

considered a failure to appear. Good cause shall consist of severe illness, injury, or other emergency which could not be controlled by the insured or the insurer and, with respect to an insurer, could not reasonably be remedied prior to the conference by providing a replacement representative or otherwise. If an insurer fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the insurer shall be subject to penalty, including suspension, revocation, or fine for violating Section 626.9541(1)(i), F.S.

(12) Post Mediation. If the parties reach a settlement, the mediator shall provide a copy of the settlement agreement to the Department and the administrator within 5 days of the conclusion of the conference. Mediation is non-binding. However, if a settlement is reached, it shall act as a release of all specific claims that were presented in the conference. Any additional claims under the policy shall be presented as separate claims. However, the release shall not constitute a final waiver of rights of the insured with respect to claims for damages or expenses if circumstances that are reasonably unforeseen arise resulting in additional costs that would have been covered under the policy but for the release.

(13) If the insured decides not to participate in this claim resolution process or if the parties are unsuccessful at resolving the claim, the insured may choose to proceed under the appraisal process set forth in the insured's insurance policy, by litigation, or by any other dispute resolution procedure available under Florida law.

(14) If as a result of mediation it is determined that the only coverage applicable is provided under the National Flood Insurance Program, the administrative fee and mediator's fee paid by the insurer for the mediation shall be refunded to the insurer or credited to the insurer's account with the administrator.

(15) The Department is authorized to designate an entity or person as its administrator to carry out any of the Department's duties under this rule.

(16) If a court holds any subsection or portion of a subsection of this rule or the applicability thereof to any person or circumstance invalid, the remainder of the rule shall not be affected thereby.

(17) The applicable provisions of Rule 69B-166.031, F.A.C., shall govern issues relating to mediation that are not addressed in this rule. The provisions of this rule shall govern in the event of any conflict with the provisions of Rule 69B-166.031, F.A.C.

Specific Authority 624.308, 626.9611, 627.7015(4) FS. Law Implemented 624.307(1), (2), (4), (5), 624.316, 624.3161, 624.317, 624.318, 624.320, 624.324, 624.418(2)(a), 624.4211, 626.859, 626.874, 626.877, 626.9541(1)(a), (e), (i), (w), 626.9561, 626.9641(1)(g), 627.7015 FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Tom Terfinko, Assistant Director, Division of Consumer Services

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Marta Arrington, Director, Division of Consumer Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 7, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 24, 2006

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF STATE

Division of Historical Resources

RULE NO.: 1A-31.013
RULE TITLES: Prohibited Practices; Penalties
NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 31, No. 51, December 23, 2005, issue of the Florida Administrative Weekly.

1A-31.013 Prohibited Practices; Penalties.

(1) When the division determines that a person or business organization is violating, or has violated, one or more of the provisions of Sections 267.13(2)(a) and (d), F.S., the division will contact the alleged violator and direct that the offending activity cease immediately and/or direct that the property of the State be returned to the division. If the violation does not cease or is not cured within the time specified by the division, the division will send the alleged violator notice of an administrative proceeding provided in Section 267.13(2)(b), F.S., and/or the division will apply to a court of competent jurisdiction for injunctive relief as specified in Section 267.13(2)(d), F.S.

(2) The division will commence an administrative proceeding if it is determined that the alleged violation resulted in permanent damage to historic property of the State.

(3) The division will apply to a court of competent jurisdiction of injunctive relief if the alleged violation is ongoing and the division determines that continued activity poses a threat to the historic preservation goals of the State.

(4) The division will commence an administrative proceeding and apply to a court of competent jurisdiction for injunctive relief when the division determines that alleged

violation has caused permanent damage to the historic property of the State and that continued activity poses a threat to the historic preservation goals of the State.

(5) If the alleged violator timely requests a hearing, the administrative proceeding may be an informal or formal hearing as the facts and law dictate. The requested administrative proceeding shall not be mediation.

DEPARTMENT OF STATE

Division of Historical Resources

RULE NO.: 1A-32.006
 RULE TITLE: Prohibited Practices; Penalties
 NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 31, No. 51, December 23, 2005, issue of the Florida Administrative Weekly.

1A-32.006 Prohibited Practices; Penalties.

(1) When the division determines that a person or business organization is violating, or has violated, one or more of the provisions of Sections 267.13(2)(a) and (d), F.S., the division will contact the alleged violator and direct that the offending activity cease immediately and/or direct that the property of the State be returned to the division. If the violation does not cease or is not cured within the time specified by the division, the division will send the alleged violator notice of an administrative proceeding provided in Section 267.13(2)(b), F.S., and/or the division will apply to a court of competent jurisdiction for injunctive relief as specified in Section 267.13(2)(d), F.S.

(2) The division will commence an administrative proceeding if it is determined that the alleged violation resulted in permanent damage to historic property of the State.

(3) The division will apply to a court of competent jurisdiction of injunctive relief if the alleged violation is ongoing and the division determines that continued activity poses a threat to the historic preservation goals of the State.

(4) The division will commence an administrative proceeding and apply to a court of competent jurisdiction for injunctive relief when the division determines that alleged violation has caused permanent damage to the historic property of the State and that continued activity poses a threat to the historic preservation goals of the State.

(5) If the alleged violator timely requests a hearing, the administrative proceeding may be an informal or formal hearing as the facts and law dictate. The requested administrative proceeding shall not be mediation.

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Housing and Community Development

RULE CHAPTER NO.: 9B-43
 RULE CHAPTER TITLE: Florida Small Cities Community Development Block Grant Program

RULE NOS.:
 9B-43.003 Definitions
 9B-43.0031 Definitions
 9B-43.004 Eligible Applicants
 9B-43.0041 Application and Administrative Requirements
 9B-43.005 Application Criteria
 9B-43.0051 Grant Administration and Project Implementation
 9B-43.006 Application Procedures for All Categories
 9B-43.0061 Emergency Set-aside Assistance
 9B-43.007 Scoring System
 9B-43.0071 Section 108 Loan Guarantee Program
 9B-43.009 Program Requirements for Housing
 9B-43.010 Program Requirements for Neighborhood Revitalization
 9B-43.012 Program Requirements for Economic Development
 9B-43.013 Program Requirements for Commercial Revitalization
 9B-43.014 General Grant Administration of All Categories

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with Section 120.54(3)(d)1, F.S., published in Vol. 32, No. 4, January 27, 2006, issue of the Florida Administrative Weekly. These changes are in response to comments received from the Joint Administrative Procedures Committee and at a public hearing held on February 21, 2006 in Tallahassee.

THE FULL TEXT OF THE PROPOSED RULES IS:

9B-43.003 Definitions.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.042, 290.043 FS. History—New 11-30-87, Amended 10-11-88, 9-25-89, 10-14-90, 12-29-91, 4-26-93, 1-30-95, 2-13-96, 12-25-96, 1-29-98,3-28-02, Repealed _____.

9B-43.0031 Definitions.

The Florida Small Cities Community Development Block Grant (CDBG) program is governed by definitions provided in the Housing and Community Development Act of 1974, as amended; and Title 24 C.F.R. 570, and ~~Sections 290.0401–048,~~

~~F.S.~~, incorporated herein by reference, as effective on _____. The following additional definitions are provided for clarification.

(1) "Architectural and engineering services" means the basic services required to be performed by an architect or engineer licensed by the State of Florida including preliminary engineering, design services and services during construction except for the following additional engineering services:

(a) Site surveys for water treatment plants, sewage treatment works, dams, reservoirs, and other similar special surveys as may be required, such as route surveys.

(b) Laboratory tests, well tests, borings, specialized geological soils, hydraulic or other studies recommended by the engineer.

(c) Property surveys, detailed description of sites, maps, drawings, or estimates related to them, assistance in negotiating for land and easement rights.

(d) Necessary data and filing maps for water rights.

(e) Redesigns ordered by the owner after final plans have been accepted by the owner and the local government, except redesigns to reduce the project cost to within the funds available.

(f) Appearances before courts or boards on matters of litigation or hearings related to the project.

(g) Preparation of environment assessments or environmental impact statements.

(h) Performance of detailed staking necessary for construction of the project in excess of the control staking.

