

**PURPOSE AND EFFECT:** This proposed rule implements the requirements of Ch. 414.065(7)(d), F.S., Noncompliance related to medical incapacity, 414.065(7)(e), F.S., Noncompliance due to medical incapacity by applicants for Supplemental Security Income (SSI), and 414.105(10), F.S., Time limitations of temporary cash assistance, that the department adopt certain rules.

**SUBJECT AREA TO BE ADDRESSED:** This proposed rule will establish requirements for individuals claiming good cause for non-compliance with work requirements due to medical incapacity.

**SPECIFIC AUTHORITY:** 414.45 FS.

**LAW IMPLEMENTED:** 414.065(7)(d), 414.065(7)(e), 414.105(10) FS.

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

**TIME AND DATE:** 10:00 a.m., September 17, 1999

**PLACE:** 1317 Winewood Blvd., Bldg. 3, Room 414, Tallahassee, FL 32399-0700

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS:** Dan Goss, 1317 Winewood Blvd., Bldg. 3, Room 412K, Tallahassee, FL 32399-0700

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Freshwater Fish and Wildlife**

**RULE TITLE:** Regulations Relating to Miscellaneous Areas **RULE NO.:** 68A-15.006

**PURPOSE AND EFFECT:** The purposes and effects of the proposed rule development is to establish specific public use and hunting regulations for wild hog and miscellaneous areas established under Commission Rule 68A-14.001, FAC. The effect of the proposed rule would be to better facilitate and regulate public use and hunting on these areas and provide for necessary resource management and protection.

**SUBJECT AREA TO BE ADDRESSED:** Subject areas covered in the proposed rules include general regulations, quota hunt permits, hunting season dates and specific area regulations pertaining to Type I WMAs.

**SPECIFIC AUTHORITY:** Article IV, Section 9, Fla. Const.

**LAW IMPLEMENTED:** Article IV, Section 9, Fla. Const.

**A HEARING ON THE PROPOSED RULES WILL BE HELD IN CONJUNCTION WITH THE COMMISSION'S PUBLIC MEETING AT THE TIME, DATES AND PLACE SHOWN BELOW:**

**TIME AND DATES:** 9:00 a.m. each day, October 6-8, 1999, December 8-10, 1999, January 10-12, 2000, March 15-17, 2000 and May 17-19, 2000

**PLACE:** Specific location to be announced

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS:** Tim Breault, Division of Wildlife, 620 South Meridian Street, Tallahassee, Florida 32399-1600

**THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT WILL BE AVAILABLE AND CAN BE OBTAINED FROM:** James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

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 calendar days before the workshop/meeting by contacting: Andrena Knicely, (850)487-1406. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

**Section II  
Proposed Rules**

**DEPARTMENT BANKING AND FINANCE**

**Board of Funeral and Cemetery Services**

<b>RULE TITLES:</b>	<b>RULE NOS.:</b>
Care and Maintenance of Existing Cemetery Records	3F-6.002
Cash Payments Received	3F-6.005
Unaccountable Contracts	3F-6.0053
	3F-6.0055

**PURPOSE AND EFFECT:** The purpose and effect of the amendments to these proposed rules are to clarify the guidelines and procedures for the care and maintenance of a licensed cemetery, including all aspects of record keeping for the licensed facility, provisions for receipts for cash payments, and audit trails for preneed and at-need contracts.

**SUMMARY:** These Rules setforth the guidelines and procedures for the care and maintance of existing cemeteries by amending subsection 3F-6.002 and recordkeeping, 3F-6.005; and by creating new subsections, 3F-6.0053 and 3F-6.0055 to setforth guidelines and procedures for cash payments received and unaccountable contracts.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower cost regulatroty alternative must do so in writing within 21 days of the notice.

SPECIFIC AUTHORITY: 20.05(5), 497.103 FS.  
LAW IMPLEMENTED: 497.237, 497.241, 497.309, 497.431 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: Diana M. Evans, Executive Director, Board of Funerals and Cemetery Services, 101 East Gaines Street, Tallahassee, Florida 32399-0350

THE FULL TEXT OF THE PROPOSED RULE IS:

**3F-6.002 Care and Maintenance of Existing Cemetery.**

(1) Every licensed ~~The~~ cemetery, shall be maintained in a reasonable condition. Minimal maintenance ~~which~~ shall include leveling of the grounds where interments have been made, removal of all debris, mowing and edging, resulting in a well kept appearance at all times.

(2) Every licensed cemetery shall prepare a schedule for the care and maintenance of the cemetery, mausoleums and columbaria. The schedule shall be updated each calendar year.

(3) Such schedules shall address the maintenance of roads, paths and walkways.

(4) The maintenance schedule will be reviewed by the Department as part of its annual inspection of the cemetery.

(5) The initial schedule of care and maintenance required by this rule will be due January 1, 2000.

Specific Authority 20.05(5), 497.103 FS. Law Implemented 497.237, 497.241 FS. History--Amended 5-10-76, Formerly 3D-30.21, 3D-30.021, Amended

**3F-6.005 Records.**

The following records shall be made available to the Department for the purposes of examinations or inspections:

- (1) through (14) no change.
- (15) Detailed maps of the cemetery; ~~and~~
- (16) Procedure manuals; ~~and~~
- (17) Examination work papers as required by Rule 3F-6.0052.

These records will be available for review at the licensed facility or an alternative site of the cemetery company if approved by the Board pursuant to Section 497.309(2), F.S. Certificate of Authority holders will send written notification to the Board Office if records are available for review at an alternative site.

Specific Authority 497.103 FS. Law Implemented 497.309, 497.431 FS. History--New 3-21-95, Amended 5-27-98, \_\_\_\_\_.

**3F-6.0053 Cash Payments Received.**

(1) For cash payments or cash equivalent payments, such as cashier's check or money order, a receipt shall be given to the payor that reflects at the minimum, date of payment, amount of payment, name of purchaser, and contact number.

(2) Documentation shall be maintained and be readily retrievable which shall show at the minimum, the date of payment, amount of payment, name of purchaser, and contact number.

Specific Authority 20.05(5), 497.103 FS. Law Implemented 497.237, 497.241, 497.309 FS. History--New \_\_\_\_\_.

**3F-6.0055 Unaccountable Contracts.**

(1) A licensee shall maintain an audit trail of all preneed and at-need contracts written where a prenumbered sequence is required.

(2) All legal, valid contracts shall be binding and honored by the licensee.

(3) If any contracts referenced under (2) cannot be accounted for by the certificate holder, cemetery company or preneed sales agent, a statement shall be prepared where the licensee agrees to honor all the contracts under this subsection.

Specific Authority 20.05(5), 497.103 FS. Law Implemented 497.237, 497.241, 497.309 FS. History--New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Funeral and Cemetery Services  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Funeral and Cemetery Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 18, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

**DEPARTMENT OF INSURANCE**

RULE TITLE: Annual and Quarterly Reporting Requirements  
RULE NO.: 4-137.001

PURPOSE AND EFFECT: The amendments reflect the 1999 annual update of the National Association of Insurance Commissioners' (NAIC's) Annual Statement Instructions, Property and Casualty, the NAIC's Annual Statement Instructions/Life, Accident and Health, the NAIC's Accounting Practices and Procedures Manual for Property and Casualty Insurance Companies, and the NAIC's Accounting Practices and Procedures Manual for Life and Accident and Health Insurance Companies. Annual and quarterly statements, as well as accounting practices and procedures, for Property and Casualty, and Life, Accident and Health companies.

SUMMARY: The rules are being amended to update NAIC manual references to adopt new improvements to the manuals and maintain consistency with the NAIC and other jurisdictions for Property and Casualty, and Life, Accident and Health, and Property and Casualty, and Life, Accident and Health companies.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 624.308(1) FS.

LAW IMPLEMENTED: 624.307(1), 624.424(1) FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:30 a.m., October 11, 1999

PLACE: Room 143, Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kerry Krantz, Life & Health Insurer Solvency, Division of Insurer Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0330, (850)413-5038

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting: Yvonne White, (850)413-4214.

THE FULL TEXT OF THE PROPOSED RULE IS:

4-137.001 Annual and Quarterly Reporting Requirements.

(1) through (3) No change.

(4) Manuals Adopted.

(a) Annual and quarterly statements shall be prepared in accordance with the following manuals, which are hereby adopted and incorporated by reference:

1. The NAIC's Annual Statement Instructions, Property and Casualty, 1999 ~~1998~~;

2. The NAIC's Annual Statement Instructions/Life, Accident and Health, 1999 ~~1998~~;

3. The NAIC's Accounting Practices and Procedures Manual for Property and Casualty Insurance Companies, 1999 ~~1998~~; and

4. The NAIC's Accounting Practices and Procedures Manual for Life and Accident and Health Insurance Companies, 1999 ~~1998~~.

(b) No change.

Specific Authority 624.308(1) FS. Law Implemented 624.307(1)624.424(1) FS. History--New 3-31-92, Amended 8-24-93, 4-9-95, 4-9-97, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kerry Krantz, Actuary, Insurer Services, Bureau of Life and Health Insurer Solvency & Market Conduct, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michelle Newell, Chief, Bureau of Life & Health Insurer Solvency, Insurer Services, Department of Insurance

DATE PROPOSED RULE APPROVED BY THE AGENCY HEAD: July 7, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 30, 1999

**DEPARTMENT OF INSURANCE**

RULE TITLE: NAIC Financial Examiners Handbook Adopted

RULE NO.: 4-138.001

PURPOSE AND EFFECT: The amendments reflect the 1999 annual update of the National Association of Insurance Commissioners' (NAIC's) Examiner's Handbook.

SUMMARY: The rule is being amended to update the NAIC handbook references to adopt improvements to the handbook and maintain consistency with the NAIC and other jurisdictions.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 624.308 FS.

LAW IMPLEMENTED: 624.316 FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:15 a.m., October 11, 1999

PLACE: Room 143, Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kerry Krantz, Actuary, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0327, phone (850)413-5038

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting Yvonne White at (850)413-4214.

THE FULL TEXT OF THE PROPOSED RULE IS:

4-138.001 NAIC Financial Examiners Handbook Adopted.

The National Association of Insurance Commissioners Financial Examiners Handbook (1999~~1996~~) is hereby adopted and incorporated by reference, with the exception of Part 8, Appendix A. Financial examinations by the Department shall be performed in substantial conformity with the methodology

outlined in the Handbook, so long as that methodology is consistent with statutory accounting principles and the Florida Insurance Code. A copy of the Examiners Handbook may be obtained from the National Association of Insurance Commissioners, 120 West 12th Street, Suite 1100, Kansas City, Missouri 63105. A copy of the Examiners Handbook may be inspected at the Department at its headquarters in Tallahassee, Florida, during regular business hours.

Specific Authority 624.308(1) FS. Law Implemented 624.316(1)(c) FS. History—New 3-30-92, Amended 4-9-97, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kerry Krantz, Actuary, Insurer Services, Bureau of Life and Health Insurer Solvency & Market Conduct, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michelle Newell, Chief, Bureau of Life & Health Insurer Solvency, Insurer Services, Department of Insurance

DATE PROPOSED RULE APPROVED BY THE AGENCY HEAD: July 7, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 30, 1999

**DEPARTMENT OF INSURANCE**

RULE TITLE: Required Options  
 RULE NO.: 4-138.044

PURPOSE AND EFFECT: The amendments reflect the 1999 annual update of the National Association of Insurance Commissioners' (NAIC's) Examiner's Handbook, Accounting Practices and Procedures Manual, and Annual Statement Instructions.

