)

THE FULL TEXT OF THE PROPOSED RULE IS:

40D-8.041 Minimum Flows.

(1) through (11) No change.

(12) Minimum Flows for Weeki Wachee River System located within Hernando County, Florida.

(a) through (c) No change.

(d) Because climatic variation can influence river flow regimes, five and ten year mean and median standards have been developed and are set forth in Table 8-18 (“Means and Medians”) as a tool to assess whether compliance with the Minimum Flow maintains 90% of the natural flow of the Weeki Wachee River System. The Means and Medians are hydrologic statistics that represent flows expected to occur during long-term periods when the Minimum Flows are being met. The Means and Medians are generated from flow records that are representative of a period devoid of significant anthropogenic impacts. The District will periodically evaluate the Means and Medians. These are evaluated as the mean and medians of annual means and medians, evaluated from January 1 through December 31 of each year. The evaluation is for both the flow at the Brooksville Gage and at the USGS Weeki Wachee Well No. 283201082315601. The flow at the Brooksville Gage is evaluated directly against Table 8-18. The well data is converted to flow with the relation $Q \text{ (cfs)} = -47.487 + 12.38 Q \text{ (cfs)} = 47.487 + 12.38$ (well level) (ft) and then evaluated against Table 8-18. The Means and Medians were developed using the Minimum Flow and the presumed historic flow records. Therefore, it is expected that the Means and Medians will be met if compliance with the Minimum Flow is maintained. However, since future structural alterations could potentially affect surface water or groundwater flow characteristics within the watershed and additional information pertaining to Minimum Flows development may become available, the District is committed to periodic review and revision of the Minimum Flows, as necessary.

(e) No change.

Table 8-18 No change.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.036, 373.0361, 373.042, 373.0421 FS. History—Readopted 10-5-74, Amended 12-31-74, Formerly 16J-0.15, 40D-1.601, Amended 10-1-84, 8-7-00, 2-6-06, 4-6-06, 1-1-07, 11-25-07, 2-18-08, 3-2-08, 5-12-08, 5-10-09, 3-23-10, 3-28-10,

NAME OF PERSON ORIGINATING PROPOSED RULE:
Mike Heyl, Chief Environmental Scientist

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Southwest Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 27, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 14, 2010

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 Clinical Laboratory Personnel

RULE NO.: 64B3-4.001 RULE TITLE: Trainee Registration

PURPOSE AND EFFECT: The Board proposes the rule amendment to incorporate an updated form.

SUMMARY: An updated form will be incorporated into the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Costs was prepared. The Board determined the proposed rule will not have an impact on small business.

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: 483.805(4) FS.

LAW IMPLEMENTED: 483.809(3), 483.811(2), (3), (4), 483.825 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: Sharon Guilford, Acting Executive Director, Board of Clinical Laboratory Personnel, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B3-4.001 Trainee Registration.

(1) No change.

(2) An applicant for trainee registration shall apply to the Department Form #DH-MQA 3005 (02/10 ~~12/09~~) “Clinical Laboratory Trainee” which is incorporated by reference herein copies of which, can be obtained from the Board office at 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257 or from its website at <http://www.doh.state.fl.us/mqa/ClinLab/index.html>.

(3) through (7) No change.

Rulemaking Authority 483.805(4) FS. Law Implemented 483.809(3), 483.811(2), (3), (4), 483.825 FS. History--New 7-20-93, Formerly 21KK-4.001, 61F3-4.001, Amended 4-10-96, 7-3-97, Formerly 59O-4.001, Amended 3-19-98, 2-15-01, 3-24-02, 3-30-04, 6-17-09, 5-11-10,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Clinical Laboratory Personnel
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Clinical Laboratory Personnel
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 9, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 5, 2010

DEPARTMENT OF HEALTH

Board of Clinical Laboratory Personnel

RULE NO.: 64B3-5.008
RULE TITLE: Public Health Laboratory Personnel
PURPOSE AND EFFECT: The Board proposes the rule amendment to incorporate an updated form.
SUMMARY: An updated form will be incorporated into the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Costs was prepared. The Board determined the proposed rule will not have an impact on small business.

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: 483.805(4) FS.

LAW IMPLEMENTED: 483.812 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: Sharon Guilford, Acting Executive Director, Board of Clinical Laboratory Personnel, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B3-5.008 Public Health Laboratory Personnel.

(1) through (3) No change.

(4) All applicants for licensure as a Public Health Laboratory Scientist shall apply to the Department on Form # DH-MQA 3001 (02/10 ~~12/09~~) "Application for Public Health Laboratory Scientist" which is incorporated by reference herein, copies of which can be obtained from the Board office at 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257 or from its website at <http://www.doh.state.fl.us/mqa/ClinLab/index.html>.

Rulemaking Authority 483.805(4) FS. Law Implemented 483.812 FS. History--New 5-26-98, Amended 4-20-04, 6-17-09, 5-6-10, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Clinical Laboratory Personnel
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Clinical Laboratory Personnel
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 9, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 5, 2010

DEPARTMENT OF HEALTH

Board of Physical Therapy Practice

RULE NO.: 64B17-7.0027
RULE TITLE: Procedure for Compliance with Board Ordered Laws and Rules Exam

PURPOSE AND EFFECT: The Board proposes the rule amendment to move the special testing accommodations questions to another part of the application.

SUMMARY: A revised form will be referenced in the rule.

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. The following is a summary of the SERC:

- Over a five year period, approximately eighty licensees would be required to pass the laws and rules examination due to discipline.
- The only costs to be incurred are rulemaking costs. No effect on state or local revenue is expected.
- No transactional costs are expected to be incurred by applicants or other entities by the proposed changes to the rule.
- The proposed change is not expected to impact small business, small counties or small cities.

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: 456.036, 456.072, 456.079, 486.025 FS.

LAW IMPLEMENTED: 456.072, 456.073, 456.079, 486.125 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, Board of Physical Therapy Practice, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B17-7.0027 Procedure for Compliance with Board Ordered Laws and Rules Exam.

Licenses ordered to take and pass the examination as a result of a disciplinary proceeding or reinstatement, must file DOH Form #DH-MQA 1144, PT Florida Laws and Rules Examination Application, Revised ~~0802~~/09, which is available through www.doh.state.fl.us/mqa.

Rulemaking Authority 456.036, 456.072, 456.079, 486.025 FS. Law Implemented 456.072, 456.073, 456.079, 486.125 FS. History—New 5-21-09, Amended 8-10-09,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Physical Therapy Practice

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Physical Therapy Practice

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

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 22, 2010

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Agency for Persons with Disabilities

RULE NOS.: RULE TITLES:

- 65G-11.001 Definitions
- 65G-11.002 Wait List Prioritization Criteria
- 65G-11.003 Wait list Prioritization Procedure

PURPOSE AND EFFECT: The purpose of this proposed rulemaking is to provide specific rule language to implement the prioritizing of the waitlist for enrollment on the Developmental Disabilities Home and Community Based Services Waivers. This rule is required to implement statutory language to Chapter 393, F.S., adopted during the 2009 Florida Legislative session.

SUMMARY: This rule describes the categories for the waitlist for waiver services as required by Florida Statute 393.065(5). Included in the rule is the documentation needed from individuals and the process the Agency will use to make the waitlist prioritization assignment.

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: 393.065(7) FS.

LAW IMPLEMENTED: 393.065(5) FS.

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

DATE AND TIME: June 9, 2010, 3:00 p.m. – 5:00 p.m.

PLACE: Agency for Persons with Disabilities, 4030 Esplanade Way, Room 301, Tallahassee, Florida 32399

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: Denise Arnold, Agency for Persons with Disabilities, 4030 Esplanade Way, Room 301, Tallahassee, Florida 32399, (850)488-3673. 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: Denise Arnold, Agency for Persons with Disabilities, 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399, (850)488-3673

THE FULL TEXT OF THE PROPOSED RULES IS:

65G-11.001 Definitions.

In addition to the terms defined in Section 393.064, F.S., and for the purpose of this rule, the following terms and phrases shall have the following meanings:

- (1) “Agency” is the Agency for Persons with Disabilities.
- (2) “Area Office” is the local office responsible for management one of the Agency’s service areas.
- (3) “Caregiver” is defined as the person who provides personal care, supervision, training or housing to an individual and who is not paid by APD to perform these tasks. For purposes of this rule, a caregiver is defined as a parent stepparent, grandparent, sibling, spouse or other relative or friend living in the same residence as the individual. Further, the caregiver must be a resident of the State of Florida for a minimum of 12 consecutive months and may not be receiving monetary compensation for the caregiver duties.
- (4) “Central Office” is the Agency’s headquarters located at 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399-0950, main telephone number (850)488-4257.
- (5) “Crisis Enrollment” is the waiver enrollment of an eligible individual to a Home and Community Based Services Waiver, in accordance with Rule 65G-1.046, F.A.C.
- (6) Questionnaire for Situational Information (QSI)” is the agency approved assessment that assesses a person’s need for level of support in areas of community living, functional, behavioral and physical health. The assessment is completed every three years and is updated as the needs and life circumstances of the individual changes. The QSI is administered by trained and certified agency staff.
- (7) “Waitlist” is the prioritized list maintained by the APD Central Office of Persons with Disabilities that have been determined eligible for APD services and eligible to receive waiver services when funding is available.

(8) "Waiver" is a Home and Community Based Services (HCBS) waiver authorized by 42 U.S.C. 1396n© of the federal Social Security Act and Section 409.906, F.S., that provides Medicaid funding for home and community based services to eligible persons with developmental disabilities who are eligible for Agency services and who live at home or in a home-like setting. The Agency currently operates four HCBS waivers: Tier One, Two, Three and Four. In accordance with Section 393.0661(3), Florida Statutes and Rules 65G-4.0026 through 65G-4.0029, Florida Administrative Code.