(i) Provision of the operation and maintenance manual for facilities.

(j) Activities required for obtaining state and federal regulatory agency construction permits.

(k) Design of hookups.

(l) Cost of engineering specialties such as electrical; hydro geological services; biologists; and heating, ventilation, and air conditioning (HVAC).

(2) "Authorized signature" means the original signature of the Chief Elected Official or the signature of a person who is designated by charter, resolution, code, ordinance or other official action of the local government to sign CDBG related documents. If a signature other than the Chief Elected Official is submitted, a copy of that designation must accompany that signature.

(3) "Direct Benefit" is CDBG assistance that promotes or enhances individual well-being including housing rehabilitation, sewer and water hookups, or job creation by a Participating Party. Activities that only meet a national objective through an area-wide determination do not confer direct benefit.

(4) "Full time employees" means all those persons employed by the local government who are payroll employees on any one specific payroll date during the 45 day period prior

to the application deadline date and who receive full vacation, retirement, and any other benefits provided by the employing local government to all its regular employees. Elected officials are not defined as "full time" employees. For county governments, only the employees of the Board of County Commissioners shall be counted.

(5) "Fundable range" shall be determined from the scores of the eligible applications, ranked in descending order by the Department. Following appeals, awards will be made based upon rank beginning with the highest scoring application and proceeding in descending order until all available funds in that category for that funding cycle are depleted. The score of the last application funded shall establish the lowest score in the fundable range if there are no eligible unfunded applications remaining in the category. If there are unfunded applications in a category, the highest scored unfunded application shall establish the lowest score of the fundable range.

(6) "Job creation location" means the geographic location within the project area where job creation activities of the Participating Party and expenditure of non-public funds will occur. This excludes any locations where public funds from any source are being expended for local government-owned infrastructure, local government owned public facilities or within public easements or rights-of-way.

(7) "Jobs – created" means jobs - permanent which were not in existence in the State of Florida prior to the provision of the CDBG assistance and which would not be created without CDBG assistance. In cases where an employer both creates and eliminates jobs, "jobs - created" means the difference between the new jobs - created and the old jobs eliminated.

(8) "Jobs – permanent" means a full-time job or a full-time equivalent job (2,000 hours annually) as set forth in the application which is necessary to the overall goals and objectives of a business and which has no known end, and which will be maintained by the Participating Party for a minimum of one year from administrative closeout of the subgrant.

(9) "Jobs – retained" means jobs – permanent which, without CDBG assistance, would be abolished by layoffs, plant closing, or other severe economic or natural conditions or as otherwise clarified in 24 C.F.R. 570.483(b)(4), as effective on _____.

(10) "Jurisdiction" means the corporate limits of a local government or the area over which it has zoning authority.

(11) "Liquidated damages" are funds paid to a local government by a contractor, vendor, or any other party pursuant to a CDBG-funded contract when such payment is triggered by nonperformance or failure to perform on their part. This definition is applicable whether such funds are withheld by the local government or repaid or rebated to the local government by the contractor, vendor or third party.

(12) “Local government” means a unit of general purpose local government, i.e., county governments and municipal governments (incorporated cities, towns and villages) within the State of Florida. Unless otherwise stated, “applicant” shall refer to the applying local government.

(13) “Main Street Program participant” means an entity in a local government’s jurisdiction which has been selected for participation in the Florida Main Street Program by the Secretary of State and are currently considered an active participant in the Main Street Program by the Department of State as of the application date.

(14) “Minority” means a Black, American Indian, Alaskan native, Hispanic, Asian, Hasidic Jew or Pacific Islander individual.

(15) “Open contract” means any subgrant which has not been administratively closed.

(16) “Participating party” means a business or other entity responsible for creating or retaining jobs – permanent as part of the proposed Economic Development project. The applying local government shall not be a participating party in its own application.

(17) “Principal” means the owner of a 50 percent or more interest in a business activity.

(18) “Project area or areas” means the site or sites upon which all subgrant-related construction activities take place, without respect to funding source.

(19) “Public notice” is defined as an advertisement published in a local newspaper of general circulation at least five days, and no more than 20 days, prior to the event for which the notice was placed. The calculation of the time period shall not include the date of publication of the notice.

(20) “Section 3” means Section 3 of the Housing and Community Development Act of 1968, as amended, as effective on _____, and 24 C.F.R. Part 135, as effective on _____, relating to employment and other economic opportunities for lower income persons.

(21) “Service area” means the total geographic area to be served by a subgrant-funded activity, where at least 51 percent of the residents are low and moderate income persons. A service area will encompass all beneficiaries who are reasonably served or would be reasonably served by an activity.

(22) “Time period” or “days” means calendar days. All time periods specified in this rule, the application, the contract and all correspondence to and from the Department refer to calendar days unless otherwise specified.

(23) “Very low-income family (VLI)” is a household whose annual income does not exceed 30 percent of the median income for the area or does not exceed 30 percent of the median income for the State, whichever is higher, as most recently determined by HUD. This information can be found in the HUD adjusted census data in the elements titled FAMVLOW and NFAMVLOW.

Specific Authority 290.048 FS. Law Implemented 290.042, 290.043 FS. History–New _____.

9B-43.004 Eligible Applicants.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.044, 290.046 FS. History–New 11-30-87, Amended 10-11-88, 10-14-90, 12-29-91, 1-30-95, 2-13-96, 1-29-98, 3-28-02, Repealed.

9B-43.0041 Application and Administrative Requirements. (New)

The Florida Small Cities CDBG program is governed by the Housing and Community Development Act of 1974, as amended; Title 24 C.F.R. 570; the “Guide to National Objectives and Eligible Activities for State CDBG Program” published by the US Department of Housing and Urban Development, as amended/revised; and the Florida Small Cities CDBG Program Application Manual, which can be obtained by contacting the Florida Small Cities CDBG Program at the Department of Community Affairs, and are incorporated herein by reference, as effective on _____.

(1) Application Process.

(a) An annual application cycle will be announced in anticipation of federal funding. The announcement will include the beginning and ending dates of the application cycle and the application deadline.

(b) Once an application is submitted to the Department, no aspect of the application may be revised to improve the score or broaden the scope of the project.

(c) If an activity is determined to be ineligible for funding pursuant to 24 C.F.R. 570.482, as effective on _____, the Department will reduce the amount requested for the ineligible activity and associated complementary activities. The application will be re-scored after this reduction.

(d) Applicants may submit either a Housing or Neighborhood Revitalization application. If both are received from a single local government, only the first application logged in by the Department will be scored. The second application will be returned.

(e) Economic Development applications received by the application deadline will be scored, ranked and, if successful, awarded until all available funds are committed; however, should initial application requests not exceed available funds, applications received after the application deadline will be reviewed and awarded on a first-come, first-served basis during the application cycle until all funds are committed.

(f) Documents to meet application requirements or additional submissions resulting from the site visit must be submitted in original or photocopy form. Facsimile or electronic submissions are not acceptable.

(2) Grant Ceilings.

(a) Grant ceilings establish limits on the amount of funds that may be requested in a single subgrant application for Commercial Revitalization, Economic Development, Housing or Neighborhood Revitalization funding based on the most

recently available U.S. Census of Population data. In the case of county government applicants, the population shall include only the unincorporated areas of the county.

(b) Local governments shall comply with the low and moderate-income (LMI) LMI population and subgrant ceilings listed below to determine the maximum amount of funds for which they may apply. Population groupings are based on HUD modified census figures summarizing low and moderate income population.

LMI Population	Grant Ceiling
1-499	\$600,000
500-1,249	\$650,000
1,250-3,999	\$700,000
4,000-10,549	\$750,000
10,550 and above	\$750,000

(c) The Department shall offer a local government which scores within the fundable range an amount less than that requested in the application if insufficient funds are available to fund the total subgrant request.

(3) Application Scoring.