SUMMARY: The rule is being amended to update the NAIC manual, instructions and handbook references, to adopt improvements to the handbook, instructions and manuals, and to maintain consistency with the NAIC and other jurisdictions.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 624.308(1), 625.121(3)(a) FS.

LAW IMPLEMENTED: 624.316(1)(c), 624.424(1), 625.121(3) FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., October 11, 1999

PLACE: Room 143, Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kerry Krantz, Actuary, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0327, phone (850)413-5038

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting: Yvonne White, (850)413-4214.

THE FULL TEXT OF THE PROPOSED RULE IS:

4-138.044 Required Opinions.

(1) through (2) No change.

(3) Exemption Eligibility Tests.

(a) Any Category A company that for any year, beginning with calendar year 1993, for which the annual statement is due on March 1, 1994, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with rule 4-138.046 of this part for the year in which these criteria are met. The ratios in 1., 2., and 3. below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

1. The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .10.

2. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .30.

3. The ratio of the book value of the medium to lower quality obligations to the sum of capital and surplus is less than .50.

4.a. The Examiner Team for the NAIC, in applying the criteria set forth in the NAIC's Annual Statement Instructions/Life, Accident and Health, ~~1998~~, and the NAIC's Accounting Practices and Procedures Manual for Life and Accident and Health Insurance Companies, ~~1998~~ as adopted and incorporated by reference in rule 4-137.001(4) and in the NAIC's Financial Examiners Handbook (~~1998~~) as adopted and incorporated by reference in rule 4-138.001, has not designated the company as:

i. a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or

ii. a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or

b. The company has resolved the first or second priority status to the satisfaction of the Department of Insurance of the state of domicile.

(b) Any Category B company that for any year, beginning with calendar year 1993, for which the annual statement is due on March 1, 1994, meets all of the following criteria shall be

eligible for exemption from submission of a statement of actuarial opinion in accordance with rule 4-138.046 of this part for the year in which the criteria are met. The ratios in 1., 2., and 3. below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

1. The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .07.

2. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .40.

3. The ratio of the book value of the medium to lower quality obligations to the sum of capital and surplus is less than .50.

4.a. The Examiner Team for the NAIC, in applying the criteria set forth in the NAIC's Annual Statement Instructions/Life, Accident and Health, ~~1998~~, and the NAIC's Accounting Practices and Procedures Manual for Life and Accident and Health Insurance Companies, ~~1998~~ as adopted and incorporated by reference in rule 4-137.001(4) and in the NAIC's Financial Examiners Handbook (~~1998~~) as adopted and incorporated by reference in rule 4-138.001, has not designated the company as:

i. a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or

ii. a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or

b. The company has resolved the first or second priority status to the satisfaction of the insurance supervisory official of the state of domicile.

(c) Any Category A or Category B company that meets all of the criteria set forth in paragraph (a) or (b) of this subsection, whichever is applicable, is exempted from submission of a statement of actuarial opinion in accordance with rule 4-138.046 of this part unless the Department makes a specific finding, based on an analysis of the company's financial statement, that compliance is necessary in order for the Department to determine that the life and health insurer or the fraternal benefit society is in compliance with chapters 624, 625, 626, 627, or 632 of the Insurance Code; or the Department has reason to believe that the financial statement upon which the calculations are based is incomplete, inaccurate, or otherwise not in compliance with rule 4-137.001, Florida Administrative Code; or the company is using such methods and practices in the conduct of its business as to render its further transaction of insurance in this state hazardous or injurious to the policyholders or to the public.

(d) Any Category A or Category B company that, for any year beginning with calendar year 1993, for which the annual statement is due on March 1, 1994, is not exempted under

paragraph (c) of this subsection shall be required to submit a statement of actuarial opinion in accordance with rule 4-138.046 of this part for the year for which it is not exempt.

(e) Any Category C company that, after submitting an opinion in accordance with rule 4-138.046 of this part, meets all of the following criteria shall not be required, unless required in accordance with paragraph (f) below, to submit a statement of actuarial opinion in accordance with rule 4-138.046 of this part more frequently than every third year. Any Category C company which fails to meet all of the following criteria for any year shall submit a statement of actuarial opinion in accordance with rule 4-138.046 of this part for that year. The ratios in 1., 2., and 3. below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

1. The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .05.

2. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .50.

3. The ratio of the book value of the medium to lower quality obligations to the sum of the capital and surplus is less than .50.

4.a. The Examiner Team for the NAIC, in applying the criteria set forth in the NAIC's Annual Statement Instructions/Life, Accident and Health, ~~1998~~, and the NAIC's Accounting Practices and Procedures Manual for Life and Accident and Health Insurance Companies, ~~1998~~ as adopted and incorporated by reference in rule 4-137.001(4) and in the NAIC's Financial Examiners Handbook (~~1998~~) as adopted and incorporated by reference in rule 4-138.001, has not designated the company as

i. a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or

ii. a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or

b. The company has resolved the first or second priority status to the satisfaction of the Department of Insurance of the state of domicile.

(f) Any company which is not required by this rule 4-138.044 to submit a statement of actuarial opinion in accordance with rule 4-138.046 of this part for any year shall submit a statement of actuarial opinion in accordance with rule 4-138.045 of this part for that year unless, pursuant to rule 4-138.044(3)(c), the Department requires a statement of actuarial opinion in accordance with rule 4-138.046 of this part.

(4) Large Companies. Every Category D company shall submit a statement of actuarial opinion in accordance with rule 4-138.046 of this part for each year, beginning with calendar year 1993, for which the annual statement is due on March 1, 1994.

Specific 624.308(1), 625.121(3)(a) FS. Law Implemented 624.316(1)(c), 624.424(1), 625.121(3) FS. History—New 5-18-93, Amended 2-16-94, 4-9-97,

NAME OF PERSON ORIGINATING PROPOSED RULE: Kerry Krantz, Actuary, Insurer Services, Bureau of Life and Health Insurer Solvency & Market Conduct, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michelle Newell, Chief, Bureau of Life & Health Insurer Solvency, Insurer Services, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 7, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 30, 1999

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**Division of Food Safety**

RULE TITLE: Adoption of Federal Regulations and Other Standards

RULE NO.: 5K-4.002

PURPOSE AND EFFECT: The rule provides regulatory guidelines for the safe and sanitary operation of food establishments.

SUMMARY: This rule amendment adopts the Food and Drug Administration 1999 "Food Code" and updates refrigeration standards.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 500.09, 500.12(1)(f), 570.07(23) FS.

LAW IMPLEMENTED: 500.04, 500.09, 500.10, 500.11, 500.12, 500.13 FS.

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

TIME AND DATE: 10:00 a.m., September 28, 1999

PLACE: Agriculture Environmental Services Conference Room, Lab 8, 3125 Conner Boulevard, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Dr. H. Wayne Derstine, Environmental Administrator, Bureau of Food and Meat Inspection, 3125 Conner Blvd., Tallahassee, FL 32399-1650, Telephone (850)488-3951

THE FULL TEXT OF THE PROPOSED RULE IS:

5K-4.002 Adoption of Federal Regulations and Other Standards.

(1) No change.

~~(2) Retail Food Store Sanitation.~~

~~(a) The purpose of this rule is to adopt sanitation criteria, standards and requirements for retail food stores that protect foods during storage and display, and provide the public safeguards against purchase of unsafe or unwholesome foods.~~

~~(b) The provisions and requirements of Part 1, Chapters 1 through 7 of the "Model Retail Food Store Sanitation Code," jointly published in 1982 by the Association of Food and Drug Officials and the Food and Drug Administration, are hereby adopted by reference as rules under Chapter 500, F.S., and a copy is filed herewith. Interested persons may obtain copies of this code by contacting the Association of Food and Drug Officials, Post Office Box 3425, York, PA 17402, and copies are available for examination at the Florida Department of Agriculture and Consumer Services, Division of Food Safety, Bureau of Food and Meat Inspection, Tallahassee, Florida.~~

~~(c) The 1984 supplemental provisions and requirements to Chapters 1 through 7 of the "Model Retail Food Store Sanitation Code" relating to customer self service of unpackaged (bulk) food are hereby adopted by reference as rules under Chapter 500, F.S., and a copy is filed herewith. Interested persons may obtain copies by contacting the Association of Food and Drug Officials, Post Office Box 3425, York, PA 17402, and copies are available for examination at the Florida Department of Agriculture and Consumer Services, Division of Food Safety, Bureau of Food and Meat Inspection, Tallahassee, Florida.~~

~~(2)(3) No change.~~

~~(4) Food Service Sanitation.~~

~~(a) The provisions and requirements of the United States Department of Health, Education and Welfare Publication No. (FDA) 78-2081 (Rev. June, 1978), Food Service Sanitation Manual, Part IV, Chapters One through Nine, are hereby adopted by reference as rules under Chapter 500, F.S. Interested persons may obtain copies of this publication by contacting the U.S. Government Printing Office. Copies are available for examination at the Florida Department of Agriculture and Consumer Services, Division of Food Safety, Bureau of Food and Meat Inspection, Tallahassee, Florida.~~

(b) The term "extensively remodeled" as used in the above referenced publication is defined as "structural changes to existing establishments which cost in excess of 50% of the assessed value to the facility as determined by the county property appraiser."

(c) ~~The requirements and sanitation criteria of this rule apply to all food service activity within and associated with food establishments and retail food stores permitted and inspected by the department.~~

(3)(5) No change.

(4)(6) Food Code – Provisions Adopted Temperatures – Revision.

(a) Chapters 1-7 Sections 3-202.11, 3-401.11 through 3-401.15, 3-402.11, 3-403.11, and 3-501.12 through 3-501.16 of the "Food Code 1999 1995" published by the U.S. Public Health Service of the U.S. Department of Health and Human Services (1999 Sept. 1995), are hereby adopted by reference as a rules under Chapter 500, F.S., except for the following provisions:

1. 1-201.10(B)(31), (32), (87)
2. 2-102.11
3. 3-304.14(B)(2)
4. 5-203.11(C)
5. 5-402.12
6. 6-202.110

All provisions in the "Food Code 1999" that are adopted herein by reference shall apply to all food establishments regulated by the Florida Department of Agriculture and Consumer Services. Interested parties may obtain copies of this publication by contacting the U. S. Government Printing Office. Copies are available for examination at the Florida Department of Agriculture and Consumer Services, Division of Food Safety, Bureau of Food and Meat Inspection, 3125 Conner Boulevard, Room 289, Tallahassee, Florida 32399-1650. These sections supersede the provisions regarding food temperatures found in the United States Department of Health, Education and Welfare Publication No. (FDA) 78-2081 (Rev. June, 1978); Food Service Sanitation Manual and the "Model Retail Food Store Sanitation Code," jointly published in 1982 by the Association of Food and Drug Officials and the Food and Drug Administration, previously adopted by reference.