(9) "Wait list Priority Checklist" is the tool completed at the time an eligible individual applies for waiver-funded services and consists of an indication of the category that the individual will be placed on the wait list. This checklist identifies services needed and current services received and requests information about the individual's current and short-term life situation, condition and circumstances. The checklist is reviewed on an annual basis and is updated when the Agency is notified that the individual's needs and circumstances have changed.

Rulemaking Authority 393.065(7) FS. Law Implemented 393.065(5) FS. History--New _____.

65G-11.002 Wait List Prioritization Criteria.

(1) In accordance with Chapter 393, F.S., beginning July 1, 2010, the Agency will assign a category of priority for the wait list by collecting information about the individual's needs and the status of the individual's caregiver if applicable. If an individual meets the criteria for more than one criterion, the highest-ranking category will be assigned. If funding is available, the Agency shall offer waiver enrollment to individuals on the waitlist in the order of the categories, category 1 being the top category. Within each category, the date the individual was determined eligible for the wait list shall be determine the order for waive documentation provided to the agency, such as, Florida Driver's License, school records, utility bill, housing lease or rental agreements, employment information.

(2) Determination of residency of the caregiver for 12 consecutive months shall be determined by documentation provided to the agency, such as Florida Driver's License, school records, utility bill, housing lease or rental agreement, employment information.

(3) If a backup caregiver is available, the name, relationship and age of the backup caregiver must be provided.

(4) Category 1 includes individuals determined to meet the crisis criteria specified in Rule 65G-1.047, F.A.C. The process for crisis determination will follow the requirements outlined in Rule 65G-1.046, F.A.C.

(a) Individuals whose situation has reached a crisis may request a crisis application be completed by the area office. In addition to the requirements of Chapter 65G-1, F.A.C., the following shall apply:

(b) A temporary placement in jail is not considered a form of housing and therefore will not exclude the individual from the definition of homeless. Additionally an individual that is within 90 days of discharge from an institutional setting and does not have an acceptable home or residential situation in place shall be considered in Category 1.

(5) Category 2 includes children who are jointly served by the Agency and the Department of Children and Families in the Child Welfare program. A monthly data match between the two agencies identifies these individuals. DCF may bring to the attention of APD any child in need of critical services with an open case with the Department of Children and Families in the Child Welfare program, rather than wait for the data match. If the youth is still on the wait list for APD services at the age of 18 when they age-out of foster care, the youth will remain under Category 2 until they begin receiving services, unless they are deemed homeless and qualify under Category 1.

(6) Category 3 includes the following individuals:

(a) Individuals for whom the caregiver has a condition or circumstance that is expected to render the caregiver unable to provide care within the next twelve months and other caregivers are unable, unwilling or unavailable to provide care. The evaluation of the caregiver's condition or circumstance should consider the level of care necessitated by the client's needs and the caregiver's ability to provide that level of care. The condition or circumstance that renders the caregiver unable must be documented by a physician's statement if it is a medical condition and must explain the reason the current caregiver can no longer provide the individual's care. Circumstances that are not medical in nature must be described and signed by the caregiver and notarized. This documentation will be provided to the Area Office for a determination of eligibility for Category 3.

(b) Individuals who are at substantial risk of incarceration or court commitment as defined by unlawful activity by the individual that has required the intervention of local or state law enforcement even if the unlawful activity did not result in an arrest or criminal charges. Documentation is required to include a summary of incidents in which the individual has engaged in dangerous behavior, has past history of involvement with the court system or law enforcement, is currently involved with the court system or law enforcement, multiple arrests, incarceration in jail, prison or admission to the mentally retarded defendant program.

(c) This category includes individuals who are currently incarcerated and are expected to be released within 12 months. Documentation for placing an individual in the priority category includes copies of any past court commitments, documentation from law enforcement, and court ordered competency evaluations. Documentation must include: 1) a summary of incidents in which the individual has engaged in dangerous behavior, has past history of involvement with the court system or law enforcement, is currently involved with the

court system or law enforcement, multiple arrests, incarceration in jail, prison or admission to the mentally retarded defendant program, and 2) copies of any past court commitments, documentation from law enforcement, and court ordered competent evaluations.

(d) Individuals whose behaviors or physical needs place them or their caregiver at risk or harm within the next 12 months, and for whom no other supports are currently available to meet their needs. In such cases, the individual will provide documentation of behaviors that are causing the risk or potential harm or the physical needs that are present and the medical treatment provided to the individual or to others because of the individual's behavioral or physical issues. Documentation of behaviors or physical needs that are causing the risk or potential harm and the medical treatment provided to the individual or to others because of the individual's behaviors or physical needs must be provided. Documentation of the frequency, intensity and duration of behavioral incidents and an explanation of behavioral interventions that have used must also be provided.

(e) Individuals who are identified by the facility as ready for discharge from a state mental health hospital, intermediate care facility for the developmentally disabled, a skilled nursing facility, correctional facility, or a secure forensic facility within the next twelve months. There must be evidence that without the provision of waiver-funded services, these individuals will be at risk of readmission to an institution due to a lack of available caregiver or a lack of appropriate or available services. Documentation for this category must include a discharge summary from the facility that indicates the individual is ready for discharge or no longer meets the criteria for the level of care required by the facility and the status of available caregivers for the individual. Documentation that there are no other resources or services available other than waiver services to meet the individuals needs must be provided.

(f) Individuals receiving Voluntary Protective Services (VPS) or requesting DCF assistance to prevent their child from entering foster care. The parents or caregivers shall provide documentation from the applicable agencies or departments confirming this information

(g) In reviewing the caregiver's ability to provide, care the Agency shall consider the reliability and long-term commitment of the caregiver in order to ensure continuity of care. Additionally, the caregiver's responsibility for other minors under their care shall be considered.

(7) Category 4 includes individuals whose primary caregiver is age 70 years of age or older and no other alternate caregiver is available, willing or able to provide support. Additionally, other government or community resources are not available to provide assistance for the caregiver. Documentation of the date of birth of the primary caregiver must be provided as well as documentation that the individual

needs a caregiver and no other caregiver is available is required. The Agency shall include a review of the caregiver's ability to provide the level of support the individual needs and not just consider the age of the caregiver. The health of the caregiver(s) will be considered. Additionally the age of both parents who are providing care giving shall be considered and if one is able to provide the care then the individual will not be considered for Category 4.

(8) Category 5 includes individuals who are expected to graduate from secondary school within the next 12 months, individuals who have received a special diploma and need the support available through waiver funded services to obtain or maintain competitive employment, or individuals who have applied for and been accepted to an accredited institution for postsecondary education. Documentation of the individual's graduation is required as well as documentation that there are no other resources available, other than waiver funded services to provide the individual with the support to obtain or maintain a job.

(9) Category 6 includes individuals who are age 21 years of age older and do not meet the criteria for any other category. Documentation of this category is obtained through verification of the individual's date of birth and verification that documentation does not qualify the individual for any other category. The Agency shall provide short term services to these individuals through the use of Social Services Block Grant funding as allocated by the legislature. These services shall not duplicate any services required by other state agencies or departments and shall only be provided when other community resources are not available.

(10) Category 7 includes those individuals who are younger than 21 years of age and who do not meet the criteria for any other category. Documentation of this category is obtained through verification of the individual's date of birth and absence of any documentation that places an individual into another category. The Agency shall provide short-term services to these individuals using Social Services Block Grant funding as allocated by the legislature. These services shall not duplicate any services required by other state agencies or departments and shall only be provided when other community resources are not available. Prevention and early intervention services that are critical to the child's developmental growth shall be a high priority for services from the Agency as well as support to the parents or caregivers to maintain the child in the family home.

Rulemaking Authority 393.065(7) FS. Law Implemented 393.065(5) FS. History--New _____.

65G-11.003 Wait list Prioritization Procedure.

(1) The Agency shall assign the wait list categories to each individual on the wait list upon adoption of this rule by using information from the current needs assessment and the Questionnaire for Situational Information (QSI), version 4.0, and the Wait list Prioritization Checklist. Additionally, the

Agency will also request information about: 1) identification of the current caregiver, 2) demographic information of the caregiver, 3) medical circumstances or other circumstances of the caregiver that prevent the caregiver from providing care, and 4) the availability of other caregiver.

(2) The Agency will notify each individual/guardian on the wait list in writing of the individual’s assigned wait list category and eligibility determination date. The individual/guardian may submit documentation to the area office if there is a need for the category assignment to be reconsidered. Upon review of the information provided, the Agency will notify the individual in writing within 15 working days, of the reconsideration decision.

(3) At any time during the year, the individual can request a reevaluation to move to another category by submitting to the area office a written request with the required documentation as specified for each category.

(4) The individual, family or guardian must ensure that accurate address and phone contact information is provided to the area staff and must notify the area office at any time this information changes.

(5) Individuals will be removed from the wait list and the individual’s Agency record will be closed if the individual: becomes domiciled in another state,

(a) Becomes ineligible for APD and the waiver, or

(b) Cannot be contacted or located over a two month period using the information provided to the area office staff. The individual can reapply for APD services at any time.

(6) The Agency shall provide regular communication to the individuals on the wait list and their parents/guardians/family members regarding possible resources in the community or other government programs, and the ongoing activities of the Agency.