(a) The maximum score possible in each program category is 1,000 points. These points shall be divided among three program factors as specified below:

Community-wide needs – 250 points

Program Impact, Scope of Work, LMI Benefit – 650 points

Outstanding Performance in Equal Opportunity Employment and Fair Housing – 100 points

(b) The Department shall calculate Community-wide Need Scores for all eligible local governments based on the most recent and uniformly available federal and state data. Current decennial U.S. Census data shall be used unless otherwise noted. The maximum Community-wide Needs Score is 250 points. Data shall be further defined as:

1. For municipal government applicants, data relevant for the entire incorporated area shall be used;

2. For county government applicants, data relevant for only the unincorporated areas within the county shall be used;

3. For municipalities incorporated since the most recent census, block group or census tract data for the area that was incorporated shall be used where available; otherwise a proportion of the county’s census data shall be used to calculate the community-wide needs score.

~~4.a.~~ Three factors shall be used to determine the community-wide needs score with the following maximum points available for each:

~~a.b.~~ Number of persons below poverty – 125 points

~~b.e.~~ Number of year-round housing units with 1.01 or more persons per room - 62.5 points

~~c.d.~~ Number of low and moderate income persons according to the latest HUD adjusted census data - 62.5 points

~~5.4.~~ Method of Calculation. Eligible local governments shall be compared on each factor with all other local governments in their LMI population group as designated herein. Calculating each local government’s score shall include the following steps:

a. The highest statistic in each population group for each factor identified herein shall be the basis for relative comparison of all other eligible local governments in the population group, as illustrated below:

Local government’s statistic on each factor divided by the highest statistic on that factor for all eligible local governments determines the equals percentage to be used for local government’s multiplier

b. For each eligible local government, the percentage calculated shall then be multiplied by the maximum number of points available for that particular factor, as follows: eligible local government’s percentage x maximum points available = score for eligible local government on factor

c. The Community-Wide Needs Score factors shall be summed for each eligible local government for the overall Community-Wide Needs Score. Pursuant to Section 290.046(3)(b), F.S., each local government awarded subgrant funds shall have its community-wide needs score reduced by 5 points for every \$100,000, or fraction thereof, of contracted funding awarded. If \$100,000 or more in funding is deobligated at the time the administrative closeout is approved by the Department, the score will be adjusted and the CWN score increased accordingly. This adjustment shall not be made during the first application cycle in which the most recent census data is used. All adjustments for subgrant funds received shall be based on subgrants received in all application cycles after the most recent census data was first used. This calculation shall be based on all funds contracted awarded as of the end of the month prior to the opening date of the application cycle. The adjusted community-wide needs score cannot be less than zero.

(c) In the event that two or more applications receive an equal final score, the application addressing the highest State priority goal as reflected by the goal points for application activities shall receive first consideration. If a tie still exists, then the applicant with the highest community-wide needs score shall receive first consideration. If a tie still exists, the application that will provide direct benefit to the largest number of low and moderate income persons will receive first consideration.

(4) Consistency with Local Comprehensive Plan.

(a) The application shall include affirmation that the proposed activities are ~~not inconsistent~~ with applicable elements of the adopted local comprehensive plan and shall include document this consistency by including the applicable excerpts from the applicant’s comprehensive plan in the supporting documentation section of the application.

(b) If the Department determines that an application is inconsistent with the adopted local comprehensive plan, the applicant shall be advised of that determination in the completeness review letter. If after review of the applicant's response, the Department reaffirms its determination of inconsistency, the application shall be rejected.

(5) Interlocal Agreements. An applicant may propose activities in other eligible jurisdictions within the following parameters:

(a) Application scoring criteria are based on the applicant's jurisdiction.

(b) Activities undertaken outside the applicant's jurisdiction which are also undertaken within the applicant's jurisdiction, except in an Economic Development application where the infrastructure activities may be undertaken exclusively outside the jurisdiction.

(c) No more than 25% of the service area and/or beneficiaries may reside outside the applicant's jurisdiction (except for Economic Development projects).

(d) The applicant shall include with the application an executed Interlocal Agreement which:

1. Includes as parties all local governments whose jurisdictions are included in the project and/or service area(s);

2. Authorizes the applicant to undertake the activities in all jurisdictions included in the interlocal agreement; and

3. Affirms that all activities are ~~not inconsistent~~ with each local government's comprehensive plan and provides documentation which includes documents this requirement by including the applicable excerpts of each local government's comprehensive plan in the supporting documentation section of the application.

(6) Documenting LMI Benefit and National Objective.

(a) HUD Census Data – LMI benefit may be documented by using HUD-provided Census Data where the service area geographically corresponds with block groups, census tracts, or local government geographical limits. A jurisdiction-wide activity using census data rather than a survey to establish the national objective of benefit primarily to low and moderate income persons may score VLI points by calculating a percentage of VLI benefit using census data. VLI beneficiaries are calculated by totaling, for each block group in each census tract, the numbers shown in two data areas: FAMVLOW and NFAMVLOW. This total of VLI beneficiaries is divided by the total beneficiaries to establish the VLI percentage for scoring the appropriate VLI beneficiary points.

(b) Sampling Survey Methodology – A sample-based survey of the beneficiaries must utilize the "Income Verification Form," Form 28-06, located in the Application Manual, which is hereby incorporated by reference as effective on _____, and must correspond with the random sampling requirements established by HUD in Notice CPD-05-06, as effective on _____.

1. The survey process must verify eligibility of any proposed direct benefit activities, certify the number of projected very low, low and moderate income households and beneficiaries, and the total number of beneficiaries.

2. Where the sample-based survey results substantially overstate the proportion of persons with low or moderate income in a service area, the Department will require the local government to provide supporting evidence which substantiates the survey data. If the survey results are found to be inaccurate, the application shall be rejected.

(c) Small Service Area Survey Methodology. For surveys of service areas under 50 households, all households must be surveyed. Any non-responding household must be assumed to be above low and moderate income. The number of household members for non-responding households may be verified through third parties.

(d) A survey approved by the Department for a CDBG application remains valid for the same geographic service area for up to five years from the date the survey was completed.

(e) Only the methods of LMI benefit determination provided for in this rule shall be used.

(f) Beneficiaries of Public Improvements. For activities where hookups or connections are required for beneficiary access to the public improvement, low and moderate income benefit shall be determined by the number of low and moderate income persons in households connected to and able to use the water, sewer or other infrastructure at the time of administrative closeout.

1. CDBG funded activities may not extend beyond the location of the last LMI beneficiary except where it is required for sound engineering, operation, or design reasons as certified by a licensed engineer.

2. For activities where hookups or connections are required as a condition for beneficiary access to a CDBG funded public improvement, no hookup or connection fees shall be charged to very-low, low or moderate-income beneficiaries. Further, no portion of the project construction costs shall be charged to very-low, low or moderate-income beneficiaries.

3. Where non-LMI beneficiaries will have to pay a one time fee (i.e., assessment, impact fee, etc.) to connect to or access the CDBG funded public improvement, and where a periodic service fee (i.e., water bill, sewer bill, etc.) will be charged, the proposed non-LMI beneficiaries will be advised of the estimated cost of the one-time fee and all beneficiaries will be advised of the estimated amount of any periodic service fee. The application narrative and budget must outline the estimated costs to be paid by non-LMI beneficiaries.

4. Surveyed beneficiaries shall be advised of both fees in writing with signature acknowledgement of receipt and understanding prior to application submission. If census data is used, a random sample representing ten percent (10%) of the

beneficiaries must be advised in writing with signature acknowledgement of receipt and understanding prior to application submission.

(7) Site Visits. Prior to issuing awards, the Department will conduct site visits.

(a) The Department shall notify the local government in writing or electronically via email of the date and approximate time the site visit will take place.

(b) The Department shall examine all documents relating to the certifications ~~that have been certified~~ in the application.

(c) Economic Development site visits will require the participating party/parties to be present, or the participating party must meet with Department staff within 30 days after the site visit at the Department of Community Affairs. Should a participating party fail to meet with Department staff, it must be withdrawn from the application by the local government or a 251-point penalty shall be assessed against the Program Impact score. During the site visit, the local government must provide documentation requested by the Department based on the application review.

(8) Completeness Review Letter (for all grant categories except economic development). Following the site visit, the Department will advise the applicant of the status of the application review.

(a) The Department shall request in writing required documentation determined unavailable or inadequate during the site visit. Except for Economic Development applications, applicants shall have 12 calendar days from the date the request is received to provide appropriate documentation to the Department.