(b) Existing mechanical refrigeration units which are being utilized to maintain potentially hazardous food at 7°C (45°F) or below and are otherwise in good repair shall have until September 8, 2002, 5 years from the effective date of this rule to comply with the requirements of 5°C (41°F) or below as stated in section 3-501.16 of the "Food Code 1999". Mechanical refrigeration units in new and extensively remodeled food establishments as of the effective date of this rule are required to maintain foods at 5°C (41°F) or below as stated in section 3-501.16 of the "Food Code 1999". When a mechanical refrigeration unit must be replaced, the

replacement unit must comply with temperature requirements of 5°C (41°F) or below for potentially hazardous food. The term "extensively remodeled" as used in this rule means "structural changes to an existing food establishment which cost in excess of 50% of the assessed value of the establishment as determined by the county property appraiser".

(5) Other Standards

(a) Cloths used for wiping food spills on food-contact surfaces of equipment shall be clean and rinsed frequently in an approved sanitizing solution as defined in 21 CFR 178.1010. Cloths used for wiping food spills on food-contact surfaces shall be used for no other purpose. The cloths shall be stored in the sanitizing solution between uses.

(b) Cloths used for cleaning non-food-contact surfaces shall be clean and rinsed frequently in an approved sanitizing solution as defined in 21 CFR 178.1010. Cloths used for cleaning non-food-contact surfaces shall be used for no other purpose. These cloths shall be stored in the sanitizing solution between uses.

Specific Authority 500.09, 500.12(1)(f), 570.07(23) FS. Law Implemented 500.04, 500.09, 500.10, 500.11, 500.12, 500.13 FS. History-Revised 3-1-72, Amended 12-31-74, 1-18-83, 6-17-85, Formerly 5E-6.02, Amended 7-25-88, 4-13-92, Formerly 5E-6.002, Amended 8-8-95, 9-9-96, 12-10-96, 4-10-97, 9-8-97, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: H. Wayne Derstine, D.V.M., Environmental Administrator, Bureau of Food and Meat Inspection, 3125 Conner Boulevard, Tallahassee, FL 32399-1650

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Marion Fuller, Director, Division of Food Safety, 3125 Conner Blvd., Tallahassee, FL 32399-1650

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 25, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 11, 1999

**DEPARTMENT OF CITRUS**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Targeted Value-Added Promotions	
Program for Fresh Grapefruit	20-48
RULE TITLES:	RULE NOS.:
Purpose of Program	20-48.001
Participant Eligibility	20-48.002
Product Eligibility	20-48.003
Allocation; Disbursement of Funds	20-48.004
Program Requirements	20-48.005
Qualification of Advertising/Merchandising	20-48.006
Targeted VAP Performance Formula	20-48.007
Proof of Performance; Claim for Payment	20-48.008
Failure to Perform under Targeted	
VAP Agreement	20-48.009
Program Evaluation	20-48.010

PURPOSE AND EFFECT: Would revise the Targeted Value-Added Promotions program for the 1999-2000 citrus season in accordance with recommendations of the Targeted Value-Added Promotions Program Subcommittee.

SUMMARY: Revises the Targeted Value-Added Promotions program for the 1999-2000 citrus season.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Regulatory Cost has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 601.15 FS.

LAW IMPLEMENTED: 601.15 FS.

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

TIME AND DATE: 10:30 a.m., October 27, 1999

PLACE: Department of Citrus Building, 1115 East Memorial Boulevard, Lakeland, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Joan B. Martin, Administrative Assistant, Legal Department, Florida Department of Citrus, P. O. Box 148, Lakeland, Florida 33802-0148

THE FULL TEXT OF THE PROPOSED RULES IS:

20-48.001 Purpose of Program.

The program is designed to help improve grower returns through increased FOB pricing by providing support to Florida citrus shippers, sales agencies and growers' cooperatives that wish to establish agreements with targeted retailers for the advertising and merchandising of fresh Florida grapefruit taxed under section 601.15(3), Florida Statutes.

Specific Authority 601.15 FS. Law Implemented 601.15 FS. History--New 11-17-97, Amended 12-6-98, Repromulgated.

20-48.002 Participant Eligibility.

(1) By definition, a "participant" in this program must be a licensed and registered fresh fruit shipper, sales agency or growers' cooperative, engaged in the shipment of fresh Florida grapefruit to domestic (U.S. only) retail markets.

(2) Brokers shall not be eligible to participate in this program.

(3) To participate, a shipper must fill out and return to the Department, by August 20 ~~7~~, a Targeted VAP Sign-Up Form CIT/MKTG/150/EFF. 8/1/99 ~~8/4/98~~, incorporated herein by reference, which will be made available to all eligible shippers by the Department of Citrus.

(4) Shippers wishing to assign their allocated program dollars to a licensed and registered sales agency or growers' cooperative must fill out and return to the Department by August 20 ~~7~~, a Targeted VAP Delegation Form

CIT/MKTG/151/EFF. 8/1/99 ~~8/4/98~~, incorporated herein by reference, which will be made available to all eligible shippers by the Department of Citrus; the Delegation form may serve in lieu of the Sign-Up form.

Specific Authority 601.15 FS. Law Implemented 601.15 FS. History--New 11-17-97, Amended 12-6-98, Repromulgated.

20-48.003 Product Eligibility.

Only the advertising and merchandising of Florida-grown grapefruit which enters the primary channel of trade for use in fresh form, and upon which excise taxes have been paid pursuant to Section 601.15, Florida Statutes, will qualify under this program.

Specific Authority 601.15 FS. Law Implemented 601.15 FS. History--New 11-17-97, Amended 12-6-98, Repromulgated.

20-48.004 Allocation; Disbursement of Funds.

(1) Funds prorated for non-commodity programs for fresh grapefruit shall be set aside by the Department of Citrus each shipping season. Such funds shall be used to reward supermarket retailers in the U.S. only – on a per-carton basis – for promotional support of fresh Florida grapefruit.

(2) The Department of Citrus shall establish Targeted VAP participant appropriations by August 31 ~~24~~.

(3) Targeted VAP dollars to the participant shall be allocated based on the percentage of total domestic (U.S. only) shipments of grapefruit the participant shipped during the prior year, but in no case shall it be less than \$5,000 ~~\$4,000~~ per said participant. A participant who does not have a prior year record shall receive an allocation of \$5,000 ~~\$4,000~~.

(4) By October 25 of each program year, the Department of Citrus shall survey program participants asking them to declare their intent to use allocated funds. Participants intending to use their allocated funds shall further indicate to the Department if they plan to use the funds in a cooperative venture with another entity, or request that the Department execute the plan on the supplier's behalf through Department of Citrus field merchandising staff directly with retailers of participants choice.

(5)(4) Prior to January February 15 of each program year, the Department of Citrus shall survey program participants as to whether or not they intend to use uncommitted program funds; at that time program participants may elect to reassign uncommitted funds into generic Department of Citrus programs, effective February March 1.

(6) If, by June 1 of each program year, participant has utilized 80% or more of their allocated funds, they will not be adjusted the following season. If, on June 1, participant has used less than 80% of their funds, they will be capped at that level for the following season.

(7)(5) The participant shall be responsible for one-fourth the cost of each individual advertising promotion. The Florida Department of Citrus shall be responsible for the remaining three-fourths, so long as net claims for such costs are not in



excess of participant's allocation. Participant contributions to the advertising programs must be forwarded to Department before payment is made to the retailer. Payment will be forwarded by the Department directly to the participant's designated retail customer.

(8) Participant will not be responsible for matching funds on media promotions. Payment will be made by the Department directly to the retailer involved for demonstration promotions scheduled at participant's request. Demo programs must be scheduled in conjunction with Department media programs in selected markets.

(9)(6) All claims must be submitted and filed with the Department no later than July 31 of each shipping season and must include pre and post promotion FOB pricing and movement, and an explanation of the volumetric variance when movement during promotion period was significantly less than anticipated on Participant's commitment form. Claims that are incomplete or otherwise late will be rejected by the Department with written notification to the participant.

(10)(7) Implementation of this program is subject to the appropriation of funds for use in this program.

Specific Authority 601.15 FS. Law Implemented 601.15 FS. History--New 11-17-97, Amended 12-6-98,\_\_\_\_\_.

#### 20-48.005 Program Requirements.

A Targeted VAP may be established in one of two ways:

(1) The shipper establishes a promotional agreement directly with a retailer, including the details of how and when the fruit will be promoted.

(2) The shipper authorizes a Department of Citrus representative to establish a promotion on the shipper's behalf. If a shipper chooses this option, the Department of Citrus representative must be given sufficient lead time to establish promotions. For all promotions established by a Department of Citrus representative involving an ad, the Department representative must be given a minimum of 21 days lead time; to establish in-store promotions (without an ad), a minimum of 10 days must be given.

(3) Upon establishing a promotional agreement with a retailer, the shipper will notify the Department of Citrus by submitting the appropriate Targeted VAP Agreement Form.

(a) Targeted VAP Promotional Agreement Form CIT/MKTG/152/EFF. 8/1/99 8/1/98 for an advertising promotion, or

(b) Targeted VAP Agreement Form CIT/MKTG/153/EFF. 8/1/99 for a media/demo promotion, incorporated herein by reference, to the Department of Citrus Lakeland office VAP Administrator and the Department of Citrus representative in the pertinent market. All promotions established by participant require 10 days lead time.

(4) If retailer commits to the program with a participant, the retailer must use that participant every week during the promotion period. The retailer shall not set up another

Targeted VAP with a different participant during that promotion period. An exception to this rule could be made if program participant can find a way to legally co-op their resources. Under such circumstances, participants could defer promotional exclusivity under the program by indicating that a given promotional agreement is open to participation from other shippers. In such instances, the participant would be restricted from awarding the retailer funds for volume beyond which was committed to under the original agreement.

(5) Individual promotions shall run for not more less than two (2) one (1) weeks.

(6) No promotion shall begin until the retailer has signed a Targeted Value-Added VAP Promotional Program Agreement Form (CIT/MKTG/149, REV. 8/1/99).

Specific Authority 601.15 FS. Law Implemented 601.15 FS. History--New 11-17-97, Amended 12-6-98,\_\_\_\_\_.

#### 20-48.006 Qualification of Advertising/Merchandising.

(1) Minimum Targeted VAP advertising/merchandising activity requirements:

(a) Expanded grapefruit display (end cap or secondary table) with no ad, or

(a)(b) Line ad + expanded display (end cap or secondary table), or

(b)(c) Feature ad + expanded display (end or secondary table) + visual sampling. Feature ad must include the Florida Sunshine Tree or Florida Citrus Growers symbol and either the American Heart Association Heart Check logo or with at least one of the following Department of Citrus approved value-added messages:

1. High in vitamin C
2. Rich in dietary fiber
3. Source of potassium
4. Significant source of folate
5. Cholesterol free and fat free

(2) To help build the value of a Targeted VAP, a retailer can agree to provide promotional support beyond the minimum requirement. Optional promotion elements include:

- (a) Promoting bagged grapefruit
- (b) Graphic bins or front lobby displays
- (c) Multi-unit pricing (beyond the \$1 mark) on bulk/loose grapefruit ±

(d) Gross margin <20% – retailer's cost versus featured price – the% difference between the shipper FOB prices and the price the retailer will feature the product

(e) Quarter page "feature" ad

(3) Promotions may be established to tie-in with Department media scheduled in selected markets. Only the following types of promotions are eligible for Targeted VAP funds in these media markets:

- (a) Demonstration/sampling programs
- (b) Graphic grapefruit bin use

(c) Bagged grapefruit promotion

Specific Authority 601.15 FS. Law Implemented 601.15 FS. History--New 11-17-97 Amended 12-6-98,\_\_\_\_\_.