Rulemaking Authority 393.065(7) FS. Law Implemented 393.065(5) FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Denise Arnold, Agency for Persons with Disabilities, 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399, (850)488-3673

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Jim DeBeaugrine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 11, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 7, 2009

FISH AND WILDLIFE CONSERVATION COMMISSION

<p>RULE NOS.:</p> <p>68-5.001</p> <p>68-5.002</p> <p>68-5.004</p>	<p>RULE TITLES:</p> <p>Introduction of Non-native Species into the State</p> <p>Conditional Non-native Species</p> <p>Amnesty for Persons Relinquishing Non-native Pets</p>
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PURPOSE AND EFFECT: The purpose of the proposed rule changes is to (1) update and clarify requirements for the issuance of permits for the importation and possession of conditional and prohibited species; (2) establish criteria for issuance and denial of research permits for conditional and prohibited species; (3) retain conditional and prohibited species status for any taxon that subsequently undergoes any taxonomic alterations, such as reclassifying into a different genus or splitting into subspecies; (4) change the status of the six reptile of concern species and their taxonomic successors to conditional species; (5) allow properly permitted recipients to legally accept unpermitted reptiles of concern and conditional reptiles at any time.

The effects of these rule changes will be stricter, more consistent regulations regarding the importation and possession of certain non-native species, conditional species and prohibited species; limit the possession of the current reptile of concern species and their taxonomic successors to permitted commercial businesses, researchers and public exhibitors and prohibit the future acquisition of these species for personal possession; allow reptiles of concern in personal possession on or before July 1, 2010 to remain with their owners for the rest of the animals’ lives, provided the owners maintain valid reptile of concern permits; and allow for properly permitted persons to accept unpermitted reptile of concern and conditional reptile species at any time. These species are considered to be dangerous to the ecology and/or the health and welfare of the people of Florida. By adopting these regulations the State of Florida will be contributing to the effort to prevent introductions of non-native species.

SUMMARY: Rule 68-5.001, F.A.C. (Introduction of Non-native Species into the State) would be amended to codify eligibility requirements for issuance of research permits for conditional species, establish criteria for denial of research permits for conditional and prohibited species, establish criteria for issuance of public exhibition permits for prohibited species, establish the rules relating to the caging and transport of reptiles listed as conditional species and revise protocols for importation of leopard (*Geochelone pardalis*), African spurred (*Geochelone sulcata*) and Bell’s hingeback tortoises (*Kinixys belliana*). Rule 68-5.002, F.A.C. (Conditional Non-native species) would be amended to include the Indian or Burmese python (*Python molurus*), Northern African python (*Python sebae*), Southern African python (*Python natalensis*), Amethystine python (*Morelia amethystinus*), Scrub python

(*Morelia kinghorni*), Black or Boelen's python (*Morelia boeleni*), Green anaconda (*Eunectes murinus*), and Nile monitor (*Varanus niloticus*) as conditional species. Rule 68-5.003, F.A.C. (Prohibited Non-native Species) would be amended to address two incorrect rule references and a spelling error. Rule 68-5.004 F.A.C. (Amnesty for Persons Relinquishing Non-native Pets) would be amended to allow the transfer of unpermitted reptiles of concern and reptiles listed as conditional species to properly permitted recipients at any time of the year. Reptiles of concern in personal possession on or before July 1, 2010 will be allowed to remain with their owners for the rest of the animals' lives, provided the owners maintain valid reptile of concern permits.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will ___ or will not X have an impact on small business. A SERC has ___ or has not X 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: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

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

DATES AND TIME: During the regular meeting of the Commission, June 23-24, 2010, 8:30 a.m. – 5:00 p.m., each day

PLACE: Lake Mary, 1501 International Parkway, Lake Mary, 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: The ADA Coordinator, at (850)488-6411. 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: Michael Yaun, Deputy General Counsel, Legal Office, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, FL 32399-1600

THE FULL TEXT OF THE PROPOSED RULES IS:

(Substantial rewording of Rule 68-5.001 follows. See Florida Administrative Code for present text.)

68-5.001 Introduction of Non-native Species into the State.

(1) No person shall transport into the state, introduce, or possess, for any purpose that might reasonably be expected to result in liberation into the state, any freshwater fish, aquatic invertebrate, marine plant, marine animal, or wild animal life not native to the state, without having secured a permit from the Commission, except:

(a) Fathead minnow (*Pimephales promelas*).

(b) Variable platy (*Xiphophorus variatus*).

(c) Coturnix quail (*Coturnix coturnix*).

(d) Ring-necked pheasant (*Phasianus colchicus*).

(2) Unless otherwise specifically provided in Titles 68A through 68E, F.A.C., all species of freshwater aquatic life and wild animal life not native to Florida may be taken throughout the year, without restrictions.

(3) Conditional Non-native Species – No person shall import into the state, sell, possess, or transport any live specimens of the species, or hybrids or eggs thereof, listed in Rule 68-5.002, F.A.C., except by Conditional/ Prohibited/ Nonnative species permit and as provided in paragraphs (a) through (f) below:

(a) Permits shall be issued only to individuals or institutions engaged in research, or to commercial import or export businesses, public aquaria, public zoological parks, or public exhibitors providing educational exhibits. Permits shall not be issued for display of these species in private aquaria, private zoological parks, or for personal possession, except as provided in Rule 68-5.002, F.A.C.

(b) Any person engaged in aquaculture who possesses a valid certificate of registration from the Department of Agriculture and Consumer Services issued pursuant to Chapter 597, F.S., and who is authorized to possess such species in accordance with Chapter 597, F.S., is not required to obtain the permit.

(c) Conditional freshwater fish and aquatic invertebrate species:

1. Species held outdoors may only be held in a water body that has the lowest point of the top edge of its levee, dike, bank, or tank at an elevation of at least one foot above the 100-year flood elevation determined by reference to elevation maps issued by the National Flood Insurance Program, U.S. Department of Homeland Security. Such water body shall have no water discharge or shall be constructed with a barrier system designed to prevent escape of adults, juveniles, and eggs in the water effluent discharged from the permittee's property. Public visitation at facilities in possession of conditional non-native species shall occur only under supervision of the permittee or his/her designee.

2. Conditional freshwater fish and aquatic invertebrate species held indoors may only be held in culture systems having no water discharge, having a water discharge through a

closed drain system, or other system designed to prevent discharge of water containing adults, juveniles and eggs from the permittee's property.

3. Conditional non-native aquatic species shall not be taken on a fee- or for-hire basis using hook and line or rod and reel.

(d) Conditional turtle species:

1. Outdoor facilities must have a permanent containment barrier secured at least six inches below ground level to prevent escape by digging, erosion, climbing or by passing through gaps. Such barriers may be constructed of solid metal or weather-resistant and rot-resistant material, and may not use mesh material.

2. All eggs must be removed and destroyed daily from outdoor facilities.

(e) Snakes and lizards:

1. Conditional snake and lizard species may only be held in safe, secure and proper housing in cases, cages, pits or enclosures of the following specifications:

a. Cage may be constructed of a variety of materials including: plate glass of at least one-quarter inch thickness, break-resistant plastic of similar strength, concrete reinforced with wire, sheet metal, molded fiberglass, plywood or interlocking lumber that has been treated to be impervious to moisture and is not less than one-half inch in thickness, or other materials which provide equivalent stability and security against escape and unauthorized intrusion. Cages and doors to cages shall be sealed. The doors of each cage shall be securely locked by a device operated by a key, combination lock, key card or other locking device approved by the Commission to prevent unauthorized intrusion.

b. A room or out-building may contain conditional snake and lizard species in cages that are not locked provided that such a room or out building is locked by a device operated by a key, combination lock, key card or other locking device approved by the Commission to prevent unauthorized intrusion, is inaccessible to unauthorized personnel, is constructed and maintained as to be escape-proof, and has been inspected and approved as conforming to these rules by Commission personnel prior to use. Any out building so used must be of strong construction with concrete or other suitable flooring and securely anchored to the ground. Such building shall be clearly posted at point of entry with a sign stating "Danger – Dangerous Reptiles."

c. Facilities with one or more permittee at the same facility location may not commingle their respective live conditional species inventories. All cages or enclosures must be clearly identified or visibly marked with the name of the permittee or other identifier to facilitate inventory inspections.

d. All individuals associated with a facility authorized to possess conditional snake and lizard species shall demonstrate knowledge of facility requirements, and secure handling protocols for conditional snakes and lizards as established by the permittee.

2. Identification: Conditional snakes and lizards shall be permanently identified with a unique passive integrated transponder (PIT tag). Identification shall consist of the implantation of a unique PIT tag under the specimen's skin in a manner to maintain the PIT tag permanently in place.

a. For snakes implantation shall be in specimens with a one (1) inch or greater diameter. The PIT tag shall be implanted in the rear one-third (1/3) of the snake, forward of the anal plate.

b. For lizards implantation shall be in the body cavity in close proximity to and forward of a rear leg, or in a rear leg.

c. The requirement pertaining to the location of the PIT tag implantation shall not apply to specimens implanted prior to acquisition of the animal or prior to the effective date of this rule.

d. Records of identification including PIT tag number where applicable, along with information about the specimen being identified (species, specimen name or number, gender, and age) must be provided to the Commission within 72 hours of acquisition and maintained in the possessor's records for as long as the specimen is possessed.

e. Exemption: Conditional snakes and lizards being held for export by any person who possesses such animals in accordance with Sections 379.304 and 379.372, F.S., are exempt from the permanent identification requirement of this section for a period not to exceed 180 days provided such animals or their enclosures are permanently marked so as to be traceable to written records indicating the date such conditional snakes and lizards were acquired.

f. Effective Date: All The permanent identification requirements for conditional snake and lizard species in this rule shall not take effect until August 1, 2010.

3. Inspection: Conditional snake and lizard species held in captivity are subject to inspection by Commission personnel. Commission personnel shall determine whether the snakes or lizards are securely, properly and safely housed. In the event that any conditional snakes or lizards are not safely housed, Commission personnel shall report the situation in writing to the person authorized to possess or exhibit such reptiles. Failure of the possessor or exhibitor to correct the situation within 30 days after such written notice shall be grounds for revocation of the permit.

4. Transporting: Conditional snake and lizard species shall be transported only after placement in a closely woven, double-seam sewn, cloth sack. This cloth sack shall be placed in a second cloth sack of similar construction, which shall be placed in a secure container. Said containers shall be prominently labeled "Dangerous Reptiles."