(b) If the Department has not received the requested documentation by the deadline date at 5:00 p.m. (E.S.T.), the applicant's funding request shall be revised accordingly and the following reduction in scores shall be applied:

1. Maps (where required) – 250 points
2. Interlocal Agreement, if applicable – 250 points

(c) Additional Completeness Review Items for Neighborhood Revitalization Applications. During the completeness review period, the Department shall review applications that propose land assembly or site preparation for new housing construction for low and moderate income persons to determine whether documentation is provided to show:

1. Firm commitments for construction from the developer,
2. Documentation of ownership, or
3. An option on the land to control the sale to or use by low and moderate income persons is provided in the application. Documentation that the proposed site is properly zoned shall also be submitted.

(d) Additional Completeness Review Items for Economic Development Applications. The following completeness requirements must be met for Economic Development applicants:

1. Within 60 days of the applicant's receipt of the Award and Offer to Contract letter, the Department must receive the Subgrant Agreement executed by the local government and documentation required to address all issues identified during the site visit. The date of receipt of the Award and Offer to Contract letter shall not be included in the 60 days.

2. In the event that a participating party withdraws prior to the execution of the subgrant agreement by the Department, and the application remains within the fundable range based on the remaining participating parties, those remaining participating parties may not increase the job creation numbers or leverage claimed for points beyond the score of the original application. Replacement of participating parties shall not be allowed without withdrawal and resubmission of the application.

(9) Eligibility. Contract performance shall be considered "on time" for open subgrants that have received an agreement period extension of less than twelve months. Performance is on schedule when expenditures and work activity plans stated in awarded subgrant agreement(s) have been met or surpassed. ~~The certification of "on time" performance, as provided in the application, is subject to verification by Department staff. If the Department determines that the certification of "on time" performance is inaccurate and the performance is not in accordance with the expenditures and work plan accomplishments described in the subgrant agreement, then the application will not be considered further.~~

Specific Authority 290.048 FS. Law Implemented 290.044, 290.046, 290.047, 290.0475 FS. History–New _____.

9B-43.005 Application Criteria.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.044, 290.046, 290.047 FS. History–New 11-30-87, Amended 10-11-88, 9-25-89, 10-14-90, 12-29-91, 1-30-95, 2-13-96, 12-25-96, 3-28-02, Repealed _____.

9B-43.0051 Grant Administration and Project Implementation.

(1) Administrative Costs. If proposed administrative cost percentages in an application are exceeded, as set forth in Section 290.047, F.S., the dollars for administrative costs shall be reduced prior to the offering of a subgrant award in order to bring the percentages into compliance based on the total eligible subgrant costs.

(2) Lead-Based Paint. The applicant shall adopt and implement procedures to fulfill regulatory and statutory requirements relating to Lead-Based Paint pursuant to 24 C.F.R. 570.487, 24 C.F.R. Part 35, and Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Section 4822 et seq.), as effective on _____. The applicant is required to:

- (a) Prohibit use of lead-based paint;
- (b) Notify potential beneficiaries of the hazards of lead-based paint;

(c) Inspect properties prior to initiating rehabilitation to determine if lead-based paint is present;

(d) ~~Take any necessary actions to ensure the protection of~~ Undertake appropriate protection of workers and occupants during abatement;

(e) Ensure that proper cleanup and disposal procedures are used; and

(f) Retain records of enforcement and monitoring for at least three years.

(3) Rehabilitation Standards. Upon completion of the rehabilitation program, all housing units addressed with CDBG funds must be in compliance with the subgrantee's local housing code and the HUD Section 8, Housing Quality Standards. This requirement does not apply if the construction activity is limited to water hookups, sewer hookups, the abandonment of wells, or the abandonment of septic systems with no internal or external modifications to the housing structure.

(4) Architectural and Engineering Costs. The maximum percentage of subgrant funds allowed for architectural and engineering costs shall be based on the subgrant activities which require architectural design and engineering and shall not exceed the Rural Development (RD) Rural Utility Service (RUS) fee schedule (Form RD 1942-19) in Florida RUS Bulletin 1780-9, which can be obtained from the Department, and which is incorporated herein by reference, as effective on _____.

(a) If more than one design professional is needed for an activity or activities (e.g., a landscape architect in addition to an engineer for sidewalk construction in a Commercial Revitalization project), the local government shall not exceed the appropriate RD/RUS fee curve for each activity covered by each design professional negotiated separately. For projects involving both Table I and II activities, engineering costs shall be pro-rated appropriately.

(b) For each additional engineering service as defined in Rule 9B-43, F.A.C., and for preliminary engineering, the local government shall negotiate a reasonable fee for the service following procurement procedures in 24 C.F.R. 85.36, as effective on _____. Preliminary engineering costs not to exceed one-half of one percent of the estimated construction cost may be paid with CDBG funds over and above the amounts included in the RD/RUS fee schedule.

(c) If "readiness to proceed" points are part of the final application score, then CDBG subgrant funds for engineering costs shall not include preliminary engineering and shall not exceed \$10,000 for non-inspection engineering plus the percentage in the fee schedule for Table I-A, Table II-A, or a prorated amount of both tables for projects involving activities included in both tables for engineering inspection.

~~(5) Beneficiaries of Public Improvements. For activities where hookups or connections are required for beneficiary access to the public improvement, low and moderate income~~

~~benefit shall be determined by the number of low and moderate income persons in households connected to and able to use the water, sewer or other infrastructure.~~

~~(5)(6) Underwriting Analysis.~~ The provisions of 24 C.F.R. 570.482(e), as effective on _____, regarding underwriting analysis are incorporated herein by reference.

~~(6)(7) Completion of Activities.~~ The Department will acknowledge a local government's closeout by mailing an administrative closeout notification or ~~providing a letter regarding~~ a Notice of Outstanding Closeout Issues (NOCISS).

(a) The NOCISS letter shall identify impediments to closeout which the local government must resolve before the Department's review of the closeout will proceed.

(b) A local government's response to a NOCISS letter must be received by the Department at least ten days before the application deadline in order for the local government to be eligible to apply during the next funding cycle. For a NOCISS response received at least ten days prior to application deadline, eligibility will be established if the response satisfies the deficiencies set forth in the NOCISS letter, regardless of whether or not the Department's closeout notification has been mailed.

~~(7)(8) Non-performance Penalties.~~ Subgrant application penalties and subgrant application restrictions shall be assessed based on non-performance of contractual requirements related to project accomplishments. The following penalties and restrictions will apply to subgrant agreements for which an administrative closeout was submitted prior to the upcoming application cycle deadline and will apply regardless of whether the subgrant agreement has been amended to permit the reduction in accomplishments:

(a) A penalty of five points per housing unit, up to a maximum of 50 points, for failure to address the number of housing units scored in the original Housing category application.

(b) A penalty of five points per low and moderate income household not served OR a penalty of five points for each business facade not addressed, as geographically displayed on the original application maps (as modified, if necessary, during the completeness process) in the Neighborhood Revitalization or Commercial Revitalization categories, up to a maximum of 50 points. All direct benefit activities proposed in the application (e.g., water hookups) must be completed to avoid this penalty. No penalty shall be assessed for failure to provide a water or sewer hookup if the hookup is not possible because the home is vacant or was damaged or destroyed after application submission and there are no other homes in the service area that were identified in the application as unmet need which qualify for a hookup.

(c) A penalty of five points per job, up to a maximum of 50 points, for failure to create or retain the total number of jobs in the original contract in the Economic Development category.

(d) A penalty of 150 points if the Department takes formal action under the terms of the contract to terminate a subgrant agreement for an event of default. This penalty will expire two years from the subgrant agreement termination date.

(e) Submission of inaccurate information will be addressed as follows ~~may be subject to one or more of the following penalties:~~

1. In the case of monitoring or audit responses, it shall result in the revocation of closeout status, audit clearance, or monitoring report finding clearance, ~~etc.~~

2. In the case of any action which avoids a penalty, the penalty will be assessed.

3. In the case of an administrative closeout status, it shall result in the nullification of the eligibility of the local government to apply for and receive additional CDBG funding in accordance with Section 290.046(2)(c)(i), F.S. Such revocation of administrative closeout status will also affect subsequent Department actions made on that basis, including the cancellation of any subsequent awards and repayment by the local government of any funds previously expended under the nullified subgrant agreement.