20-48.007 Targeted VAP Performance Formula.

(1) Targeted VAP dollars for advertising are based on the following formula:

Program Cost: # of cartons x Total \$ per carton (maximum \$.50) = \$ \_\_\_\_

(2) Value of each required promotional/advertising activity shall be awarded as follows:

~~(a) Expanded display (end cap or secondary table).....\$.10 per carton~~

~~(a)(b) Line ad + expanded display (end cap or secondary table).....\$.10 \$.15 per carton~~

~~(b)(c) Feature ad + expanded display (end cap or secondary table) + visual sampling .....\$.25 per carton~~

(3) Value earned for optional promotion activities:

~~(a) Gross margin <20% of retail price + multi-unit pricing (beyond the \$1 mark) on bulk loose citrus .....\$.10 \$.15 per carton~~

~~(b) Graphic bins or front lobby displays.....\$.25 \$.40 per carton~~

~~(c) Multi-unit pricing (beyond the \$1 mark) on bulk/loose citrus .....\$.10 per carton~~

~~(c)(d) Promoting bagged citrus .....\$.25 \$.40 per carton~~

~~(e) Quarter-page "feature" ad.....\$.10 per carton~~

(4) There is a promotional spending cap of \$.50 per carton under the Targeted VAP program for media promotions. The cap does not apply to Targeted VAP funds for ~~display contests~~ or demo support; those funds can be rewarded to retailers as follows:

~~(a) For display contests, retailers shall be paid \$.25 per participating store, with a cap of \$5,000 on the cost of a given promotion.~~

~~(a)(b) For demo support, retailers shall be reimbursed for actual cost associated with the demo activity with a cap of \$5,000 on the cost of a given promotion.~~

~~(b) Graphic bin use.....\$.50 per carton~~

~~(c) Bagged grapefruit promotion.....\$.50 per carton~~

A cap of \$.50 per carton will apply to graphic bin and bagged grapefruit media promotions.

Specific Authority 601.15 FS. Law Implemented 601.15 FS. History--New 11-17-97, Amended 12-6-98,\_\_\_\_\_.

20-48.008 Proof of Performance; Claim for Payment.

Claims shall be in sufficient detail to allow for proper post-audit and pre-audit thereof. Upon completion of a promotion the appropriate Department of Citrus field representative shall compile and submit to the Department of Citrus documentation for proof of performance, including:

- (1) Tear sheets of each ad; and
(2) Photos or retailer sales planners; and

(3) Copy of load invoice from shipper, or a properly executed volume confirmation form

(4) Demo invoice detailing number of stores participating and cost/store, with signed demo reports for each participating store.

Specific Authority 601.15 FS. Law Implemented 601.15 FS. History--New 11-17-97, Amended 12-6-98,\_\_\_\_\_.

20-48.009 Failure to Perform Under Targeted VAP Agreement.

If participant and/or retailer fails to perform in accordance with Targeted VAP Agreement or otherwise fails to properly file claim, Department shall notify participant that claims will be reduced to reflect actual performance.

Specific Authority 601.15 FS. Law Implemented 601.15 FS. History--New 11-17-97, Repromulgated 12-6-98,\_\_\_\_\_.

20-48.010 Program Evaluation.

The Targeted VAP Program will be subject to periodic review by the Department of Citrus to ensure that it is effectively fulfilling the purpose for which it was established.

Specific Authority 601.15 FS. Law Implemented 601.15 FS. History--New 11-17-97, Repromulgated 12-6-98,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Clark R. Jennings, General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Clark R. Jennings, General Counsel
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 21, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

DEPARTMENT OF CORRECTIONS

Table with 2 columns: RULE TITLES and RULE NOS.:
Administrative Confinement 33-3.0081
Protective Management 33-3.0082
Disciplinary Confinement 33-3.0084
Special Management Meal 33-3.0085

PURPOSE AND EFFECT: The purpose and effect of the proposed rule amendments is as follows: clarifies the process and criteria for placing inmates into each confinement status; specifies how often inmates in confinement must be checked and by whom; provides procedures to be followed when confinement inmates exhibit self-destructive behavior; provides for issuance of a modesty garment when it is necessary to take an inmate's clothes; and revises language concerning conditions of confinement for consistency throughout.

SUMMARY: The proposed rules clarify and strengthen requirements concerning administration of protective management, administrative and disciplinary confinement units and provide consistency among these rules. The proposed amendments specifically address the treatment of inmates

exhibiting self-destructive or mentally disordered behavior, exercise for inmates in confinement and assignment of officers to confinement units.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 20.315, 944.09 FS.

LAW IMPLEMENTED: 20.315, 944.09, 944.34, 945.04 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:00 a.m., October 5, 1999

PLACE: Law Library Conference Room, Room B-404, 2601 Blair Stone Road, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Perri King Dale, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULES IS:

(Substantial rewording of Rule 33-3.0081 follows. See Florida Administrative Code for present text.)

33-3.0081 Administrative Confinement.

(1) Description of Administrative Confinement. Administrative confinement is the temporary removal of an inmate from the general inmate population in order to provide for security and safety until such time as more permanent inmate management processes can be concluded.

(2) Administrative confinement is a temporary confinement status that may limit conditions and privileges as provided in subsection (8) as a means of promoting the security, order and effective management of the institution. Otherwise the treatment of inmates in administrative confinement shall be as near to that of the general population as assignment to administrative confinement and the administrative confinement housing area will permit. Any deviations shall be fully documented as set forth in the provisions of this rule.

(3) Definitions.

(a) Area housing supervisor – the correctional officer sergeant, or above, who is in charge of the confinement unit for a particular shift.

(b) Clinical health care personnel – physician, clinical associate, nurse, CMTC, psychologist or psychological specialist.

(c) Institutional Special Review Team – a team consisting of the assistant superintendent, the correctional officer chief, the classification supervisor, or alternate staff members as

appointed by the superintendent. Alternate staff members must be at the rank of lieutenant or above for security, or correctional probation officer level or above for classification. This team is responsible for assessing inmate protection issues.

(d) Investigating official – the person in charge of the investigation of the circumstances concerning the inmate's confinement. This person must be a shift supervisor, institutional inspector, or classification supervisor or above. The investigating official is authorized to assign others of lesser rank to conduct the investigation.

(e) Senior correctional officer – a correctional officer lieutenant or above.

(f) Special risk inmate – any inmate who has demonstrated behavior that is or could be harmful to himself or herself.

(4) Procedures for Placement in Administrative Confinement.

(a) When a decision is made to place an inmate in administrative confinement, the reason for such placement shall be explained to the inmate and the inmate shall be given an opportunity to present verbal comments on the matter. The inmate shall also be allowed to submit a written statement. Prior to placing the inmate in administrative confinement, the inmate shall be given a pre-confinement health assessment to include a physical and mental health evaluation that shall be documented in the health care record. When an official places an inmate in administrative confinement, this action shall be documented on a Report of Administrative Confinement, Form DC4-813(a), including the reasons for the action and a summary of the inmate's comments. The heading and Section I shall be completed by the official who placed the inmate in administrative confinement. This section shall fully state the circumstances surrounding and reasons for placing the inmate in administrative confinement. The reason shall correspond with one of the reasons for placement stated in subsection (5) of this rule. Once Section I has been completed, the official who placed the inmate in administrative confinement shall sign Section I and forward the report to classification prior to the end of his or her shift or workday.

(b) The actions of the official placing the inmate in administrative confinement shall be reviewed within 72 hours by a correctional probation officer (CPO). The CPO shall review the reasons and circumstances surrounding the placement of the inmate in administrative confinement and shall personally interview the inmate. If the review cannot be completed within 72 hours by the CPO due to holiday or weekend, a senior correctional officer, who was not the official who originally placed the inmate in administrative confinement, shall complete the review. The review completed by a senior correctional officer shall be documented on Form DC4-815, Daily Record of Segregation, and the CPO shall complete a review within two working days after the weekend or holiday. The CPO shall either concur with the placement of the inmate in administrative confinement or recommend the

release of the inmate. The CPO's action shall be documented in section II of the Report of Administrative Confinement, Form DC4-813(a). The CPO shall also document that the 72 hour review was completed by a senior correctional officer in section II of Form DC4-813(a), if necessary. If the CPO concurs with the placement of the inmate in administrative confinement, the DC4-813(a) does not need to be forwarded to the warden and shall be processed for filing. If the CPO recommends that the inmate be released from confinement, the DC4-813(a) shall be forwarded to the warden or assistant warden for a final decision. The warden's or assistant warden's decision shall be documented in section III of Form DC4-813(a). The completed DC4-813(a) shall be forwarded to classification for filing.

(5) Reasons for Placement in Administrative Confinement with time limits. Placement of an inmate in administrative confinement is authorized for the following reasons:

(a) Disciplinary charges have been filed and the inmate needs to be temporarily removed from the general inmate population in order to provide for security or safety until such time as the disciplinary hearing is held. A senior correctional officer or above shall have the authority to place an inmate in administrative confinement for this reason. The length of time spent in administrative confinement for this reason shall not exceed seven working days unless the warden authorizes an extension. This extension shall be documented on Form DC4-815.

(b) Outside charges are pending against the inmate and the presence of the inmate in the general population would present a danger to the security or order of the institution. A senior correctional officer or above shall have the authority to place an inmate in administrative confinement for this reason. The length of time spent in administrative confinement for this reason shall not exceed 20 working days. If it appears that an inmate should continue to be segregated from the general population beyond 20 working days, close management procedures can be initiated pursuant to chapter 33-38.

(c) An inmate shall be placed in administrative confinement pending review for resolving an inmate's request for protection from other inmates, (33-3.0082). An inmate shall be placed in administrative confinement by the senior correctional officer when the inmate presents a signed written statement alleging that he fears for his safety in open population from other inmates and that he feels there is no other reasonable alternative open to him. A senior correctional officer shall also place an inmate who may need protection into administrative confinement pending review for protective management based on evidence that such a review is necessary. The senior correctional officer shall encourage the inmate to provide information and otherwise cooperate with efforts by the institution to investigate the matter and eliminate

any danger to the inmate. The protection process including the warden's action shall be completed within 15 working days from the initial confinement of the inmate.

1. The institutional special review team shall initiate an investigation to gather information. A member of the special review team shall complete the heading and section IA of the DC4-868, Report of Protective Management. The team member shall utilize the documentation in the DC4-813(a), Report of Administrative Confinement, for the information necessary to complete this portion of the report. The report shall then be forwarded to the investigative official assigned to investigate the reasons for protection. The investigator shall complete Section IB of the report and return it to the special review team.

2. If the inmate submits a request for release in writing at any time during a review for protection process that was initiated by the inmate, a member of the special review team shall interview the inmate as soon as possible and shall have the inmate complete Form DC6-203, Protection Waiver/Appeal Decision Form. The special review team shall release the inmate from administrative confinement if it appears that the inmate does not need protection. If administrative confinement pending review for protection was imposed on the inmate, the process set forth in this rule shall continue until completed.