5. Disaster and Critical Incidents Plans.

a. A plan to secure conditional snakes or lizards in the event of disasters or critical incidents shall be documented on the Captive Wildlife Critical Incident/Disaster Plan form FWCDLE 619 (06-10), which is adopted and incorporated herein by reference. Forms may be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600, or at www.myfwc.com/permits. This form shall consist of two parts. Part A of form FWCDLE 619 shall be submitted at the time of initial application to possess conditional snake and lizard species; and Part B shall be retained on file at the facility and be made available for inspection upon request of Commission personnel.

b. No later than 24 hours prior to the National Weather Center's projected onset of hurricane-force winds of Category 3 or greater, all conditional snakes and lizards shall be placed in a closely woven, double-seam sewn, cloth sack. This cloth sack shall be placed in a second cloth sack of similar construction, which shall be placed in a secure container. Any conditional snakes and lizards in an outdoor enclosure shall be moved to a secure indoor facility of strong construction with concrete or other suitable flooring and securely anchored to the ground. Persons authorized to possess conditional snakes and lizards shall report their critical incident preparation status to their county emergency management agency prior to the onset of critical conditions.

6. Record Keeping: Persons authorized to possess conditional snake and lizard species shall maintain an accurate record of all changes in inventory including births, deaths, acquisitions, sales and transfers of all conditional snakes or lizards. Such records shall be kept on the permitted premises on a Captive Wildlife Inventory-Reptile form, FWCDLE 620IV-R (06-10), which is adopted and incorporated herein by reference. Forms may be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600, or at www.myfwc.com/permits. Such records shall be open to inspection upon request by Commission personnel.

a. Records of births or deaths shall include the date of the birth or death; and the quantity and species of each birth or death. For the purposes of this section "birth" shall be defined as the initial hatch or live birth date for the clutch.

b. Records of acquisition shall include the date of acquisition; quantity and species of reptiles acquired; method of identification and unique passive integrated transponder (PIT tag) number, if applicable, for each specimen; name and complete address of supplier, except for animals acquired

under the provisions of paragraph 68-5.004(3)(c), F.A.C.; and conditional species permit number of supplier where applicable.

c. Transfer: Conditional snake and lizard species may be transferred to persons authorized to possess conditional snakes and lizards. Such transfers must be accompanied by Captive Wildlife Inventory-Reptile form, FWCDLE 620IV-R (06-10), which is adopted and incorporated herein by reference. Forms may be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600, or at www.myfwc.com/permits. This form shall be signed by the originator upon shipment and by the recipient upon receipt and shall list the common name, scientific name, and quantity of each species in transport; name and address of the originator and recipient; conditional species permit number of the recipient; if the shipment originates within Florida, the conditional species permit number of the originator.

7. Reporting:

a. Persons exhibiting or selling live conditional snakes and lizards in accordance with Section 379.304, F.S., shall complete a Captive Wildlife Inventory-Reptile form, FWCDLE 620IV-R (06-10), and submit same to Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600, upon annual renewal of permit and six months thereafter.

b. Any person authorized to possess conditional snakes and lizards must report any escapes to the Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement immediately upon discovery of escape.

(f) Research involving conditional species:

1. A detailed research proposal shall accompany the application for the permit. The proposal shall state with particularity research objectives, methodology and study duration, and outline planned safeguards to assure proper containment of the species. An annual record of progress toward the research project objectives shall be maintained, and such research proposal and record of progress shall be available for inspection upon request of Commission personnel.

2. All research involving conditional species shall be conducted according to the provisions of paragraphs (3)(c)-(e) above.

3. The permit shall expire 12 months from the date of issuance and shall not be renewed until a detailed report of research findings is received and approved by the Commission. The report shall include a description of activities undertaken in the permit period, progress toward research project objectives, and proposed additional activities to be undertaken

during any renewal period. Such reports are public records subject to the requirements for public disclosure under Chapter 119, F.S.

4. Any escape or release of conditional species shall be reported immediately to the Commission.

(4) Prohibited Non-native Species – No person shall import into the state, sell, possess, or transport any live specimens of the species, or hybrids or eggs thereof, listed in Rule 68-5.003, F.A.C., except by Conditional/ Prohibited/ Nonnative Species permit and as provided in paragraphs (a) and (b) below:

(a) Exhibition of prohibited species: public aquaria, zoological parks, or public exhibitors shall be granted a permit provided the following requirements are met:

1. Prohibited aquatic species shall be maintained in indoor facilities in containers or other confinement facilities designed to prevent escape and having no exterior water discharge or having a water discharge through a closed drain system that terminates in a dry-bed wastewater retention area with no public access.

2. Prohibited terrestrial species shall be maintained in indoor facilities in cages or other confinement facilities that prevent escape and public contact.

3. Critical incident and disaster plan. A plan for securing animals on site, evacuating and /or euthanizing animals in the event of a natural disaster or critical incident shall be submitted by the applicant and approved by the Commission before a permit will be issued. The critical incident and disaster plan shall also include methods to transport and return evacuated animals to the exhibition facility. Commission personnel will review the critical incident and disaster plan to ensure the State of Florida is adequately protected from the risk of introduction of the species.

4. Inspections. Exhibitors permitted to possess prohibited species may be inspected by Commission personnel or an authorized representative of the Commission prior to issuance of a permit. Scheduled and unannounced inspections to ensure general security measures are followed may be conducted at any time during the permit period.

5. The permit will expire 12 months from the date of issuance.

6. Possession of sea snakes (Family Hydrophiidae, all species) is limited to public aquaria, public zoological parks, or public exhibitors providing educational exhibits, for public exhibition purposes only, under the following conditions:

a. Only male sea snakes may be possessed.

b. A public aquarium, zoological park, or public exhibitor possessing sea snakes shall not be located in a coastal county and shall have no contiguous connection with any waters of the state.

c. Each public aquarium, public zoological park, or public exhibitor possessing sea snakes shall provide quarterly reports to the Commission regarding the number of each species of sea snakes on the premises and any changes in inventory resulting from death or additions by importation.

d. Each public aquarium, zoological park, or public exhibitor possessing sea snakes shall post with the Commission a \$1 million letter of credit. The letter of credit shall be in favor of the State of Florida, Fish and Wildlife Conservation Commission, for use by the Commission to remove any sea snake accidentally or intentionally introduced into waters of the state. The letter of credit shall be written in the form determined by the Commission. The letter of credit shall provide that the zoological park or aquarium is responsible for the sea snakes within that facility and shall be in effect at all times that the zoological park or aquarium or public exhibitor possesses sea snakes.

e. No person or public aquarium, public zoological park, or public exhibitor shall barter, sell, or trade sea snakes within this state.

f. A public aquarium, public zoological park, or public exhibitor that imports sea snakes pursuant to this subsection may transport sea snakes into this state only by airplane that may land only at an airport located in a non-coastal county within this state.

g. A public aquarium, public zoological park, or public exhibitor possessing sea snakes pursuant to this subsection shall abide by all regulatory requirements of the Fish and Wildlife Conservation Commission with respect to venomous reptiles.

(b) Research involving prohibited species: Individuals or institutions engaged in research shall be granted a permit, provided the following requirements are met:

1. Eligibility. A permit for research involving prohibited species shall be issued only to a principal investigator who is a faculty member of a college or university, is affiliated with an accredited institution, or is a member of a federal, state or county agency.

2. Research proposal. A detailed research proposal shall be submitted and shall state with particularity research objectives, methodology and study duration, and shall outline planned safeguards to ensure proper containment of all specimens. An annual record of progress toward the research project objectives shall be maintained, and such research proposal and record of progress shall be available for inspection upon request of Commission personnel.

3. General security measures and containment.

a. Applicants shall submit to the Commission a list of personnel that have access to the prohibited species and arrangements for final disposition or euthanization of specimens.

b. All research on prohibited aquatic species shall be conducted in indoor facilities in containers or other confinement facilities designed to prevent escape and having no exterior water discharge or having a water discharge through a closed drain system that terminates in a dry-bed wastewater retention area with no public access.

c. All research on prohibited terrestrial wildlife species shall be conducted in indoor facilities in cages or other confinement facilities that prevent escape.

4. Critical incident and disaster plan. A plan for securing animals on site, evacuating and /or euthanizing animals in the event of a natural disaster or critical incident shall be submitted by the applicant and approved by the Commission before a permit will be issued. The critical incident and disaster plan shall include methods to transport and return evacuated animals back to the research facility. Commission personnel will review the critical incident and disaster plan to ensure the State of Florida is adequately protected from the risk of introduction of the species.

5. Inspections. All research facilities where research involving prohibited species is to be conducted will be inspected by Commission personnel or an authorized representative of the Commission prior to issuance of a permit. Scheduled and unannounced inspections to ensure general security measures are followed may be conducted at any time during the permit period.

6. The permit shall expire 12 months from the date of issuance and shall not be renewed until a detailed report of research findings is received and approved by the Commission. The report will include a description of activities undertaken in the permit period, progress toward research project objectives, and proposed additional activities to be undertaken during any renewal period. Such reports are public records subject to the requirements for public disclosure under Chapter 119, F.S.

7. Any escape or release of prohibited species shall be reported immediately to the Commission, and escape or release shall constitute grounds for revocation of the permit to conduct research involving prohibited species.

(5) No permits shall be granted for possession of any species of piranha or pirambeba (subfamily Serrasalminae).

(6) No leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), or Bell's hingeback tortoise (*Kinixys belliana*) shall be imported or transported into this state, without a Conditional/Prohibited/Nonnative Species permit subject to the following:

(a) Tortoises shall be inspected by a veterinarian and certified as being free of external parasites prior to being imported. Certified veterinary health certificates and written notice of the shipment shall be submitted to the Commission no less than 10 days before arrival of any tortoise.