(f) All penalties in subparagraph (8) will expire two years from the date of administrative closeout or subgrant termination by the Department.

(g) If the subgrant agreement is terminated with no expenditures, or is terminated with expenditures for administration and/or engineering only, no penalty will be assessed.

(h) The Department will waive these penalties if the local government is unable to meet subgrant agreement requirements due solely to a state or federally declared natural disaster or emergency.

~~(8)(9)~~ Procurement. Grant funds shall be used to obtain commodities and services only in accordance with written procurement procedures adopted by the local government and shall comply with the provisions of 24 C.F.R. 85.36, as effective on _____, which is hereby incorporated by reference, and, for covered professional services contracts, Section 287.055, F.S., (Consultants Competitive Negotiation Act).

(a) Any procurement which requires public notice in a newspaper shall be published in a daily newspaper of general circulation in a nearby Office of Management and Budget (OMB) designated metropolitan statistical area (MSA). Alternatively, a local government may substitute such notice with a combination of local newspaper publication and mailed announcements to potential bidders, which generates at least three responsible and responsive bids or proposals. Such publication and/or mailing shall allow at least 12 days for receipt of the proposals or bids.

(b) The Department must provide written permission prior to the local government awarding any contract exceeding \$25,000 procured as a result of inadequate competition, a sole

source or a noncompetitive procurement. For contracts below \$25,000, the local government's files must document the justification for such noncompetitive procurement which complies with 24 C.F.R. 85.36(b)(4), ~~as effective on _____.~~

(c) All contracts for professional services shall conform to the following:

1. Any Request for Proposals which includes more than one service shall provide that:

a. Proposals may be submitted for one or more of the services;

b. Qualifications and proposals shall be separately stated for each service;

c. The evaluation of the proposals shall be separate for each service.

2. A written evaluation, such as a ranking sheet or narrative, shall be prepared for each proposal, ranking or comparing each proposal to the criteria in the published Request for Proposals. Based on that criteria, the written evaluation will document why the successful proposal was selected.

3. A separate professional services contract must be procured and executed between the local government and any professional services consultant for each particular CDBG subgrant and each service. Each advertisement for procurement of CDBG professional services, except for subgrant application preparation, must identify either the CDBG subgrant cycle by federal fiscal year or the CDBG subgrant agreement number.

4. Each professional services contract must reference the CDBG subgrant agreement to which it is applicable.

(d) Construction Contracts.

1. If CDBG and other sources of funding are being jointly used to fund activities under a single contract, the activities to be paid for with CDBG funds must be shown separately in the bid proposal so that the CDBG activities and the amount of the contract to be paid from CDBG funds are identifiable.

2. If, after applying any specified deductive alternates, construction bids exceed available funds, the local government shall not negotiate with the low bidder unless there is only one bidder or all bidders are allowed to submit revised bids for the revised project.

3. If the construction cost can be reduced by deleting entire line items or reducing quantities based on unit prices identified in the bid, the effect of such deletions or reductions on all bidders' prices shall be determined. Contract award shall be made to the low, responsive and responsible bidder for the revised project.

4. All contracts in excess of \$100,000 covered by Section 3 regulations shall contain the language required in 24 C.F.R. 135.38, as effective on _____, which is hereby incorporated by reference.

5. The provisions of this subsection shall not be construed to conflict with or supersede the requirements of Section 287.055, F.S., or any other applicable State or federal law.

~~(9)(10)~~ Expenditures and Limitations.

(a) No payment from the Department shall be for an amount less than \$5,000, unless it is a local government's final request for funds.

(b) Local governments operating on a reimbursement of funds basis must submit at least one request for funds each quarter which reflects actual project expenditures for the quarter.

(c) Local governments may maintain no more than \$5,000 of cash-on-hand to meet daily cash needs. Amounts greater than \$5,000 shall be expended within 14 days or refunded to the Department.

(d) Escrow Accounts. Local governments may draw down CDBG funds and deposit them into an interest-bearing escrow account for housing rehabilitation. An escrow account may be established when direct grants or loans are made to owners of private property for the purpose of housing rehabilitation. Escrow accounts shall only be used pursuant to 24 C.F.R. 570.511, ~~as effective on _____~~.

1. Funds may be requested only after approval of the contractor and amount of the contract by the local government. If funds are received by the local government prior to the execution of a contract that obligates those funds, those funds will be returned to the Department within seven days of their receipt.

2. The local government must track the requirements for, receipt of, and disbursement of all funds for each housing unit.

3. Funds requested and escrowed for use on housing units shall not be used for any other purpose.

4. Funds requested and escrowed for a housing unit must be expended on that housing unit within 45 days from date of deposit in the escrow account or be returned to the Department.

5. Interest earned on escrow accounts shall be returned quarterly to the Department.

~~(10)(11)~~ Amendments. All proposed amendments must be approved by the Department except for quantity revisions to accomplishments which do not reduce the number of beneficiaries and deobligation of funds at closeout.

(a) Only those amendments reducing the number of intended beneficiaries, or accomplishments, from the original application shall require review by the Citizens Advisory Task Force and a public hearing with public notice.

(b) An amendment reducing the score below the fundable range will not be approved by the Department.

(c) Documentation Required. All requests for subgrant agreement amendments shall include the following written documentation for review by the Department:

1. A cover letter signed by the Chief Elected Official or his or her designee which describes the need for the proposed changes and their effect upon the approved project. If the amendment involves a score reduction, the letter must state the amended score.

2. All application forms that would be changed by the proposed amendment.

3. If applicable, a revised activity work plan.

4. If applicable, a revised budget showing the current and amended budget.

5. If there is a change in activity location, a legible map which indicates the proposed change.

6. If applicable, a copy of the minutes of the meeting of the Citizen's Advisory Task Force (CATF) when the proposed amendment was reviewed.

7. If applicable, a copy of the public notice for the public hearing at which the amendment was approved, ~~which shall evidence compliance with Rule 9B-43.001(19), F.A.C.~~

8. Signature of the Chief Elected Official on Form DCA 07.02, Request for Amendment, effective _____, provided by the Department upon request, which is hereby incorporated by reference, ~~or~~ documentation from the local governing body authorizing the proposed amendment.

(d) The amendment must be received by the Department at least 45 days prior to the end of the subgrant agreement. If the amendment is extending the subgrant agreement period, it must be received by the Department at least 90 days prior to the end of the subgrant agreement.

(e) If the local government requests administrative closeout prior to the termination date of the subgrant agreement, any amendment affecting closeout and requiring Department approval must be included with the closeout.

(f) Time Extensions to Subgrant Agreements. Any proposed amendment extending the termination date of the subgrant agreement must be approved by the Department. ~~The Each time extension amendment requested by the local government must explain any delay affecting project completion and must justify the need for the extension. If such justification is not deemed reasonable by the Department, the request will be rejected.~~

~~(11)(12)~~ Subgrant Closeout.

(a) At the time of submission of the closeout report, the local government must have available documentation which verifies its certification that all construction has been completed, inspected and approved by all parties prior to the subgrant agreement end date and submission of the administrative closeout.

(b) An administrative closeout may be submitted only when the local government has no more than \$5,000 in total funds on hand. All funds drawn from the Department and not expended that exceed \$5,000 must be returned to the Department prior to or with the submission of the closeout. If the local government has transferred funds from the regular

CDBG administrative account or the escrow account and these funds remain under the control of the local government, the funds are not considered expended for purposes of administrative closeout.

(c) Upon completion of the activities contained in the local government's CDBG subgrant agreement, including any amendments, the local government shall submit to the Department a closeout which, at a minimum, gives the final statement of costs, certifies that the project and all non-administrative activities are completed and accepted, that all costs except those reflected on the closeout have been paid, that the final score at closeout is within the fundable range as last amended and reports demographics of the program's beneficiaries.

(d) If any change has been made since the application map or the last map amendment in Commercial Revitalization or Neighborhood Revitalization, the closeout shall also contain a revised map of the activities completed during the term of the CDBG contract.