3. Once the investigation is complete, the institutional special review team shall hold a hearing with the inmate to determine whether the inmate should be released to open population. The team shall review all documentation available concerning the need for protection to include any written statements submitted by the inmate. The team shall document its findings and recommendations on the Report of Protective Management, Form DC4-868. The following elements shall be considered in determining whether protective management is necessary:

- a. A record of having been assaulted;
- b. A reputation among the inmate population, attested to in writing by staff, as an informant or trial witness;
- c. Verified threats, verbal abuse, or harassment;
- d. A former criminal justice activity resulting in verified threats, verbal abuse, or harassment;
- e. A conviction of a crime repugnant to the inmate population;
- f. Reliable, confirmed evidence of sexual harassment;
- g. Other factors such as physical size, build and age producing a risk from the general inmate population.

4. The team shall submit its findings and recommendations to the warden on the Report of Protective Management, DC4-868. The warden shall determine whether protective management or some other alternative measure is necessary based on the facts within 15 working days from the date of initial confinement. If the warden determines that protection is necessary, the inmate shall be placed in protective

management at that facility or another or shall be recommended for a transfer to resolve the inmate's need for protection. The final action shall be documented on the Report of Protective Management, DC4-868. In the event of transfer or placement into protective management, the DC4-868 need not be submitted to the regional director. In the event the warden determines that protection is not appropriate and recommends that the inmate return to the general population, the DC4-868 shall be forwarded to the regional director.

5. The regional director shall determine within five working days whether protection is necessary based upon the investigation and any follow-up he or she deems appropriate. The regional director shall approve or disapprove placement of the inmate in protective management. The regional director's decision shall also be documented on the Report of Protective Management and this report shall be returned to the institution. If the regional director determines that a need for protection exists, he or she will indicate in the Report of Protective Management that the inmate shall be placed in a protective management unit or transferred, whichever is appropriate. If the regional director determines that protective management is not necessary, the inmate may appeal this decision directly to the Office of the Secretary pursuant to 33-29.007 and 33-29.011. The inmate shall be notified of the regional director's decision and this notification shall be documented on the Report of Protective Management, DC4-868. At the time of notification, the inmate will be asked if he or she wants to appeal the decision. The inmate's decision on whether or not to appeal shall be documented on DC6-203, Protection Waiver/Appeal Decision Form. The inmate shall remain in administrative confinement until the appeal process is complete.

6. Within three working days after an inmate has been approved for protective management, a determination shall be made as to appropriate housing. The inmate shall remain in administrative confinement until this decision is made. If a decision is made to transfer the inmate, the inmate shall be kept in administrative confinement until the transfer is completed. Transfers for protection needs shall be completed within five working days. Regional directors are authorized to make intra-regional transfers.

(d) An investigation, evaluation for change of status or transfer is pending and the presence of the inmate in the general population might interfere with that investigation or present a danger to the inmate, other inmates, or to the security and order of the institution. An investigating officer shall have the authority to request that the senior correctional officer place the inmate in administrative confinement for this reason and the length of time spent in this status shall not exceed 15 working days unless one 10 day extension is granted by the warden. This extension shall be documented on the Daily Record of Segregation, DC4-815. If it is necessary to continue the inmate's confinement beyond this first extension, written

authorization must be obtained from the regional director for a 30 day extension. This authorization shall be attached to the DC4-815. The regional director shall have the authority to authorize additional 30 day extensions as necessary. Examples of circumstances for placing an inmate in administrative confinement for this reason include:

1. Pending an evaluation for placement in close management.

2. Special review or some type of disciplinary or management transfer. Transfers for this reason shall be given priority.

3. Pending an investigation into allegations that the inmate is in fear of a staff member. The protection process outlined in subsection (c) above shall not be utilized for this purpose.

4. Any other reason when the facts indicate that the inmate must be removed from the general inmate population for the safety of any inmate or group of inmates or for the security of the institution.

(e) Mental health reasons. Clinical health care personnel shall have the authority to place an inmate in administrative confinement for this reason and the length of time spent in this status shall not exceed five calendar days.

(f) When an inmate is received on transfer from another institution and there is not sufficient time to review the inmate file and classify the inmate into general population. A senior correctional officer or above has the authority to place an inmate into administrative confinement for this reason. The length of time spent in administrative confinement for this reason shall not exceed two working days. If the initial review suggests that a further investigation is necessary prior to release, the inmate's status can be changed to pending investigation.

(6) Review of Administrative Confinement.

(a) A correctional probation officer shall review inmates in administrative confinement every week. If an inmate is confined for more than 30 days, a formal assessment and evaluation report shall be required. Such reports may be in a brief paragraph form detailing the basis for confinement, what has transpired since the last report, the decision concerning continued confinement and the basis for that decision. The classification supervisor and the warden or the assistant warden shall approve such reports. The goal of the correctional probation officer shall be toward returning the inmate to open population as soon as the facts of the case suggest that this can be safely accomplished.

(b) Inmates shall be weighed upon admission to the confinement unit. Inmates confined for 30 days or more shall be weighed after 30 days and weekly thereafter. The weight of the inmate shall be recorded on Form DC4-815, Daily Record of Segregation.

(c) Any inmate assigned to administrative confinement for more than 30 days shall be given a psychological assessment by appropriate mental health staff to determine his mental

condition. The assessment shall include a personal interview. The psychologist or psychological specialist shall prepare a report to the warden with the facts of the case. The warden shall then make a final decision regarding continuation of confinement. All such assessments shall be documented in the mental health record. If the decision is to continue confinement and that confinement extends beyond 90 days, a new psychological assessment shall be completed each 90-day period.

(d) Inmates in administrative confinement shall receive a personal contact a minimum of:

1. Daily by a clinical health care person.

2. As frequently as necessary, but not less than weekly, by a correctional probation officer to ensure that the inmate's welfare is properly provided for, and to determine the time and method of release or any program changes.

3. Weekly by the chaplain. More frequent visits shall be made upon request of the inmate if the chaplain's schedule permits.

(e) A documented visual health and welfare/security check shall be made of all inmates in administrative confinement:

1. Daily by the area housing supervisor.

2. At least every 30 minutes by a correctional officer, but on an irregular schedule.

(f) Administrative housing areas will be visited:

1. Daily by the officer-in-charge on duty for all shifts except in case of riot or other institutional emergency.

2. Daily by the correctional officer chief (when on duty at the facility) except in case of riot or other institutional emergency.

3. Weekly by the warden and assistant wardens.

(g) Any inmate who has demonstrated behavior that is or could be harmful to himself or herself shall be designated as a special risk inmate. If the inmate demonstrates bizarre, mentally disordered, or self-destructive behavior, the medical department shall be immediately contacted to determine if special watch or suicide watch procedures shall be initiated. Suicidal inmates shall be removed to a designated area where a correctional officer or health care staff provides observation. Visual checks shall be made in accordance with medical protocols or at least every 30 minutes and shall be documented on Form DC4-650, Observation Checklist, until the inmate is no longer considered a special risk inmate. All actions taken by staff with regard to special risk inmates shall be documented on Form DC4-815 and followed with an Incident Report, Form DC3-301.

(7) Administrative Confinement Facilities.

(a) The number of inmates housed in an administrative confinement cell shall not exceed the number of bunks in the cell. Exceptions may be made during an emergency situation as approved by the warden, but such exceptions shall not continue for more than 24 hours without the specific

authorization of the regional director. Prior to placing inmates in the same cell, a determination shall be made that none of the inmates constitute a threat to any of the others.

(b) All administrative confinement cells shall be equipped with appropriate toilet facilities and running water for drinking and other sanitary purposes. Water in the cell can be turned off when necessary due to misbehavior. In such event, the inmate occupant shall be furnished with an adequate supply of drinking water by other means to prevent dehydration. This action shall be documented on Form DC4-815, Daily Record of Segregation.

(c) Prior to placement of an individual in an administrative confinement cell, it shall be thoroughly inspected to ensure that it is in proper order and the inmate housed in that cell shall then be held responsible for the condition of the cell.

(d) The administrative confinement cells shall be physically separate from disciplinary confinement cells, whenever possible. Whenever such location is not possible, physical barriers shall preclude the cross association of those in disciplinary confinement with those in administrative confinement. Administrative confinement cells shall be built to permit verbal communication and unobstructed observation by the staff.

(8) Restraint and Escort Requirements.

(a) Prior to opening any cell for any purpose, including exercise, medical or disciplinary call-outs, telephone calls, recreation, and visits, all inmates in the cell shall be handcuffed behind their backs, unless documented medical conditions require that an inmate be handcuffed in front. In such cases, escort officers shall be particularly vigilant.

(b) A minimum of two officers shall be physically present at the cell whenever the cell door is opened.

(c) When escorting an inmate from a cell, the inmate shall be thoroughly searched. If the inmate is being taken outside the immediate housing unit, leg irons and other appropriate restraint devices shall be applied.

(d) After the required restraints are applied, the inmate has been thoroughly searched, and the cell door has been secured, the second officer is authorized to leave the area.

(e) If two inmates are being escorted from the same cell, both inmates can be escorted at the same time provided that the second officer remains to escort the second inmate and no other movement is occurring on the wing. During all other situations, only one inmate at a time shall be escorted on each confinement wing.

(9) Conditions and Privileges.

(a) Comfort Items – Inmates in administrative confinement shall be permitted personal hygiene items and other medically needed or prescribed items such as eye glasses or hearing aids, except when security requirements dictate otherwise. Inmates in administrative confinement shall not possess any products that contain baby oil, mineral oil, cocoa butter, or alcohol. In the event certain items that inmates in

administrative confinement are not normally prohibited from possessing are removed, the senior correctional officer shall be notified and must approve the action taken, or the item must be returned to the inmate. Action taken shall be recorded on the Daily Record of Segregation, Form DC4-815, which must be reviewed by the correctional officer chief. Property receipts shall be given for any personal property removed. The following comfort items shall be provided as a minimum: toothbrush, toothpaste, bar of soap, towel or paper towels, internal and external feminine hygiene products for women, and toilet tissue.

(b) Personal Hygiene – Inmates in administrative confinement shall meet the same standards in regard to personal hygiene as required of the general inmate population.

1. At a minimum each inmate in confinement shall shower three times per week and on days that an inmate works.

2. Male inmates shall be required to shave at least three times per week. Hair care shall be the same as that provided to and required of the general population inmates.

(c) Correspondence – Inmates in administrative confinement shall have the same opportunities for correspondence that are available to the general inmate population.

(d) Visiting – All visits for inmates in administrative confinement must be approved in advance by the warden or his designee. Requests for inmates in administrative confinement to visit shall be in writing to the warden. Those inmates who are a threat to the security of the institution shall be denied visiting privileges. Attorney-client visits shall not be restricted except on evidence that the visit would be a threat to security or order.

(e) Legal Access – Legal materials shall be as accessible to inmates in administrative confinement as to inmates in general population as long as security concerns permit. An inmate in confinement may be required to conduct legal business by correspondence rather than a personal visit to the law library if security requirements prevent a personal visit. However, all steps shall be taken to ensure the inmate is not denied needed access while in confinement. Although the inmate may not be represented by an attorney at any administrative hearing, access shall be granted for legal visits at any reasonable time during normal business hours to the inmate's attorney or aide to that attorney. Inmates shall be provided paper and writing utensils in order to prepare legal papers. Typewriters or typing services are not considered required items and shall not be permitted in confinement cells.