(b) Containers used to transport tortoises shall be disinfected prior to importation, and shall be incinerated within 24 hours of arrival or exported out of Florida within 72 hours.

(c) Such other conditions as may be necessary to ensure that no tortoise infested with ticks capable of transmitting the Heartwater disease is imported into Florida.

(7) No person shall allow or permit any freshwater fish, aquatic invertebrate, marine plant, marine animal, or wild animal life not native to the state, to remain in any facility that is no longer maintained or operated for the production or maintenance of such non-native species. The presence of any such non-native species in any facility shall constitute possession by the owner or operator of the facility.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 6-7-08, Amended _____.

68-5.002 Conditional Non-native Species.

Live specimens of the following species, including their taxonomic successors, subspecies, or hybrids or eggs thereof may be possessed only pursuant to permit issued by the Executive Director except as provided in subsection 68-5.001(3)(2), F.A.C.

(1) Non-native freshwater fish and aquatic invertebrate species.

(a) through (p) No change.

~~(q) Red-eared slider (*Trachemys scripta elegans*):~~

1. Red-eared sliders in personal possession prior to July 1, 2007 may continue in the possession of the owner.

2. Red-eared sliders less than four inches carapace length may not be possessed after July 1, 2008 without a permit.

3. Red-eared sliders with distinctive aberrant color patterns, including albino or melanistic specimens, may be possessed without a permit otherwise required by this rule.

~~(q)(r) Arowanas (Family Osteoglossidae, all species except silver arowana, *Osteoglossum bicirrhosum*).~~

~~(r)(s) Northern largemouth bass (*Micropterus salmoides salmoides*), except that intergrade largemouth bass (northern largemouth bass x Florida largemouth bass *Micropterus salmoides floridanus*) may be possessed in the Suwannee River and its tributaries and north and west of the Suwannee River.~~

(2) Non-native mammals – Nutria (*Myocaster coypus*).

(3) Non-native turtles. Red-eared slider (*Trachemys scripta elegans*): red-eared sliders may be possessed only by permitted individuals or commercial import or export businesses according to the provisions of paragraph 68-5.001(3)(d), F.A.C., except as provided below:

(a) Red-eared sliders in personal possession prior to July 1, 2007 may continue in the possession of the owner without a permit, except that red-eared sliders less than four inches carapace length may not be possessed after July 1, 2008 without a permit.

(b) Red-eared sliders with distinctive aberrant color patterns, including albino or melanistic specimens, may be possessed without a permit otherwise required by this rule.

(4) Non-native Snakes and lizards: The following species possessed for personal use by reptile of concern license holders prior to July 1, 2010 may continue in the possession of the owner for the life of the animal. A valid license to possess these animals must be maintained pursuant to Section 379.372, F.S.

- (a) Indian or Burmese python (*Python molurus*)
- (b) Reticulated python (*Python reticulatus*)
- (c) Northern African python (*Python sebae*)
- (d) Southern African python (*Python natalensis*)
- (e) Amethystine python (*Morelia amethystinus*)
- (f) Scrub python (*Morelia kinghorni*)
- (g) Black or Boelen's python (*Morelia boeleni*)
- (h) Green anaconda (*Eunectes murinus*)
- (i) Nile monitor (*Varanus niloticus*).

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 6-7-07, Amended 9-11-09, _____.

68-5.004 Amnesty for Persons Relinquishing Non-native Pets.

It is the policy of the Fish and Wildlife Conservation Commission to encourage persons possessing unwanted non-native fish or wildlife as pets to relinquish such pets to qualified adopters as an alternative to releasing them into Florida's environment. In furtherance of this policy, the Commission will sponsor amnesty events for such purpose.

(1) No change.

~~(2) State and county wildlife control agencies may accept non native fish and wildlife from persons who have not obtained a permit from the Commission for possession of such fish or wildlife.~~

~~(2)(3)~~ Any person relinquishing or adopting non-native fish or wildlife pursuant to this rule is hereby deemed not to be in violation of the permit requirement of subsection 68A-6.0023(7) 68A-6.0021(2), F.A.C.

(3) Relinquishing reptiles of concern, or conditional snakes and lizards.

(a) Persons with a valid license to possess or exhibit reptiles designated as reptiles of concern after July 1, 2010, may accept reptiles of concern as defined in subsection 68A-6.007(1), F.A.C. from persons who have not obtained a permit from the Commission for possession of such reptiles without violating the provisions of subsection 68A-6.0023(7), F.A.C., which prohibits the buying, selling or transferring of wildlife to or from an unpermitted entity within Florida.

(b) Persons authorized to possess conditional snakes and lizards may accept conditional snakes and lizards as defined in subsection 68-5.002(5), F.A.C., from persons who have not obtained a permit from the Commission for possession of such conditional snakes and lizards without violating the provisions

of subsection 68A-6.0023(7), F.A.C., which prohibits the buying, selling or transferring of wildlife to or from an unpermitted entity within Florida.

(c) Persons accepting unpermitted reptiles of concern, or conditional snakes and lizards, shall complete a Captive Wildlife Inventory-Donated Reptile form, which is available from the Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600, and submit the form to the same address within 72 hours of acquisition.

(d) Any person relinquishing or accepting reptiles of concern, or conditional snakes and lizards, under this subsection is authorized to make such transfer and is not in violation of the prohibitions on buying, selling or transferring contained in subsection 68A-6.0023(7), F.A.C.

(e) Persons accepting unpermitted reptiles of concern, or conditional snakes or lizards, under this subsection must otherwise comply with all permit conditions and Commission rules, specifically including provisions in Chapter 68A-6, F.A.C.

(4) State and county wildlife control agencies may accept non-native fish and wildlife from persons who have not obtained a permit from the Commission for possession of such fish or wildlife.

Rulemaking Authority Article IV, Section 9, Florida Constitution. Law Implemented Article IV, Section 9, Florida Constitution. History--New 10-23-08, Amended _____.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tim Breault, Director, Division of Habitat and Species Conservation, Florida Fish and Wildlife Conservation Commission

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 28, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NO.: 68A-4.002
 RULE TITLE: Possession of Gun While Using a Light Prohibited

PURPOSE AND EFFECT: The purpose and effect of this rule change is to make the rule consistent with new Rule 68A-9.012, F.A.C., (Taking Wildlife on Airport Property).

SUMMARY: A new Rule 68A-9.012, F.A.C., consolidates from several existing rules into one rule the provisions concerning aircraft and human safety issues posed by wildlife on airport property. The new rule largely eliminates permitting requirements for taking of wildlife on airports for the purpose of aircraft or human safety. Consolidation of provisions addressing aircraft and human safety issues posed by wildlife from several rules into one rule also makes it easier for airport operators to understand how they may handle such issues. Other rules are repealed (68A-27.002) or modified (68A-9.010) because provisions are now included in the new rule, or modified (68A-4.002 and 68A-24.005) to be consistent with the new rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will ___or will not X have an impact on small business. A SERC has ___ or has not X 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: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

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

DATES AND TIME: During the regular meeting of the Commission, June 23-24, 2010, 8:30 a.m. – 5:00 p.m., each day

PLACE: Orlando Marriott Lake Mary, 1501 International Parkway, Lake Mary, 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: The ADA Coordinator, at (850)488-6411. 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: Mr. Tim Breault, Director, Division of Habitat and Species Conservation, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-4.002 Possession of Gun While Using a Light Prohibited.

(1) Except while engaging in activities provided for in Rules 68A-9.012 ~~68A-9.010~~, 68A-23.002, 68A-24.002, 68A-25.003, 68A-25.032, and 68A-25.042, F.A.C., the displaying or use of a light at night in a place where wildlife or freshwater fish might be found and in a manner capable of disclosing the presence of wildlife or freshwater fish, together with the possession of a gun by one or more persons then and there in the presence of each other is prohibited.

(2) through (3) No change.

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const., 379.1025 FS. Law Implemented Art. IV, Sec. 9, Fla. Const., 379.3015, 379.404(2) FS. History—New 8-1-79, Amended 6-21-82, Formerly 39-4.02, 39-4.002, Amended 4-3-08,_____.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Tim Breault, Director, Division of Habitat and Species Conservation, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 28, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 11, 2009

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NO.: 68A-9.010
 RULE TITLE: Taking Nuisance Wildlife

PURPOSE AND EFFECT: The purpose and effect of these proposed rule changes is to consolidate provisions for the harassment and take of wildlife that pose a threat to aircraft safety and human life at airports and to eliminate most permitting requirements for such actions

SUMMARY: A new Rule 68A-9.012, F.A.C., consolidates from several existing rules into one rule the provisions concerning aircraft and human safety issues posed by wildlife on airport property. The new rule largely eliminates permitting requirements for taking of wildlife on airports for the purpose of aircraft or human safety. Consolidation of provisions addressing aircraft and human safety issues posed by wildlife from several rules into one rule also makes it easier for airport operators to understand how they may handle such issues. Other rules are repealed (68A-27.002) or modified (68A-9.010) because provisions are now included in the new rule, or modified (68A-4.002 and 68A-24.005) to be consistent with the new rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will ___or will not X have an impact on small business. A SERC has ___ or has not X 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: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

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

DATES AND TIME: During the regular meeting of the Commission, June 23-24, 2010, 8:30 a.m. – 5:00 p.m., each day

PLACE: Orlando Marriott Lake Mary, 1501 International Parkway, Lake Mary, 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: The ADA Coordinator, at (850)488-6411. 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: Mr. Tim Breault, Director, Division of Habitat and Species Conservation, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-9.010 Taking Nuisance Wildlife.