(e) The closeout for Housing contracts shall, at a minimum, include a list of the households assisted by the contract and certify that they were within the local government's jurisdiction. Additional information required by HUD may be requested.

(f) For activities where hookups or connections are required for beneficiary access to the public improvement, ~~low and moderate income benefit shall be determined by the number of low and moderate income persons in households connected to and able to use the water, sewer or other infrastructure at the time of administrative closeout. At a minimum,~~ evidence at the time of closeout must show:

1. The total number of persons in all households in the service area;
2. The number of low and moderate income persons in households connected to the infrastructure; and
3. Documentation that the number of LMI persons in households connected to the infrastructure divided by the total number of beneficiaries in the service area equals at least 51 percent or higher, if required to remain within the fundable range.

~~(i) CDBG funded activities may not extend beyond the location of the last LMI beneficiary except where it is required for sound engineering, operation, or design reasons as certified by a licensed engineer.~~

~~(ii) For activities where hookups or connections are required as a condition for beneficiary access to a CDBG funded public improvement, CDBG funds must be used to pay for direct access costs for LMI beneficiaries.~~

~~(iii) Where non LMI beneficiaries will have to pay a one time fee (i.e., assessment, impact fee, etc.) to connect to or access the CDBG funded public improvement, and where a periodic service fee (i.e., water bill, sewer bill, etc.) will be charged, the proposed non LMI beneficiaries will be advised~~

~~of the estimated cost of the one-time fee and all beneficiaries will be advised of the estimated amount of any periodic service fee. The application narrative and budget will outline the estimated costs to be paid by non-LMI beneficiaries. Surveyed beneficiaries shall be advised of both fees in writing with signature acknowledgement of receipt and understanding prior to application submission. If census data is used, a random sample, representing 10 percent (%) of the beneficiaries must be advised writing with signature acknowledgement of receipt and understanding prior to application submission.~~

(g) A local government whose closeout is not received by the Department prior to the date of the opening of the application cycle, as defined in the Notice of Funding Availability (NOFA), shall not be eligible pursuant to ~~Rule 9B-43.003(7), F.A.C.~~

(h) The closeout must contain original signatures. Facsimile (FAX) submissions are not acceptable.

(i) If a local government fails to meet contractual requirements on time, the Department reserves the right to require that a local government financially (not administratively) close out a subgrant agreement in order to meet federal requirements for the timely distribution of funds set by HUD.

(j) The closeout is due within 45 days after expiration or termination of the subgrant agreement.

~~(12)(13)~~ Audit Requirements.

~~(a) If an audit or an attestation statement has not been received from a local government with either an open or administratively closed contract by the April 30 deadline date, a 25 point penalty will be assessed. The penalty will expire two years from the date that the audit or attestation statement was received due.~~

~~(b) If audit requirements are not documented at the time of site visit because a required audit was not performed, the Department shall find that the local government has inadequate administrative capacity. If a required audit was performed but not submitted to the Department, the application will be considered, but any funded CDBG contract will contain special conditions limiting expenditure of funds until all audit issues are resolved.~~

~~(13)(14)~~ Program Income. Any program income generated by a Florida Small Cities CDBG subgrant, whether open or closed, shall be reported and returned to the Department.

~~(14)(15)~~ Non-program Income. Liquidated damages, rebates, refunds, or any other "non-program income" funds received shall be used to conduct additional eligible CDBG activities or returned to the Department. Additional direct and quantifiable costs (i.e., legal fees, court costs, engineering fees or administrative fees as defined in this rule) generated by the incident creating the liquidated damages may be deducted from the total liquidated damages prior to undertaking additional

activities or returning funds to the Department. Use of the funds for additional eligible CDBG activities must be preceded by an amendment to the CDBG contract detailing their use.

Specific Authority 290.048 FS. Law Implemented 290.044, 290.046, 290.047 FS. History–New _____.

9B-43.006 Application Procedures for All Categories.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.044, 290.046, 290.047, 290.0475 FS. History–New 11-30-87, Amended 10-11-88, 9-25-89, 10-14-90, 12-29-91, 4-26-93, 1-30-95, 2-13-96, 12-25-96, 1-29-98, 3-28-02, Repealed _____.

9B-43.0061 Emergency Set-aside Assistance.

Applications for Emergency Set-aside funding will be accepted from eligible Florida Small Cities CDBG applicants ~~for the Emergency Assistance Set-aside~~ in accordance with the following criteria:

(1) The maximum funds available under this set-aside from each federal fiscal year's allocation shall be five percent (5%) of the funds and shall be available from April 1 of the year for which they are allocated through the third quarter (March 31) of the next State fiscal year.

(2) Any funds in this set-aside for which a notice of intent to submit an emergency application has not been received prior to March 31 shall be reallocated in accordance with Section 290.044(4), F.S.

(3) Applications will only be accepted from eligible local governments, as defined in Section 290.042(5), F.S., which have been declared by executive order of the Governor to be in a state of emergency as provided under Section 252.36, F.S., and any subsequent emergency rule criteria prepared by the Department to address the emergency.

(4) The purpose of funds shall be to meet serious, urgent community needs ~~which pose an immediate and direct threat to the health, safety and welfare of eligible residents of low and moderate income residents and are eligible activities. The activities to be funded must be CDBG eligible activities and be documented as being directly related to the disaster event covered in the executive order and documented through disaster assessment reports or similar documentation. Sufficient documentation must exist to show that the need for the activities being undertaken is directly related to a specific disaster event covered by an executive order.~~ The amount of funds requested shall be limited to that amount necessary to address the emergency need.

(5) Applicants under this category shall demonstrate that no other federal, State or local disaster funds to address the emergency are available.

(6) All other provisions of this Rule Chapter shall apply to the Emergency Assistance Set-aside unless otherwise stated.

Specific Authority 290.044 FS. Law Implemented 290.044 FS. History–New _____.

9B-43.007 Scoring System.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.046 FS. History–New 11-30-87, Amended 10-11-88, 10-14-90. Repromulgated 1-30-95, Amended 2-13-96, 3-28-02, Repealed _____.

9B-43.0071 Section 108 Loan Guarantee Program.

(1) Application Process.

(a) Projects which propose loans to a third party or parties shall include letters of commitment from all funding sources evidencing sufficient funds to complete the project. For economic development projects, these commitments shall include at a minimum those stated in the Economic Development section of the Florida Small Cities CDBG Application Manual under "Initial Participating Party Commitments."

(b) Following the receipt of a formal invitation to submit an application, the local government (Applicant/Borrower) shall have a third party conduct and complete a detailed underwriting analysis in accordance with 24 C.F.R. 570.482(e)(2) and Appendix A of 24 C.F.R. Part 570, ~~as effective on _____.~~ The Department may, as necessary ~~at its discretion~~, require additional underwriting standards, criteria or review.

(c) The Department shall retain the right of approval of the third party underwriter, the method of analysis and adherence to the guidelines in 24 C.F.R. 570.482 (e)(2) and Appendix A.

(d) The local government shall submit the underwriting analysis with the final application package. The Department reserves the right to require additional information from the local government, the underwriter and/or the third party to whom a loan is proposed. Once a financial underwriting analysis and other required documentation has been provided by the local government, any material change, including changes in corporate or ownership structure, which affects the underlying assumptions upon which the local government relied will require that the underwriting analysis be re-evaluated by the local government and any assistance requested for the participating party must be adjusted if a material change has occurred.

(2) Site Visit and Contracting Period.

(a) The Department will conduct a site visit following review and acceptance of the final application package. For projects which propose loans to a third party or parties, a representative of the third party(ies) shall attend the site visit or must meet with Department staff within 30 days after the site visit at the Department of Community Affairs.

(b) The local government shall submit a fully executed Participating Party Agreement meeting the requirements set out in the Economic Development section of the Florida Small Cities CDBG Application Manual.

(3) Administration and Reporting.

(a) The local government shall copy the Department on all written correspondence with HUD, the underwriter, the Participating Party and all other involved parties.

(b) The local government shall at a minimum provide the Department with quarterly progress reports until such time as the project is administratively closed. This report shall include documentation in a form acceptable to the Department of the project's draws and repayments, accomplishments to date and updates on previous areas of concern as determined by the Department.