(f) Reading materials and other privileges shall be permitted on an individual basis for those inmates in administrative confinement. Safety, sanitation and security factors shall be considered when making such decisions.

(g) Library Services – Only one book at a time may be checked out. Books may be checked out once weekly.

(h) Inmates shall be allowed to retain personal property including stamps, watches, rings and health and comfort items unless there is a indication of a security problem, in which case removal of any item shall be documented on Form DC4-815 and a property receipt issued.

(i) Diet – All inmates in administrative confinement shall receive normal institutional meals as are available to the general inmate population except that if any item on the normal menu might create a security problem in the confinement area, then another item of comparable quality shall be substituted. Substitutions shall be documented on the Daily Record of Segregation, Form DC4-815.

(j) Counseling Interviews – Inmates in administrative confinement may be removed from their cells to attend any counseling session when there is no security problem involved.

(k) Clothing and Bedding.

1. Inmates in administrative confinement shall be provided the same clothing and clothing exchange as the general inmate population unless there are facts to suggest that on an individual basis exceptions are necessary for the welfare of the inmate or the security of the institution. In such cases, the exceptions shall be documented on Form DC4-815 and approved by the correctional officer chief. Shower slides may be substituted for regulation shoes. Any item may be removed from the cell in order to prevent the inmate from inflicting injury to himself or herself or others or to prevent the destruction of property or equipment. If an inmate's clothing is removed, a modesty shroud/garment shall be immediately obtained and given to the inmate. If the inmate chooses not to wear the garment, the garment shall be left in the cell and this action shall be documented on Form DC4-815. Under no circumstances shall an inmate be left without a means to cover himself or herself.

2. Bedding and linen for those in administrative confinement shall be issued and exchanged the same as is provided to the general inmate population. Any exceptions shall be based on potential harm to individuals or a threat to the security of the institution. The shift officer in charge or the confinement lieutenant must approve the action initially. Such exceptions shall be documented on Form DC4-815 and the chief correctional officer shall make the final decision in regard to the appropriateness of the action no later than the next working day following the action.

(l) Telephone – Telephone privileges are allowed for emergency situations, when necessary to ensure the inmate's access to courts, or in any other circumstance when a call is authorized by the warden.

(m) Exercise – Those inmates confined on a 24-hour basis excluding showers and clinic trips may exercise in their cells. However, if confinement extends beyond a 30-day period, an exercise schedule shall be implemented to ensure a minimum of three hours per week of exercise out of doors. Such exercise periods shall be documented on Form DC4-815. The warden or

assistant warden is authorized to restrict exercise for an individual inmate only when the inmate is found guilty of a major rule violation. In this instance, a major rule violation is defined as: any assault, battery or attempted assault or battery; any spoken or written threat towards any person; inciting, attempting to incite or participating in any riot, strike, mutinous act or disturbance; fighting; possession of weapons, ammunition, explosives or escape paraphernalia; escape or escape attempt. Inmates shall be notified in writing of this decision and may appeal through the grievance procedure. The denial of exercise shall be for no more than 15 days per incident and for no longer than 30 days in cumulative length. A document detailing an in-cell exercise plan will be provided to the affected inmate at the beginning of any period of exercise restriction and shall be documented on Form DC4-815. Medical restrictions can also place limitations on the exercise periods. Recreational equipment may be available for the exercise period provided such equipment does not compromise the safety or security of the institution.

(n) Canteen Items.

1. Inmates in administrative confinement shall be allowed to make canteen purchases once every other week. Items sold to administrative confinement inmates shall be restricted when reasonably necessary for institutional safety and security.

2. Inmates in administrative confinement shall be allowed to purchase a maximum of four canteen food items. In making this determination, it is the number of food items that is counted, not the type of item. For example, three packages of cookies counts as three items, not one item.

3. Inmates in administrative confinement shall be allowed to purchase a maximum of five non-food canteen items. In making this determination, with the exception of stamps and notebook paper, it is the number of non-food items that is counted, not the type of item. For example, three security pens counts as three items, not one item. Twenty-five stamps or fewer will count as one item and two packages or less of notebook paper will count as one item.

(o) Writing utensils. Inmates in administrative confinement shall possess only security pens, with a possession limit of four pens. Other types of pens shall be confiscated and held until the inmate is released from administrative confinement status. A security pen is a specially designed pen, approved by the Bureau of Security Operations, that is flexible so that it bends under pressure and has a tip that retracts under excessive pressure. If no security pens are available, the inmate shall be allowed to sign out a regular pen from the confinement unit officer. All care shall be taken to ensure that an inmate who requests access to a pen in order to prepare legal documents or legal mail or to file a grievance with the department has access to a pen for a time period sufficient to prepare the legal mail, documents, or grievances.

(10) Administrative Confinement Records.

(a) A Report of Administrative Confinement, Form DC4-813(a), shall be kept for each inmate placed in administrative confinement. A photocopy of the DC4-813(a), with section I completed, shall be kept in administrative confinement with the other confinement records for each inmate. Upon completion of the DC4-813(a), the white copy of the form will be mailed to central office to be filed in the central office inmate record and the yellow copy will be filed in the institutional inmate record.

(b) An Inspection of Confinement Record, Form DC4-814, shall be maintained in each administrative confinement area. Each staff person shall sign such record when entering and leaving the confinement area. Prior to leaving the confinement area, each staff member shall indicate any specific problems including any inmate who requires special attention. Upon completion, the DC4-814 will be maintained in the housing area and forwarded to the correctional officer chief on a weekly basis where it will be maintained on file pursuant to the current retention schedule.

(c) A Daily Record of Segregation, Form DC4-815, shall be maintained for each inmate as long as he is in administrative confinement. The DC4-815 shall be utilized to document any and all activities, including cell searches, any items removed, showers, recreation, haircuts and shaves. If items that inmates in administrative confinement are not normally prohibited from possessing are denied or removed from the inmate, the shift officer-in-charge or the confinement lieutenant must approve the action initially. The items denied or removed will be documented on Form DC4-815 and the chief correctional officer will make the final decision in regard to the appropriateness of that action no later than the next working day following the action. The supervising officer will make a notation of any unusual occurrences or changes in the inmate's behavior and any action taken. Changes in housing location or any other special action will also be noted. The DC4-815 shall be maintained in the housing area for one week, at which time the form will be forwarded to the warden for review. Once reviewed, these forms will be forwarded to classification to be filed in the institutional inmate record.

(d) A Protection Waiver/Appeal Decision Form, DC6-203, shall be completed for each inmate who requests to be released from administrative confinement pending protection prior to the completion of the protection process or when the inmate is notified that the regional director has denied protection. Upon completion, the DC6-203 shall be forwarded to classification to be filed in the institutional inmate record.

(e) The following forms are hereby incorporated by reference. A copy of any of these forms may be obtained from the Office of Security and Institutional Management, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. If forms are to be mailed, a self-addressed stamped envelope must accompany the request.



1. Form DC4-813(a), Report of Administrative Confinement, effective date \_\_\_\_\_.

2. Form DC4-814, Inspection of Confinement, effective date 7-10-90.

3. Form DC4-815, Daily Record of Segregation, effective date 7-10-90.

4. Form DC6-203, Protection Waiver/Appeal Decision Form, effective date \_\_\_\_\_.

(11) Staffing Issues.

(a) Officers assigned to a confinement unit shall be rotated to another assignment every 18 months for a period of at least one year. Any officer assigned to a confinement post shall be authorized a minimum period of five days annual leave or a five day assignment to a less stressful post every six months.

(b) The Inspector General shall notify the warden and regional director of any officer involved in eight or more use of force incidents in an 18 month period. The regional director will review the circumstances for possible reassignment.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 945.04 FS. History—New 4-7-81, Amended 6-23-83, 3-12-84, Formerly 33-3.081, Amended 4-22-87, 8-27-87, 7-10-90, 12-4-90, 3-24-97, 4-26-98, 10-5-98, \_\_\_\_\_.

33-3.0082 Protective Management.

Protective management is not disciplinary in nature and inmates in protective management are not being punished and are not in confinement. The treatment of inmates in protective management shall be as near that of the general population as the individual inmate's safety and security concerns permit.

(1) through (2) No change.

(3)(a) The number of inmates housed in a housing unit shall not exceed the number of beds in the housing unit. Exceptions may be made during an emergency situation as approved by the warden, but such exceptions shall not continue for more than 24 hours without the specific authorization of the regional director or designee. Prior to placing inmates in the same housing unit, or cell where they are housed together or otherwise in direct contact with each other, an inquiry shall be made as to whether any of the inmates constitutes a threat to any of the others.

(b) through (c) No change.

(d) The protective management housing units ~~shall~~ should be physically separate from disciplinary confinement cells, whenever possible. Whenever such location is not possible, physical barriers ~~shall~~ should preclude the cross association of those on disciplinary confinement with those on protective management. Protective management housing units shall ~~should~~ be built to permit verbal communication and unobstructed observation by the staff.

(e) No change.

(4)(a) Inmates in protective management who do not receive out of cell time shall receive a personal contact a minimum of:

1. At least every hour by a correctional officer.

2. Daily by the officer-in-charge on duty for the day or evening shift, except in case of riot or other institutional emergency.

3. Daily by the correctional officer chief (when on duty at the facility) except in case of riot or other institutional emergency.

4. Weekly by the warden or assistant warden.

~~5.3.~~ Daily by a clinical health person ~~representative of the medical department~~ or daily sick call opportunity.

~~6.4.~~ Weekly by the chaplain. More frequent visits shall ~~should~~ be made upon request of the inmate, if the chaplain's schedule permits.

(b) No change.

(c) The institutional special review team shall cause a formal evaluation report to be prepared every 30 days on each inmate in protective management. ~~The report shall be reviewed by the team shall review the report.~~ Such reports may be in brief paragraph form stating the basis of the assignment, what has transpired since the last report, and any new facts relevant to the decision to continue protective management. Any inmate assigned protective management for more than 30 days shall be given a psychological assessment by appropriate mental health ~~the professional~~ staff to determine his mental condition. The assessment shall include a personal interview. The psychologist or psychological specialist shall prepare a report to the ~~warden superintendent~~ with the facts of the case. The ~~warden superintendent~~ shall then make a final decision regarding continuation of protective management. All such assessments shall be documented in the mental health record. If the decision is to continue protective management ~~and~~ that extends beyond 90 days, a new psychological assessment shall be accomplished each 90-day period.

(d) ~~For the purposes of this rule, "special management inmate" refers to~~ Any inmate who has demonstrated behavior that is or may be harmful to himself or herself shall be designated as a special risk inmate, other inmates, or staff, or who has become an extreme security risk. If the inmate demonstrates bizarre, mentally disordered, or self-destructive behavior, the medical department shall be immediately contacted to determine if special watch or suicide watch procedures shall be initiated. Suicidal inmates shall be removed to a designated area where ~~continuing observation is provided by~~ a correctional officer or medical staff provide observation. Visual ~~These~~ checks shall be made in accordance with medical protocols or at least every 30 minutes and shall be documented on Form DC4-650 until the inmate is no longer considered a special ~~risk management~~ inmate. All actions taken by staff with regard to special risk inmates shall be documented on Form DC4-867 and followed with preparation of an Incident Report, Form DC3-301. ~~Inmates who are assaultive or attempt to escape, damage property, or otherwise~~

~~become an extreme security risk shall be placed in a location, either in protective management or another designated area, where more frequent observation and checks can be made.~~

(5) Work assignments – within 10 days of the protective management determination, work opportunities consistent with medical grades shall be available to inmates in protective management during the day, evening or night hours. All inmates shall be provided the opportunity for work assignments regardless of medical grade except when precluded by doctor's orders for medical reasons. Work shall ~~may~~ be cancelled for an individual inmate or a work squad when staff concludes the work or work assignment would subject the inmate to danger or if adequate staff protection is not available. Each occurrence of work cancellation will be documented with reasons for the action and shall be reviewed by the warden superintendent or assistant warden superintendent the following day. Refusal of a work assignment shall result in disciplinary action pursuant to Chapter 33-22. Inmates who refuse work assignments will not be allowed other housing unit activities. Those who accept work assignments shall be subject to awards of gain time pursuant to rule 33-11.0065 in the same manner as general population.