Any person owning property may take nuisance wildlife or they may authorize another person to take nuisance wildlife on their behalf except those species listed in subsection (1) below

on their property by any method except those methods listed in subsection (2) below. Persons responsible for government owned property are considered “landowners” for the purpose of this rule. Notwithstanding the provisions of this section, the executive director or a designee may issue permits authorizing the take of additional species of wildlife, additional methods of take or alternative forms of disposition and transportation for justifiable purposes pursuant to Rule 68A-9.002, F.A.C., provided authorizations shall be denied or revoked upon reasonable conclusion that the requested or permitted activity would be detrimental to fish and wildlife resources or public health and safety.

(1) Wildlife that may not be taken as nuisance wildlife:

(a) Species listed in Chapter 68A-27, F.A.C.

(b) The following mammals:

1. through 3. No change.

4. Bobcat – Except that a bobcat may be taken, as provided by subsections (2), (3) and (4) below, when it causes or is about to cause property damage, or presents a threat to public safety. Euthanasia of any live captured bobcat is prohibited and any live captured bobcat shall be released as provided by subsection (3).

(c) No change.

(2) Methods that may not be used to take nuisance wildlife:

(a) Gun and light, ~~except as provided in paragraph (5)(b) below.~~

(b) No change.

(3) through (4) No change.

~~(5) Take of nuisance wildlife on airport property.~~

~~(a) Wildlife listed in Chapter 68A-27, F.A.C., that pose an imminent jeopardy to aircraft safety and human life, may be harassed by persistent, non-injurious disturbance without physical capture or direct handling to disperse wildlife by airport operators or their agents on airport property in order to prevent collisions between aircraft and wildlife.~~

~~(b) Airport personnel may take deer or wild turkey on airport property if their presence poses a potential threat to aircraft safety and human life. Deer may be taken by the use of a gun and light at night. Carcasses of deer or wild turkey taken under this rule shall be buried, incinerated on site or donated to a charitable, non profit institution or agency. No deer or wild turkey carcasses taken under this rule shall be retained for use by airport personnel.~~

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 7-1-08, Amended 7-1-10,_____.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT

CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Tim Breault, Director, Division of Habitat and Species Conservation, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 28, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 11, 2009

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NO.: 68A-9.012 RULE TITLE: Taking of Wildlife on Airport Property

PURPOSE AND EFFECT: The purpose and effect of these proposed rule changes is to consolidate provisions for the harassment and take of wildlife that pose a threat to aircraft safety and human life at airports and to eliminate most permitting requirements for such actions.

SUMMARY: A new Rule 68A-9.012, F.A.C., consolidates from several existing rules into one rule the provisions concerning aircraft and human safety issues posed by wildlife on airport property. The new rule largely eliminates permitting requirements for taking of wildlife on airports for the purpose of aircraft or human safety. Consolidation of provisions addressing aircraft and human safety issues posed by wildlife from several rules into one rule also makes it easier for airport operators to understand how they may handle such issues. Other rules are repealed (68A-27.002) or modified (68A-9.010) because provisions are now included in the new rule, or modified (68A-4.002 and 68A-24.005) to be consistent with the new rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will ___or will not X have an impact on small business. A SERC has ___ or has not X 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: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

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

DATES AND TIME: During the regular meeting of the Commission, June 23-24, 2010, 8:30 a.m. – 5:00 p.m., each day

PLACE: Orlando Marriott Lake Mary, 1501 International Parkway, Lake Mary, 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: The ADA Coordinator, at (850)488-6411. 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: Mr. Tim Breault, Director, Division of Habitat and Species Conservation, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-9.012 Take of Wildlife on Airport Property.

Any airport may take wildlife on airport property for the purpose of ensuring aircraft and human safety in accordance with this rule. An airport or other entity owning or operating an airport as defined in Section 330.27(2), F.S. or their officers, employees, contractors (or employee of a contractor) or member of the airport's governing body as referenced in Section 379.2293(5), F.S. may carry out the activities specified in this rule. Notwithstanding the provisions of this section, the executive director or a designee may issue permits authorizing the take of additional species of wildlife, additional methods of take or alternative forms of disposition and transportation for justifiable purposes pursuant to Rule 68A-9.002, F.A.C., provided authorizations shall be denied or revoked upon reasonable conclusion that the requested or permitted activity would be detrimental to fish and wildlife resources or public health and safety.

(1) The taking and disposition of species regulated by the United States Departments of Interior or Commerce in 50 C.F.R. §10.13 (Migratory Birds), 50 C.F.R. § 17.11 and §17.12 (Threatened and Endangered Species), 50 C.F.R. §22 (Bald Eagle), 50 C.F.R. §223.102 and §224.102 (Marine Species), is allowed pursuant to federal authorization. No additional Commission authorization is required.

(2) The following paragraphs control the take of black bears and species described in Chapter 68A-27, F.A.C., except species described in subsection (1):

(a) Any of these species may be harassed by persistent, non-injurious disturbance without physical capture or direct handling to disperse wildlife when the wildlife poses an imminent threat to aircraft and human safety.

(b) Any of these species may be otherwise taken when:

1. The wildlife poses an imminent threat to aircraft and human safety; and

2. A situation requires an emergency response which does not allow time for paragraph (2)(a); or

3. Attempts using paragraph (2)(a) have been documented as unsuccessful and when:

a. The airport is implementing a Federal Aviation Administration approved wildlife hazard management plan and

b. The airport has made habitat management alteration that has eliminated or significantly reduced hazardous wildlife attractants on airport property.

(c) Wildlife burrows, including gopher tortoise burrows, within the safety area as defined in 14 C.F.R. § 139.5 may be destroyed after or while all existing gopher tortoise(s) within the burrows are live captured.

(3) Notwithstanding any provision of Commission rule, an airport authority may take all other wildlife not described in subsections (1) and (2) on airport property if their presence poses a potential threat to aircraft and human safety.

(4) Notwithstanding any provision of Commission rule, wildlife in subsections (2) and (3) taken pursuant to this rule may be taken by any method except the following:

(a) Poison, other than those pesticides that are registered by the Florida Department of Agriculture and Consumer Services without additional authorizations and are only used in a manner consistent with the product labeling.

(b) Leg hold traps except those commercially manufactured padded-jaw traps.

(c) Traps, nets and snares unless they are visited at intervals not exceeding 24 hours.

(d) Any method prohibited pursuant to Section 828.12, F.S.

(e) Live capture of any deer, except Key deer as authorized by subsection (1).

(f) The killing of gopher tortoises is prohibited.

(5) Disposition of live-captured wildlife.

(a) Any species described in subsection (2) live captured shall be immediately released provided the release site and capture site are located on a contiguous piece of airport property or a permit or authorization has been obtained from the Commission for off-site release or alternative forms of disposition.

(b) Any species described in subsection (3) live captured by any method shall be released or euthanized within 24 hours following capture or inspection of a trapping device containing wildlife except,

1. Wildlife may only be released if:

a. The wildlife is released on the property of the airport provided the release site and capture site are located on a contiguous piece of property; or

b. The wildlife is a native species; and

c. The property where the animal is to be released is located within the county of capture and is a minimum of 40 contiguous acres; and

d. The person releasing the wildlife is in possession, at time of release, of written permission from the property owner allowing such action.

2. Euthanasia of wildlife shall be humane as defined by the American Association of Zoo Veterinarians or the American Veterinary Medical Association.

3. Euthanasia of any live captured bobcat is prohibited and any live captured bobcat shall be released as provided in subparagraph 1.

(6) Transportation of wildlife.

(a) Live-captured wildlife described in subsection (3), may be transported pursuant to this subsection only for:

1. The purpose of euthanasia as provided in subsection (5) or

2. The purpose of release as provided in subsection (5).

(b) Transportation of wildlife authorized by this subsection shall not supersede the provisions of any rabies alert or area quarantine issued by County Health Departments or County Animal Services.

(7) Wildlife described in subsections (2) and (3) that is killed pursuant to this rule or parts of that wildlife shall not be retained for personal use and shall be buried or incinerated.

(8) Any take that kills wildlife described in subsection (2) shall be reported by the airport. An Airport Wildlife Incident Report (Form FWC-AWIR 06-2010, herein incorporated by reference) must be submitted to the Commission within 5 business days. The form is available at MyFWC.com and must be submitted to the Protected Species Permit Coordinator, 620 S. Meridian Street, Mail Station 2A, Tallahassee, FL 32399-1600 or by email at AirportIncidents@myFWC.com.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History-New _____.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Tim Breault, Director, Division of Habitat and Species Conservation, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 28, 2010
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 12, 2010

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NO.: 68A-24.005
 RULE TITLE: Transporting and Shipping Live Raccoons

PURPOSE AND EFFECT: The purpose and effect of this rule change is to make the rule consistent with new Rule 68A-9.012, F.A.C., (Taking Wildlife on Airport Property).

SUMMARY: A new Rule 68A-9.012, F.A.C., consolidates from several existing rules into one rule the provisions concerning aircraft and human safety issues posed by wildlife on airport property. The new rule largely eliminates permitting requirements for taking of wildlife on airports for the purpose of aircraft or human safety. Consolidation of provisions addressing aircraft and human safety issues posed by wildlife from several rules into one rule also makes it easier for airport operators to understand how they may handle such issues. Other rules are repealed (68A-27.002) or modified (68A-9.010) because provisions are now included in the new rule, or modified (68A-4.002 and 68A-24.005) to be consistent with the new rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will ___or will not X have an impact on small business. A SERC has ___ or has not X 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: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

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

DATES AND TIME: During the regular meeting of the Commission, June 23-24, 2010, 8:30 a.m. – 5:00 p.m., each day

PLACE: Orlando Marriott Lake Mary, 1501 International Parkway, Lake Mary, 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: The ADA Coordinator, at (850)488-6411. 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: Mr. Tim Breault, Director, Division of Habitat and Species Conservation, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-24.005 Transporting and Shipping Live Raccoons.
 No person shall transport within, into, or from the state any wild-trapped, live raccoon, except as authorized by Rules 68A-9.010 and 68A-9.012, F.A.C.