Specific Authority 290.048 FS. Law Implemented 290.0455 FS. History– New _____.

9B-43.009 Program Requirements for Housing.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.043, 290.044, 290.046 FS. History–New 11-30-87, Amended 10-11-88, 10-14-90, 12-29-91, 4-26-93, 1-30-95, 2-13-96, 12-25-96, 1-29-98, 3-28-02, Repealed.

9B-43.010 Program Requirements for Neighborhood Revitalization.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.043, 290.044, 290.046 FS. History–New 11-30-87, Amended 10-11-88, 10-14-90, 12-29-91, 4-26-93, 1-30-95, 2-13-96, 12-25-96, 3-28-02, Repealed.

9B-43.012 Program Requirements for Economic Development.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.044, 290.046 FS. History–New 11-30-87, Amended 10-11-88, 10-14-90, 12-29-91, 1-30-95, 2-13-96, 12-25-96, 3-28-02, Repealed.

9B-43.013 Program Requirements for Commercial Revitalization.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.044, 290.046, 290.047 FS. History–New 11-30-87, Amended 10-11-88, 9-25-89, 10-14-90, 12-29-91, 4-26-93, 1-30-95, 2-13-96, 12-25-96, 3-28-02, Repealed.

9B-43.014 General Grant Administration of All Categories.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.046 FS. History–New 11-30-87, Amended 10-11-88, 10-14-90, 12-29-91, 4-26-93, 1-30-95, 2-13-96, 12-25-96, 1-29-98, 3-28-02, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Monya Newmyer, Community Program Manager

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kimball Love, Director, Division of Housing and Community Development

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 10, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 30, 2005

DEPARTMENT OF TRANSPORTATION

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
14-51	Florida's Highway Guide Sign Program
RULE NOS.:	RULE TITLES:
14-51.011	Definitions
14-51.051	Standards

14-51.052 Design
14-51.053 Installation

CHANGE NOTICE, WITHDRAWAL OF ONE RULE, AND SCHEDULING OF ADDITIONAL HEARING

The notice of rulemaking was published in *Florida Administrative Weekly*, Vol. 31, No. 42, dated October 21, 2005. A notice of hearing was published in *Florida Administrative Weekly*, Vol. 31, No. 47, dated November 23, 2005. A notice of correction (correcting the rule listing) was published in *Florida Administrative Weekly*, Vol. 31, No. 50, dated December 16, 2005.

THE ADDITIONAL HEARING IS SCHEDULED AS FOLLOWS:

DATE AND TIME: April 4, 2006, 1:30 p.m.

PLACE: Department of Transportation, Haydon Burns Building Auditorium, 605 Suwannee Street, Tallahassee, Florida

SUMMARY OF CHANGES: In response to comments presented at the December 8, 2005, public hearing and comments received from the Joint Administrative Procedures Committee, changes are being made to the amendment to Rule 14-51.011 and to proposed Rules 14-51.051 and 14-51.052, and proposed new Rule 14-51.053 is being withdrawn in its entirety.

- Rule 14-51.011: In 14-51.011(19) "Wayfinding Signs" definition, change "directional sign" to "directional guide sign."
- Rule 14-51.051: In 14-51.051(1), change "rule section will provide" to "rule chapter provides" and add a new sentence relating to deviations requiring a Federal Highway Administration Request for Experiment.
- Rule 14-51.051: 14-51.051(3), is substantially reworded, including: deletion of the phrase "On the State Highway System" and adding new language regarding destinations shown on Wayfinding signs.
- Rule 14-51.051: In 14-51.051(5) the previously set date of October 14, 2005, is changed to March 31, 2006, and the ending period is changed from January 1, 2012, to January 1, 2013.
- Rule 14-51.051: In 14-51.051(6) is changed to delete the entire second sentence regarding concerns over directional signing confusion.
- Rule 14-51.051: In 14-51.051(7) is changed to edit cross references.
- Rule 14-51.051: New 14-51.051(9) is added to address the permit process for Wayfinding Signs since proposed Rule 14-51.053 is withdrawn.
- Rule 14-51.052: 14-51.052(4) regarding enhancement markers "shall be allowed" is changed to "may be used, at the option of the applicant".
- Rule 14-51.052: 14-51.052(5) regarding pictographs "shall" is changed to "may."
- Rule 14-51.052: 14-51.052(7) is changed to delete the last

two sentences in their entirety and “must” is changed to “shall.”

- Rule 14-51.052: 14-51.052(8) is changed to delete the word “minimum” when referring to the lettering size.
- Rule 14-51.052: In 14-51.052(11), “reflective” is changed to “retroreflective”.
- Rule 14-51.053 is withdrawn in its entirety.

THE FULL TEXT OF THE PROPOSED NEW RULES IS CHANGED TO READ AS FOLLOWS:

PART I GENERAL

14-51.011 Definitions.

As used in this rule chapter, the following words and phrases shall have the following meanings.

(1) “Applicant” means the person or entity seeking permission for a sign under this rule chapter.

(2) “Department” means the Florida Department of Transportation.

(3) “Enhancement Marker” means a sign or portion of a sign where shape, color, or pictograph is used as an aesthetic identifier for a Wayfinding Sign.

(4) “AFHWA” means the Federal Highway Administration.

(5)(3) “Guide Sign” means a sign that shows route designations, destinations, directions, distances, services, points of interest, or other geographical, recreational, or cultural information.

(6)(4) “Limited Access Facility” means as defined in Section 334.03(13), Florida Statutes.

(7) “Local Government” means the county or city having jurisdiction in the subject area, including the area involving the State Highway System.

(8)(5) “Manual on Uniform Traffic Control Devices (MUTCD)” is a federal publication, which is incorporated by reference under Rule 14-15.010, F.A.C., and is used to establish the uniformity of traffic control devices, such as sign placement, color of sign backgrounds and letters, and sign messages. The Department has adopted the use of this manual in order to provide a uniform system of traffic control devices on the State Highway System.

(9)(6) “Non-Limited Access Facility” means an arterial or collector road as these terms are defined in Sections 334.03(1) and (4), Florida Statutes, respectively, and which is not a limited access facility.

(10) “Pictograph” means the distinctive use of color(s), symbol(s), or copy as a brand identifier for Wayfinding Sign system areas and attractions. They are non-commercial graphics as opposed to commercial logos.

(11) “Official Traffic Control Devices” means as defined in Section 316.003(23), Florida Statutes.

(12)(7) “Place Name Sign” means a sign identifying the geographic boundary of a city or county, lying on or along a road on the State Highway System.

(13)(8) “Rural Interchange” means a grade separated intersection between streets or roadways outside the limits of any urban or urbanized area, as such areas are defined both in Sections 334.03(32) and (36), Florida Statutes. Where either the immediate right of way of a limited access facility or the right of way of an intersecting roadway is within the boundary of an urban or urbanized area, the interchange or intersection shall be considered urban.

(14)(9) “Sign” means any traffic control device that is intended to communicate specific information to road users through a word or symbol legend. Signs do not include traffic control signals, pavement markings, delineators, or channelization devices.

(15)(10) “Supplemental Guide Sign” means a sign placed or erected to provide information regarding destinations accessible from an interchange, other than places shown on the standard interchange signing. The standard guide signs are called “exit direction” signs. These signs usually contain information about the route number, nearest cities, and sometimes the local street name. The purpose of a supplemental guide sign is to provide direction to destinations for motorists unfamiliar with the local area.

(16)(11) “Tourist Attraction” means facilities that principally provide recreation, amusement, or leisure activities to the general public, with the majority of its visitors not residing in the immediate area of the attraction, and traveling over 100 miles to enjoy what the facility offers. Tourist attractions are publicly or privately owned, but derive the major portion of their income from these non-resident visitors.

(17)(12) “Trailblazers” means signs erected at strategic locations, usually along major urban arterials in conjunction with the signing of a major destination, tourist attraction, or general service facility on a limited access facility.

(18)(13) “Unincorporated Area” means as defined in Section 153.53(1), Florida Statutes.

(19) “Wayfinding Sign” means a directional guide sign that guides the traveling public to key civic, cultural, visitor, and recreational destinations within a specific region.