(6) Inmates in protective management who are medically able to work and who work shall be afforded an opportunity for at least an additional 20 hours of out-of-cell time per week for activities. Each protective management unit shall have a dayroom or common area equipped in a similar manner as those for general population. Out-of-cell time includes ~~may consist of any of~~ the following activities:

(a) Exercise – an exercise schedule shall be implemented to ensure a minimum opportunity of two hours per week of exercise out of doors. ~~Exceptions to this requirement may be made when facts document that such exercise periods should not be granted.~~ The warden superintendent or assistant warden superintendent is authorized to ~~may~~ restrict exercise for an individual inmate when the inmate continues to pose a serious threat to the safety, security and order of the institution by recent demonstrations of violence, by continuing threats of physical harm, written or ~~and~~ spoken, toward staff and other inmates; by involvement in acts which seriously interfere with the staff's daily security functions; or by actions demonstrating an extreme escape risk. Inmates shall be notified in writing of this decision and may appeal through the grievance procedure. The denial of exercise shall be for the shortest length of time to accomplish the goal of safety, security and order within the institution and shall be documented on Form DC4-867, Record of Protective Management. Medical restrictions may also place limitations on exercise periods. Similar recreational equipment shall be available as is available for general population inmates for the exercise period provided that such equipment does not compromise the safety or security of the institution.

(b) Religious activities – a weekly non-denominational service shall be held for protective management inmates in the chapel. This service shall ~~may~~ be held at the protective management housing unit if security reasons prevent chapel service. The chaplain shall arrange for religious consultations between inmates and outside volunteers, counsel with clergy and the opportunity to receive religious sacraments similar to that afforded to the general population when requested.

(c) Self-improvement programs or leisure activities shall be available in their housing area, or in separate locations within the institution that conform with the need for security. Self-improvement programs ~~Such program participation may~~ include academic education, vocational training, correspondence courses or self-directed study activities, religious activities, television, quiet activities or letter writing. Inmates in protective management shall be permitted to make canteen purchases at least once per week either through a personal visit to the canteen or delivery. Inmates in protective management shall be allowed to visit the library and check out books at least once weekly, except as provided in 33-3.0082(7).

(d) Legal Access – inmates in protective management shall have access to the law library during evening or other hours when general population inmates are not present. If security reasons prevent a visit, access shall be provided through correspondence or visits from the inmate law clerk. All steps shall be taken to ensure the inmate is not denied needed legal access while in protective management. Inmates shall be provided ~~appropriate~~ paper and writing utensils in order to prepare legal papers. Typewriters or typing services are not considered required items and will not be permitted in protective management housing units.

(e) No change.

(f) Visiting – A visiting schedule shall be implemented to ensure a minimum of two hours a week for inmates to receive visits. A visiting time for protective management inmates shall be set aside in the visiting park either before or after visiting hours for general population inmates, during visiting hours if separate facilities for visitation are available, or on different days from the general population. Visiting shall ~~may~~ be limited by the warden superintendent or his or her designee when it is concluded that a threat to the inmate exists by allowing visitation in the visiting area or when supervision is ~~may be~~ limited. The warden is authorized to make e ~~Exceptions may be made~~ for visitors who have traveled a great distance. Attorney-client visits shall be in accordance with 33-5.011 and shall not be restricted except on evidence that the visit would be a threat to security and order. ~~All visits must be approved in advance, by~~ The warden superintendent or his or her designee must approve all visits in advance.

(g) Telephone – Inmates in protective management shall be allowed to make one call per week of at least 10 minutes, except at Florida State Prison. However, if telephones are

available in the dayroom, protective management inmates shall be allowed to make calls in the same manner as general population inmates. Calls shall be allowed at Florida State Prison and all other institutions; in emergency situations, when necessary to ensure the inmate's access to courts, or in any other circumstance when a call is authorized by the warden superintendent or assistant warden superintendent.

(h) Meals – Inmates in protective management shall be fed in the dining room unless individual circumstances adversely affecting the safety of a particular inmate preclude dining room feeding for the inmate. If particular security reasons as determined by institution staff prevent dining room feeding, the inmate's meal shall may be served in the day room or the inmate's housing unit, ~~otherwise the inmate shall be expected to eat in the designated dining room.~~ Inmates in protective management shall receive normal institutional meals as are available to the general population, except that if any item on the normal menu might create a security problem for a particular inmate, then another item of comparable quality shall may be substituted. ~~Other~~ Substitutions shall be documented on the Record of Protective Management, Form DC4-867.

(i) No change.

(7) No change.

(8) Conditions and Privileges.

(a) Comfort Items--Inmates in protective management shall be permitted personal hygiene items and other medically needed or prescribed items such as eye glasses, and hearing aids, ~~etc.~~, except when security requirements dictate otherwise. In the event that comfort items are taken from inmates in protective management, the senior correctional officer on duty shall be notified and must approve or disapprove the action taken. Action taken shall be documented ~~recorded~~ on the Record of Protective Management Form, DC4-867, which must be reviewed by the correctional officer chief. Property receipts shall be given for any personal property removed. The following comfort items shall be provided as a minimum: toothbrush, toothpaste, bar of soap, towel or paper towels, toilet tissue, and internal and external feminine hygiene products ~~sanitary napkins~~ for women. Comfort items shall be the same as those provided general population inmates.

(b) No change.

(c) Inmates shall be allowed to retain personal property including stamps, a watch, a radio, a ring, authorized self-improvement and reading materials and similar health and comfort items as general population inmates unless there is an indication of a security problem, in which case removal or denial of any item shall be documented on Form DC4-867 and a property receipt shall be issued. All property retained by inmates must fit into the storage area provided, which shall be the same size as provided for general population inmates.

(d) Clothing – Inmates may wear shower slides or personal canvas shoes while in their housing units, but regulation shoes shall may be required ~~by staff~~ for work assignments. Otherwise the clothing for inmates in protective management shall be the same as that issued and exchanged to the general inmate population except when there is an indication of a security or health problem or when additional clothing is required for a work assignment. In such cases, when clothing is denied to an inmate it shall be noted on Form DC4-867, stating the reasons for such denial.

(e) No change.

(f) Other privileges will may be restricted on a daily case-by-case basis when such restrictions are necessary for the security, order or effective management of the institution. All such restrictions shall be documented on Form DC4-868 and reported to the warden superintendent. The warden superintendent is authorized to may restrict privileges on a continuing basis after a determination that such restrictions are necessary for the security, order, or effective management of the institution. The warden's decision for continuing restriction shall also be documented on Form DC4-867.

(g) Protective management inmates shall may be handcuffed or otherwise restrained when individual security concerns associated with that inmate require such action.

(h) No change.

(9) Whenever the inmate requests in writing, or the institutional special review team determines feel that the inmate could be returned to the open population or that a transfer could resolve the need for protection, the team shall document its findings and recommendations on a progress report. The team shall submit the progress report, along with the inmate's written statement, to the warden superintendent. The warden superintendent shall determine whether the inmate is to be released to open population or transferred. In cases where the regional director initially approved the protection needs, the progress report, with the warden's superintendent's comments will be forwarded to the regional director. In such cases, the regional director shall review the release recommendation. If the regional director approves the inmate shall be released from protective management.

(10) Protective Management Records.

(a) No change.

(b) An Inspection of Confinement Record, Form DC4-814, shall be maintained in each protective management area. Each Such record shall be signed by the staff person shall sign the record when entering and leaving the protective management area. Prior to leaving the protective management area, each the staff member will indicate any specific problems including any inmate who requires medical attention.

(c) A Record of Protective Management, Form DC4-867, shall be maintained for each inmate as long as the inmate is in protective management. Once the inmate is released from protective management, Form DC4-867 will be forwarded to

the warden for review. Once reviewed, these forms will be forwarded to classification to be filed in the institutional inmate record. This form shall be used to record any action, remarks or disposition made on a specific inmate. Notations shall be made by medical staff, the special review team, or other staff dealing directly with the inmate. If items are denied or removed from the inmate, the senior correctional officer on duty must approve the action. The items denied or removed will be documented ~~noted~~ on the Form DC4-867 and the chief correctional officer will make the final decision in regard to the appropriateness of that action no later than the next working day following this action. The supervising officer will document ~~make a notation of~~ any unusual occurrences or changes in the inmate's behavior and any action taken, if necessary. Changes in housing location or any other special action will also be documented ~~noted~~.

(11) The following forms Form DC4-867 and DC4-868 are hereby incorporated by reference. The effective date of these forms is December 4, 1990. A copy of the forms may be obtained from the Adult Services Program Office of Security and Institutional Management, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. If the form is to be mailed, a self-addressed envelope must accompany the request ~~must be accompanied by a self-addressed stamped envelope.~~

(a) Form DC4-867, Record of Protective Management, effective date December 4, 1990.

(b) Form DC4-868, Report of Protective Management, effective date \_\_\_\_\_.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.34, 945.04 FS. History—New 6-23-83, Formerly 33-3.082, Amended 3-12-84, 7-10-90, 12-4-90, 4-26-98, \_\_\_\_\_.

### 33-3.0084 Disciplinary Confinement.

#### (1) Confinement Facilities and Conditions.

(a) Cells. Inmates placed in disciplinary confinement should normally be placed in single cells. The confinement cells should be approximately the same square footage as utilized for general population inmates. Inmates will not be housed in disciplinary confinement cells in greater number than there are bunks in the cells. The only exception to this policy would be during an emergency situation as approved by the warden. However, if this exception exists in excess of twenty-four (24) hours, ~~then~~ the warden Superintendent must get specific authorization from the Regional Director to continue to house inmates in this manner.

1. All disciplinary confinement cells shall ~~will normally~~ be equipped with appropriate toilet facilities and running water for drinking and other sanitary purposes. Water in the cell can be turned off when necessary. ~~The master control for the running water may be placed outside the cell in the event it becomes necessary to cut off running water in a cell due to misbehavior.~~ In such event, the inmate occupant will be

furnished an adequate supply of drinking water by other means to prevent dehydration. This action shall be documented on Form DC4-815, Daily Record of Segregation.

2. Prior to placement of an individual in a disciplinary confinement cell, it will be thoroughly inspected to ensure that it is in proper order and the inmate housed in that cell will then be held responsible for the condition of the cell.