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. FS. History–New 8-1-79, Amended 7-5-84, Formerly 39-24.05, 39-24.005, Amended 7-1-08, _____.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Tim Breault, Director, Division of Habitat and Species Conservation, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 28, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 11, 2009

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NO.: 68A-27.002
 RULE TITLE: Provision for Harassment of Endangered, Threatened and Species of Special Concern on Airport Property

PURPOSE AND EFFECT: The purpose and effect of this rule change is to repeal the rule because its provisions are now included in new Rule 68A-9.012, F.A.C., (Taking Wildlife on Airport Property).

SUMMARY: A new Rule 68A-9.012, F.A.C., consolidates from several existing rules into one rule the provisions concerning aircraft and human safety issues posed by wildlife

on airport property. The new rule largely eliminates permitting requirements for taking of wildlife on airports for the purpose of aircraft or human safety. Consolidation of provisions addressing aircraft and human safety issues posed by wildlife from several rules into one rule also makes it easier for airport operators to understand how they may handle such issues. Other rules are repealed (68A-27.002) or modified (68A-9.010) because provisions are now included in the new rule, or modified (68A-4.002 and 68A-24.005) to be consistent with the new rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will ___or will not X have an impact on small business. A SERC has ___ or has not X 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: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

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

DATES AND TIME: During the regular meeting of the Commission, June 23-24, 2010, 8:30 a.m. – 5:00 p.m., each day.

PLACE: Orlando Marriott Lake Mary, 1501 International Parkway, Lake Mary, 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: The ADA Coordinator, at (850)488-6411. 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: Mr. Tim Breault, Director, Division of Habitat and Species Conservation, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-27.002 Provision for Harassment of Endangered, Threatened and Species of Special Concern on Airport Property.

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 8-1-79, Amended 6-21-82, 7-1-84, 7-1-85, Formerly 39-27.02, Amended 6-1-86, 5-10-87, 4-13-88, 4-11-90, 6-23-98, 6-23-99, Formerly 39-27.002, Amended 7-1-08, Repealed.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Tim Breault, Director, Division of Habitat and Species Conservation, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 28, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 11, 2009

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE NO.:
68B-5.002

RULE TITLE:
John Pennekamp Coral Reef State Park: Prohibition on Harvest of Certain Species, Size Limit; Trappers to Comply with Rule 68B-24.0065

PURPOSE AND EFFECT: The purpose of this rule amendment is to modify the Commission’s Rule for John Pennekamp Coral Reef State Park (Park) to allow lionfish (*Pterois volitans*) to be taken from the park without size restrictions. In addition, these rule amendments will update outdated scientific names of organisms included in the rule. The rule changes would: 1) remove the prohibition of harvest on any members of the genus *Pterois*, 2) remove the minimum size limit for any members of the genus *Pterois*, and 3) update outdated scientific names for organisms included in the rule. The effect of these rule amendments is that lionfish will be able to be removed from John Pennekamp State Park with no restrictions. Staff at the Park requested that the FWC make this rule change. Allowing the harvest of lionfish from the Park will aid in the lionfish eradication efforts already underway in the Florida Keys. This removal is important to Florida’s ecosystems, as lionfish are not native to Florida waters, invasive and can be destructive to the ecosystems.

SUMMARY: Rule 68B-5.002, F.A.C. (John Pennekamp Coral Reef State Park: Prohibition on Harvest of Certain Species, Size Limit; Trappers to Comply with Rule 68B-24.0065) would be amended to allow harvest of any member of the genus from *Pterois* without size restrictions and to update outdated scientific names of organisms in the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will not have a substantial 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: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

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

DATES AND TIME: During the regular meeting of the Commission, June 23-24, 2010, 8:30 a.m. – 5:00 p.m., each day

PLACE: Orlando Marriott Lake Mary, 1501 International Parkway, Lake Mary, FL 32746

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: The ADA Coordinator, at (850)488-6411. 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: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850)487-0554

THE FULL TEXT OF THE PROPOSED RULE IS:

68B-5.002 John Pennekamp Coral Reef State Park: Prohibition on Harvest of Certain Species, Size Limit; Trappers to Comply with Rule 68B-24.0065, F.A.C.

(1) No person shall take, kill, or possess any of the following fish in John Pennekamp Coral Reef State Park:

- (a) through (n) No change.
- (o) Drums – Genera *Equetus*, *Pareques* and *Odontoscion*.
- (p) False morays – Family Chlopsidae ~~Xenocongridae~~.
- (q) through (bb) No change.
- (cc) Scorpionfishes – Family Scorpaenidae: except for species in the Genus *Pterois*.
- (dd) through (gg) No change.
- (hh) Soapfishes – Genus *Rypticus* ~~Family Grammistidae~~.
- (ii) Soles – Family ~~Soleidae~~ Achiridae.
- (jj) through (qq) No change.
- (rr) Triggerfishes and Filefishes – Families ~~Family~~ Balistidae and Monacantidae.
- (ss) through (uu) No change.

(2) Size Limit – No person shall take, kill, or possess any fish in John Pennekamp Coral Reef State Park smaller than 8 inches in total length. This subsection shall not apply to those species for which a specific minimum size limit has been otherwise established by law or rule or to any of the following fish:

- (a) through (g) No change.
- (h) Lionfish – Genus *Pterois*.
- (3) No change.

Rulemaking Specific Authority Art. IV, Sec. 9, Fla Const. Law Implemented Art. IV, Sec. 9, Fla Const. History–New 7-3-89, Amended 6-1-94, Formerly 46-5.002, Amended.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850)487-0554

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 28, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 5, 2010

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE NOS.:	RULE TITLES:
68B-47.001	Definitions
68B-47.003	Recreational Bag Limits
68B-47.005	Commercial Harvest Limits
68B-47.006	Weakfish, Regulation

PURPOSE AND EFFECT: The purpose of this rule amendment is to modify the Commission’s Weakfish Rule to comply with new weakfish regulations set by the Atlantic States Marine Fisheries Commission in response to a weakfish stock assessment of the entire Atlantic coast’s weakfish population. Adopting these regulations will contribute to the rebuilding of the weakfish stock along the entire Atlantic coast. In addition, these rule amendments would create a weakfish management area that would resolve identification issues in northeast Florida between weakfish, sand seatrout, and the hybrid population that has been created from interbreeding between weakfish and sand seatrout. The changes to this rule would: 1) add a definition for harvest for commercial purposes

and weakfish management area, 2) amend the definition of weakfish, 3) lower the recreational bag limit from four fish to one fish per person per day inside the weakfish management area, 3) establish a commercial harvest limit of 100 pounds per person or per vessel, per day or per trip, whichever is greater, inside the weakfish management area, 4) state that the presence of weakfish aboard a vessel that is actively fishing within the weakfish management area shall constitute prima facie evidence that such weakfish were harvested from that area and will be subjected to the limits for recreational and commercial fishing inside the area. The effect of these rule amendments is Florida will aid in the rebuilding plan for weakfish along the entire Atlantic coast. By adopting these regulations the State of Florida will be contributing to the effort to reduce fishing pressure on weakfish and allow the populations to expand. This should help ensure a larger sustainable harvest for the future. In addition, establishing a weakfish management area where weakfish regulations would be applied to all weakfish-like fish should eliminate the identification confusion for anglers and allow weakfish regulations to be enforced.

SUMMARY: Rule 68B-47.001, F.A.C. (Definitions) would be amended by adding a definition for “harvest for commercial purposes” and “weakfish management area,” as well as expanding the definition of “weakfish.” Rule 68B-47.003, F.A.C. (Recreational Bag Limits) would be amended to reduce the recreational bag limit from four fish to one fish per person per day inside the weakfish management area. Rule 68B-47.005, F.A.C. (Commercial Harvest Limits) would be created to establish a commercial harvest and possession limit of 100 pounds of weakfish per person or per vessel, per day or per trip, whichever is greater, inside the weakfish management area. Rule 68B-47.006, F.A.C. (Weakfish, Regulation) would be established to define that the presence of weakfish aboard a vessel that is actively fishing within the weakfish management area shall constitute prima facie evidence that such weakfish were harvested from within the area and thus the limits for recreational and commercial harvest would apply.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will not have a substantial 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: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

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

DATES AND TIME: During the regular meeting of the Commission, June 23-24, 2010, 8:30 a.m. – 5:00 p.m., each day

PLACE: Orlando Marriott Lake Mary, 1501 International Parkway, Lake Mary, FL 32746

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: The ADA Coordinator, at (850)488-6411. 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 Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850)487-0554

THE FULL TEXT OF THE PROPOSED RULES IS:

68B-47.001 Definitions.

As used in this chapter:

(1) No change.

(2) “Harvest for commercial purposes” means the taking or harvesting of any weakfish for purposes of sale or with the intent to sell. The harvest of weakfish in excess of the applicable recreational bag limit shall constitute harvest for commercial purposes.

~~(3)(2)~~ “Land,” when used in connection with the harvest of a fish, means the physical act of bringing the harvested fish ashore.

~~(4)(3)~~ “Spearing” means the catching or taking of a fish by bow hunting, gigging, spearfishing, or by any device used to capture a fish by piercing the body. Spearing does not include the catching or taking of a fish by a hook with hook and line gear, or by snagging (snatch hooking).

~~(5)(4)~~ “Total length” means the straight line distance from the most forward point of the head with the mouth closed, to the farthest tip of the tail with the tail compressed or squeezed, while the fish is lying on its side.

~~(6)(5)~~ “Weakfish,” also known as gray seatrout or yellow-mouth trout, means any fish of the species *Cynoscion regalis*, or sand seatrout (*Cynoscion arenarius*) or a hybrid of the two species caught in the Weakfish Management Area, or any part thereof.