(20) “Wayfinding Sign System Plan” means the location area, design, engineering, and sign plan submitted to the Department for approval.

Specific Authority 316.0745 FS. Law Implemented 316.0745 FS. History—New 3-27-05, Amended _____.

PART V WAYFINDING SIGNS

14-51.051 Standards.

(1) This rule chapter provides statewide criteria for Wayfinding Signs to be installed on the State Highway System. Any deviation from the standards referenced herein shall

require the local government to submit a Request to Experiment to the FHWA as referenced in Section 1A.10 of the MUTCD.

(2) All regulatory, warning, and general service signs shall conform to the MUTCD.

(3) The local government shall develop and approve through local resolution the criteria for the destinations shown on Wayfinding Sign System Plan. The local government may use the criteria established in Rule 14-51.030, F.A.C.

(4) Communities eligible for Wayfinding Signs shall be on the Official Florida Transportation Map. Wayfinding Signs for either an incorporated or unincorporated area not appearing on the Official Florida Transportation Map are eligible upon written request of the local government. Such requests shall follow the process outlined in subsection 14-51.041(2), F.A.C.

(5) Wayfinding Signs installed on the State Highway System prior to March 31, 2006, shall be allowed to remain or be replaced until January 1, 2013. As of that date, all existing Wayfinding Signs that are on the State Highway System, and which are not in compliance with this rule chapter, must be removed or be brought into compliance.

(6) Wayfinding Signs are not allowed within the right of way of limited access facilities, including ramps and frontage roads.

(7) Wayfinding Signs shall be designed, installed, and maintained in accordance with the standards referenced in subsections 14-51.014(7) and (8), F.A.C.

(8) The planning, design, installation, and maintenance of all Wayfinding Signs and their assemblies is the responsibility of the local government, including on the State Highway System.

(9) The local government shall submit its Wayfinding Sign System Plan to the appropriate District Traffic Operations Office to initiate the Department's permit process.

Specific Authority 316.0745 FS. Law Implemented 316.0745 FS. History--New_____.

14-51.052 Design.

(1) Red, yellow, orange, fluorescent yellow-green, or fluorescent pink shall not be used as background colors for Wayfinding Signs, in order to minimize confusion with regulatory, warning, construction, or incident management signs.

(2) Background colors, other than those stated in subsection 14-51.052(1), F.A.C., shall be allowed on Wayfinding Signs.

(3) A minimum contrast value of legend color to background color of 70 percent is required for Wayfinding Signs (ADA minimum contrast value).

(4) Enhancement markers may be used, at the option of the applicant, as a means of aesthetically identifying the Wayfinding Signs. The size and shape of an enhancement marker shall be smaller than the Wayfinding Signs in order to avoid confusion with traffic control devices.

(5) A pictograph may be incorporated into the overall design of a Wayfinding Sign.

(6) There shall be a maximum of three destinations shown on each Wayfinding Sign.

(7) All lettering used on Wayfinding Signs on the State Highway System shall be highway gothic fonts or other FHWA approved fonts.

(8) The lettering size on Wayfinding Signs shall be in accordance with Section 2D.06 of the MUTCD.

(9) Arrows shown on Wayfinding Signs shall be designed in accordance with Section 2D.08 of the MUTCD. The positioning of arrows relative to the destinations shown shall be in accordance with Section 2D.34 of the MUTCD.

(10) Wayfinding Signs and their supporting structures shall be designed, constructed, and installed to meet the Department's clear zone and safety criteria, including breakaway features. The design shall be signed and sealed by a Professional Engineer registered in the State of Florida.

(11) Sign panels shall be retroreflective and in accordance with Section 994 (Retroreflective and Nonreflective Sign Sheeting) of the Standard Specifications for Road and Bridge Construction 2004, referenced in subsection 14-51.014(8), F.A.C.

Specific Authority 316.0745 FS. Law Implemented 316.0745 FS. History--New_____.

NOTE: As stated earlier, Proposed Rule 14-51.053 is withdrawn.

DEPARTMENT OF TRANSPORTATION

<p>RULE CHAPTER NO.:</p> <p>14-75</p> <p>RULE NOS.:</p> <p>14-75.0022</p> <p>14-75.003</p> <p>14-75.004</p> <p>14-75.0051</p> <p>14-75.0052</p>	<p>RULE CHAPTER TITLE:</p> <p>Qualification, Selection, and Performance Evaluation Requirements for Professional Consultants to Perform Work for DOT</p> <p>RULE TITLES:</p> <p>Consultant Qualification Process</p> <p>Minimum Qualification Standards by Type of Work</p> <p>Consultant Competitive Selection Process</p> <p>Suspension or Revocation of Qualification</p> <p>Professional Consultant Work Performance Evaluation System</p>
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NOTICE OF WITDRAWAL

Notice was published in Florida Administrative Weekly, Vol. 31, No. 50, December 16, 2005. There was no request for a hearing. Changes in response to a review by the Joint Administrative Procedures Committee were published in Vol. 32, No. 10, Florida Administrative Weekly, dated March 10, 2006.

Upon further review, it was determined that there were a number of proposed amendments that had not been included in the notice which was submitted for publication in the original notice of rulemaking. After discussing the matter with the Joint Administrative Procedures Committee attorney, it was determined best to withdraw the notice of rulemaking and to publish a corrected notice of rulemaking.

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection’s home page at <http://www.dep.state.fl.us/> under the link or button titled “Official Notices.”

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Department of Environmental Protection are published on the Internet at the Department of Environmental Protection’s home page at <http://www.dep.state.fl.us/> under the link or button titled “Official Notices.”

DEPARTMENT OF HEALTH

Board of Medicine

RULE NO.:	RULE TITLE:
64B8-8.0011	Standard Terms Applicable to Orders
64B8-8.0012	Probation Variables

NOTICE OF CORRECTION

The above-referenced proposed rules were published in Vol. 32, No. 9, of the March 3, 2006, issue of the Florida Administrative Weekly. The date of approval by the agency head, and the date notice of proposed rule development published in the FAW, were inadvertently switched. The date the proposed rules were approved by the agency head should be corrected to February 4, 2006. The date the notice of proposed rule development published in the FAW should be corrected to December 23, 2005. The foregoing changes do not affect the substance of the proposed rules.

The person to be contacted regarding the above correction is: Larry McPherson, Jr., Executive Director, Board of Medicine, 4052 Bald Cypress Way, Bin #C03, Tallahassee, FL 32399-3253.

FINANCIAL SERVICES COMMISSION

Office of Insurance Regulation

RULE NO.:	RULE TITLE:
69O-136.018	Determination of Eligibility to Operate as an Alien Insurer in Florida pursuant to Subsection 624.402(8), Florida Statutes

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed, in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 31, No. 43, October 28, 2005, of the Florida Administrative Weekly. These changes are being made to address concerns expressed by the Joint Administrative Procedures Committee.

1. Subsection (2) of Rule 69O-136.018 is revised to change the date of form OIR-A2-1654 from (07/2005) to (REV 02/2006).

2. Form OIR-A2-1654 has been revised to improve clarity. A copy of the revised form is available from Bob Norris at e-mail address: bob.norris@fldfs.com. The remainder of the reads as previously published.

FINANCIAL SERVICES COMMISSION

Office of Insurance Regulation

RULE NO.:	RULE TITLE:
69O-170.020	Reasonable Degree of Competition Criteria – Monroe County

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed, in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 32, No. 5, February 3, 2006, of the Florida Administrative Weekly. These changes are being made to address concerns expressed by the Joint Administrative Procedures Committee.

1. The rule number is changed to 69O-170.0195.
 2. Subsection (1)(b) is revised by changing the formula for the Herfindahl Index to:

$$H = (%S1)^2 + (%S2)^2 + (%S3)^2 + \dots + (%Sn)^2 .$$

3. Subsection (1)(c) is changed to read:
 (c) Review any other information related to and associated with evaluating market competition for that county, such as entry and exit of insurers into the market, trends in the market share of insurers and the number of new policies being issued.

4. Subsection (2) is changed by deleting “has a noncompetitive market” and inserting “does not have a reasonable degree of competition”.

The remainder of the rule reads as previously published.