~~(7)~~ “Weakfish Management Area” is defined as the area encompassing the St. Marys River and the inland waters of Nassau County east of Highway 17, north of State Highway 200A, and north of the Shave Bridge on the Amelia River. In addition, state waters off Amelia Island, from the Florida-Georgia border to the southernmost tip of Amelia Island are included in the area. Inside this management area any fish of the species *Cynoscion regalis*, *Cynoscion arenarius*

(sand seatrout), or the hybrid between the two, or any part thereof will be considered a weakfish subject to the regulations in this chapter. Fish that resemble weakfish, sand seatrout, or their hybrids harvested outside this management area in the state of Florida will be considered sand seatrout, not weakfish, and subject to any applicable regulations for sand seatrout.

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 7-17-95, Amended 1-1-98, Formerly 46-47.001, Amended 7-1-06, _____.

68B-47.003 Recreational Bag Limits.

Except for a person possessing a valid saltwater products license, no person shall harvest or land more than 1 4 weakfish per day, nor possess more than 1 4 weakfish at any time while in or on the waters of the state inside the Weakfish Management Area.

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 7-17-95, Formerly 46-47.003, Amended _____.

68B-47.005 Commercial Harvest Limits.

(1) Directed Commercial Harvest of Weakfish Limits – An entity that is harvesting weakfish with allowable gears other than shrimp trawls shall be subject to a limit of 100 pounds per person or per vessel per day or per trip, whichever is greater, inside the Weakfish Management Area.

(2) Bycatch Commercial Harvest of Weakfish Limits – An entity that is harvesting weakfish as bycatch of the shrimp fishery shall be subject to a vessel limit of 100 pounds per vessel per day or per trip, whichever is greater, inside the Weakfish Management Area.

(3) All entities commercially harvesting weakfish are subject to a possession limit of 100 pounds while in the Weakfish Management Area.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New _____.

68B-47.006 Weakfish, Regulation.

The presence of weakfish aboard a vessel that is actively fishing in or above the waters of the State of Florida within the Weakfish Management Area shall constitute prima facie evidence that such weakfish were harvested from the Weakfish Management Area and thus the limits for recreational and commercial harvest in this chapter would apply.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New _____.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT

CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850)487-0554

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 18, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 5, 2010

DEPARTMENT OF FINANCIAL SERVICES

Division of State Fire Marshal

RULE NO.:	RULE TITLE:
69A-62.023	Criteria for Identifying Firefighter Employers with a High Frequency or Severity of Injuries

PURPOSE AND EFFECT: The purpose and effect of the rule is to simplify the calculation used to identify firefighter employers experiencing a high frequency of severity of injuries, and the use of available, reliable data.

SUMMARY: Section 633.809, Florida Statutes, directs the Division of State Fire Marshal to develop a means to identify firefighter employers whose firefighter employees have a high frequency or severity of work-related injuries. The purpose is to assist the identified firefighter employers in reducing the frequency and severity of work-related injuries through the development of safety and health programs and inspections.

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: 633.804, 633.809 FS.

LAW IMPLEMENTED: 633.804, 633.809 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: Tuesday, June 29, 2010, 1:00 p.m., or as soon thereafter as a prior rule hearing, if requested, is concluded

PLACE: Auditorium, Florida State Fire College, 11655 N.W. Gainesville Rd., Ocala, FL 34482

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: Charles Brush, Health and Safety Program Manager, (352)369-2836; Charlie.Brush@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: Charles Brush, Health and Safety Program Manager, (352)369-2836; Charlie.Brush@myfloridacfo.com

THE FULL TEXT OF THE PROPOSED RULE IS:

(Substantial rewording of Rule 69A-62.023 follows. See Florida Administrative Code for present text.)

69A-62.023 Criteria for Identifying Firefighter Employers with a High Frequency or Severity of Injuries.

(1) Definitions:

(a) "Severe injury" means a line of duty injury that results in:

- 1. Fatality;
- 2. Loss of a limb;
- 3. Loss or impairment of a bodily member, organ or mental faculty;
- 4. More than 24 hours of hospitalization, or
- 5. Permanent disfigurement to a commonly visible portion of the body.

(b) "Lost time injury" means an "injury/indemnity" as defined in subsection 69L-56.002(41), F.A.C., or a "Medical only to lost time case" as defined in subsection 69L-56.002(45), F.A.C.

(d) "Firefighter employer average frequency of lost time injuries" equals the total of all lost time injuries in a calendar year experienced by a firefighter employer, divided by the total number of employer firefighter employees.

(e) "Statewide average frequency of lost time injuries" equals the total of all lost time injuries experienced by all firefighter employees in the state in a calendar year divided by the total number of firefighter employees experiencing lost time injuries in the state.

(f) "Firefighter employees" are those volunteer and career firefighters whose names are submitted by firefighter employers to the State Fire Marshal pursuant to Rule 69A-37.0335, F.A.C., and this rule chapter.

(g) "Most recent verified data" means the latest complete calendar year data acquired from the Department's Division of Workers Compensation, verified with the firefighter employer.

(2) Any firefighter employer experiencing:

(a) A more than 20 percent higher average frequency of lost time injuries than the statewide average, or

(b) Experiencing a severe injury related to a violation of this Rule Chapter that was investigated by the Department during the same period, is a Firefighter Employer with a High Frequency or Severity of Injuries for purposes of Sections 633.803, .804, and .809, F.S., and this Rule Chapter.

(3) The most recent verified data will be used to calculate the number of lost time injuries in subsection (2). The average statewide lost time injuries, individual employer injuries, and number of firefighter employee from the same period of time will be used in the calculation.

(4) A firefighter employer identified as having a high frequency or severity of injuries must submit a firefighter employee safety and health program in accordance with Rule 69A-62.021, F.A.C., for approval by the State Fire Marshal in accordance with Section 633.809, F.S. The Department will use the safety and health program to inspect the identified firefighter employer. If a firefighter employer so identified has not developed its own approved Safety and Health Program, the Safety and Health Program developed by the division, posted on the Department's website at: <http://www.myfloridacfo.com/sfm/bfst/SafetyHealth/SafetyResrcs.htm>, will be used to conduct the inspection.

Rulemaking Specific Authority 633.804, 633.809 FS. Law Implemented 633.804, 633.809 FS. History--New 9-6-04, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Barry Baker

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 11, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009

DEPARTMENT OF FINANCIAL SERVICES

Division of State Fire Marshal

RULE NO.: 69A-62.050
 RULE TITLE: Official State Firefighter Memorial Flag

PURPOSE AND EFFECT: To set forth the design, conditions of production, distribution, and display of an official state firefighter memorial flag to honor firefighters who have died in the line of duty.

SUMMARY: The rule sets forth the design specifications and a competitive process for production of the flags. The flags will be distributed at no cost to the next of kin of those firefighters honored at the annual fallen firefighter memorial service at the State Fire College in Ocala. Flag display is governed by Section 256.05, F.S.

SUMMARY: The rule sets forth the design specifications and a competitive process for production of the flags. The flags will be distributed at no cost to the next of kin of those firefighters

honored at the annual fallen firefighter memorial service at the State Fire College in Ocala. Flag display is governed by Section 256.05, F.S.

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: 256.15(3) FS.

LAW IMPLEMENTED: 256.15 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATES, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATES AND TIME: Tuesday, June 29, 2010, 1:00 p.m.

PLACE: Auditorium, Florida State Fire College, 11655 N.W. Gainesville Rd, Ocala, FL 34482

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: Charles Brush, Health and Safety Program Manager, (352)369-2836; Charlie.Brush@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: Charles Brush, Health and Safety Program Manager, (352)369-2836; Charlie.Brush@myfloridacfo.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69A-62.050 Official State Firefighter Memorial Flag.

(1) Scope. This rule sets forth the conditions of design, production, distribution, and display of the official state Firefighter Memorial Flag to honor firefighters who have died in the line of duty.

(2) Purpose. To preserve the reverence and dignity associated with the flag, and those whose sacrifice the flag honors.

(3) Design. In addition to the design specifications set forth in statute, the official flag shall be produced in size 5' x 8', and be printed on 200 Denier Solarmax nylon fabric or a fabric of equivalent weather resistance and durability. The flag shall be finished with a canvas heading and two brass grommets, with two rows of lock-stitching on the top and bottom edges, and four rows of stitching on the fly end. The flag shall carry the words "Official State of Florida Firefighter Memorial Flag."

(4) Production. The Department shall utilize a competitive process to choose a vendor to produce the flag. The Department will enter into an Agreement with the Vendor awarded the contract which will include the price at which the flag will be offered to the public as well as to the Department, the number of days to deliver any flag ordered and the cost for shipping. The contract will include a provision requiring the vendor to provide a copy of this rule, with every flag purchased. The contact information for the winning vendor shall be posted on the State Fire Marshal's website.

(5) Distribution. The State Fire Marshal honors Florida Firefighters who have died in the line of duty at a Firefighter Memorial Service conducted every year in the month of October at the State Fire College in Ocala, Florida. The official state Firefighter Memorial Flag will be formally presented at this service to the next of kin of every Florida firefighter honored at the ceremony, at no charge to the recipient. Each flag so presented shall carry a note indicating the following: "This flag is being presented to you by courtesy of the people of Florida" and no other name.

(6) Display. The flag may be displayed at memorial or funeral services of firefighters who have died in the line of duty, at firefighter memorials, at fire stations, at the Fallen Firefighter Memorial located at the Florida State Fire College in Ocala, by the families of fallen firefighters, and any occasion which honors the fire service in a reverent and honorable manner which does not violate Section 256.05, F.S.

Rulemaking Authority 256.15(3) FS. Law Implemented 256.15 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Barry Baker

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 6, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009

**Section III
Notices of Changes, Corrections and
Withdrawals**

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."