3. Disciplinary confinement cells shall ~~should~~ be physically separate ~~located separately~~ from administrative confinement and protective management cells, whenever possible. Whenever such location is not possible, physical barriers shall preclude the cross association of those in disciplinary confinement with those in administrative confinement and protective management. Disciplinary confinement units shall be built ~~the general inmate population, but in a common area~~ to permit verbal communication and to allow for unobstructed observation by staff. Additionally, whenever possible, disciplinary confinement cells should be ~~located separately from administrative and protective confinement cells and close management cells.~~

4. Each confinement cell shall ~~should~~ provide for a minimum of twenty foot-candles of light, including natural lighting, ~~unless the behavior of the occupant is such that removal of such light is necessary in order to control behavior. In such cases, approval of the senior correctional officer is required and such approval will be documented on the Daily Record of Segregation, DC4-815. Such light restriction will be for the shortest period necessary to gain control of the inmate. Once the inmate is removed from the light restricted status, such removal will also be noted on the DC4-815. The removal decision will also be made by the senior correctional officer.~~

5. Care shall ~~should~~ be exercised to maintain noise levels in confinement units at a reasonable level so as not to interfere with normal human activities.

#### (b) Restraint and Escort Requirements.

1. Prior to opening any cell for any purpose, including exercise, medical or disciplinary call-outs, telephone calls, recreation, and visits, all inmates in the cell shall be handcuffed behind their backs, unless documented medical conditions require that an inmate be handcuffed in front. In such cases, escort officers shall be particularly vigilant.

2. A minimum of two officers shall be physically present at the cell whenever the cell door is opened.

3. When escorting an inmate from a cell, the inmate shall be thoroughly searched. If the inmate is being taken outside the immediate housing unit, leg irons and other appropriate restraint devices shall be applied.

4. After the required restraints are applied, the inmate has been thoroughly searched, and the cell door has been secured, the second officer is authorized to leave the area.

5. If two inmates are being escorted from the same cell, both inmates can be escorted at the same time provided that the second officer remains to escort the second inmate and no

other movement is occurring on the wing. During all other situations, only one inmate at a time shall be escorted on each confinement wing.

(c)(b) Clothing and Bedding.

1. Inmates in disciplinary confinement shall be provided the same clothing and clothing exchange as the general inmate population unless there are ~~clear~~ facts to suggest that on an individual basis exceptions shall ~~should~~ be made for the welfare of the inmate or the security of the institution. In such cases, the exceptions should be noted on the DC4-815 Form and approved by the correctional officer chief Superintendent. Shower slides may be substituted for regulation shoes. Any item may be removed from the cell in order to prevent the inmate from inflicting injury to himself or herself or others or to prevent the destruction of property or equipment. If an inmate's clothing is removed, a modesty shroud/garment shall be immediately obtained and given to the inmate. If the inmate chooses not to wear the garment, the garment shall be left in the cell and this action shall be documented on Form DC4-815. Under no circumstances shall an inmate be left without a means to cover himself or herself.

2. Bedding and linen for those in disciplinary confinement shall ~~should~~ be issued and exchanged the same as is provided to the general inmate population. ~~Again, Any~~ exceptions shall ~~should~~ be based on potential harm to individuals or a clear threat to the security of the institution. Such exceptions shall ~~should~~ be documented ~~reflected~~ on the DC4-815.

(d)(e) Diet and Meals. Inmates in disciplinary confinement shall ~~should~~ receive a meals representative of the food served the general population, but not necessarily a choice of every item. Any food item that might create a security problem in the confinement area shall ~~may~~ be substituted ~~for~~ by another item of comparable quality and quantity.

(e)(f) Comfort Items. Inmates in confinement will be afforded the following comfort items as a minimum: toothbrush, toothpaste, bar of soap, towel (or paper towels), internal and external feminine hygiene products sanitary napkins for women, and toilet tissue.

(f)(e) No change.

(g)(f) Weighing. Inmates shall ~~will~~ be weighed upon entering disciplinary confinement, at least once a week while in confinement, and upon leaving confinement ~~and a record made thereof.~~ The weight of the inmate shall be documented on Form DC4-815, Daily Record of Segregation.

(h)(g) No change.

(i)(h) Correspondence.

1. Inmates in disciplinary confinement shall be allowed routine correspondence privileges unless restricted as provided in rule 33-22.008, Disciplinary Action. Inmates shall ~~should~~ be encouraged to write their family to advise them of their anticipated visiting status.

2. Grievance forms will also be made available to the inmate at any time regardless of his confinement status. Such forms will be immediately transmitted to the addressee without delay.

(j)(i) Legal Access.

1. Inmates An inmate in disciplinary confinement shall be permitted to have access to their personal legal papers and law books, to correspond with the may be required to conduct legal business by correspondence rather than a personal visit to the law library, to have the law library deliver research materials to their cells, and to if security requirements prevent a personal visit with certified inmate law clerks. However, all Steps shall must be taken to ensure that the inmates are is not denied needed access while in disciplinary confinement.

2. Written inmate requests for legal assistance shall be directed to the librarian and shall be responded to within 2 working days of receipt, not including the day of receipt. For purposes of this rule, "working day" shall mean any weekday not including holidays or weekends. Specific requests for cases, statutes or other reference materials, or requests for legal supplies or forms shall be responded to by means of correspondence. However, written inmate requests for legal assistance that are broad in scope, contain incorrect references to research materials, or where the styling or content of the request indicates that the inmate lacks an understanding of the law or legal research, that the inmate is functionally illiterate, or that the inmate may be impaired, shall be responded to by personal interview with an inmate law clerk or the librarian.

~~3.2.~~ Legal visits shall be allowed as provided in rule 33-5.011, Legal Visitors.

~~4.3.~~ Inmates will be provided ~~appropriate~~ paper and writing utensils in order to prepare legal papers. Typewriters or typing services are not considered required items and will not be permitted in confinement cells.

(k)(j) Telephone. Inmates in disciplinary confinement shall ~~are not be normally~~ allowed telephone privileges except in cases of emergency or when necessary to ensure the inmate's access to attorneys or the courts and only when alternative means of access are not feasible. Calls to ~~courts or~~ attorneys shall not be monitored.

(l)(k) Visiting Privileges.

1. Inmates in disciplinary confinement will be allowed visits only ~~under unusual circumstances~~ when specifically authorized by the warden Superintendent or his designated representative.

2. When an inmate is denied visiting privileges or has special visiting restrictions, it is the responsibility of the inmate to inform the visitors of such restrictions. Staff shall ~~should~~ specifically point out this responsibility to the inmate at such time as the restrictions become effective. If sufficient time has lapsed so that visitors could have been informed, then the visiting restrictions shall ~~may~~ be imposed even though visitors arrive and request visits. However, if insufficient time

precluded notification of the visitors of the restrictions imposed, consideration ~~shall~~ ~~should~~ be given for a special visitors pass. Such special consideration may be for a shorter period than the full visiting day.

(m)(+) Personal Property. Inmates are allowed to retain stamps, eyeglasses, hearing aids, personal watches, and rings in confinement unless their actions require removal of such. Superintendents may approve additional items on an individual basis.

(n)(+) No change.

(o)(+) Exercise. Those inmates confined on a twenty-four hour basis (excluding showers and clinic trips) may exercise in their cells. However, if confinement extends beyond a thirty-day period an exercise schedule ~~shall~~ ~~should~~ be implemented to ensure a minimum of ~~three~~ ~~two~~ hours per week of exercise ~~out of doors outside of the cell.~~ Such exercise periods ~~shall~~ ~~should~~ be documented on Form DC4-815 the confinement records. The warden or assistant warden is authorized to restrict exercise for an individual inmate only when the inmate is found guilty of a major rule violation. In this instance, a major rule violation is defined as: any assault, battery, attempted assault or battery; any spoken or written threat towards any person; inciting, attempting to incite or participating in any riot, strike, mutinous act or disturbance; fighting; possession of weapons, ammunition, explosives or escape paraphernalia; escape or escape attempt. Inmates shall be notified in writing of this decision and may appeal through the grievance procedure. The denial of exercise shall be no more than 15 days per incident and for no longer than 30 days cumulative length and shall be documented on Form DC4-815. A document detailing an in-cell exercise plan will be provided to the affected inmate at the beginning of any period of exercise restriction and shall be documented on Form DC4-815. Exceptions to this requirement may be made only when clear and compelling facts show that such exercise periods should not be granted. Restrictions may also be placed on the exercise periods by professional medical staff. The reasons for any exercise restrictions shall be documented.

(p) Canteen Items. Inmates in disciplinary confinement shall be allowed to purchase canteen items once every other week with the following restrictions:

1. Inmates in disciplinary confinement are prohibited from possessing or purchasing any canteen food items.

2. Inmates in disciplinary confinement shall be allowed to purchase a maximum of five non-food canteen items. In making this determination, with the exception of stamps and notebook paper, it is the number of non-food items that is counted, not the type of item. For example, three security pens counts as three items, not one item. Twenty-five stamps or fewer will count as one item and two packages or less of notebook paper will count as one item. Non-food items shall be limited to security pens, paper, stamps, roll-on or stick deodorant and shower slides.

(q) Writing utensils. Inmates in disciplinary confinement shall possess only security pens, with a possession limit of four pens. Other types of pens shall be confiscated and held until the inmate is released from disciplinary confinement status. A security pen is a specially designed pen, approved by the Bureau of Security Operations, that is flexible so that it bends under pressure and has a tip that retracts under excessive pressure. If no security pens are available, the inmate shall be allowed to sign out a regular pen from the confinement unit officer. All care shall be taken to ensure that an inmate who requests access to a pen in order to prepare legal documents or legal mail or to file a grievance with the department has access to a pen for a time period sufficient to prepare the legal mail, documents, or grievances.

(r)(+) Restrictions.

1. Any privilege listed within this section, except essential health items; (including prescribed medication); and receiving and sending legal mail or grievance forms ~~shall be subject to restriction~~ ~~may be restricted~~ when an inmate's conduct and behavior become unmanageable.

2. ~~Any item may be removed from the cell in order to prevent the inmate from inflicting injury to himself or others or to prevent the destruction of property or equipment.~~

2.3. ~~When any privilege is restricted or any item is removed from an inmate's cell in accordance with paragraphs 1. and 2. above, the action taken must be approved by the senior correctional officer. The action taken and the reason for it shall be documented recorded on the Daily Record of Segregation, Form DC-815. A receipt shall be given for any property taken. This action must be reviewed and approved by the correctional officer chief no later than the next working day following this action.~~

(2) Release From Disciplinary Confinement.

(a) ~~A correctional probation officer~~ ~~Disciplinary Team members~~ will frequently review the case of each inmate in disciplinary confinement, determine the inmate's attitude and return the inmate to the regular inmate population when, ~~in the Team's opinion,~~ he may reasonably be expected to adequately adjust and conform to the rules and regulations. Disciplinary confinement ~~shall~~ ~~should~~ always be for the shortest period of time that accomplishes the desired results of favorable adjustment. ~~The CPO is authorized to shorten time in disciplinary confinement may be shortened~~ for good behavior and attitude.

(b) No inmate will be held in disciplinary confinement to exceed the maximum penalty for the rule violation. Any inmate assigned to disciplinary confinement for 30 days ~~is to~~ be given a psychological assessment by appropriate mental health ~~the professional~~ staff to determine his mental condition. The assessment shall include a personal interview. The psychologist shall prepare a report to the warden Superintendent with the facts of the case. The warden Superintendent will then make a final decision regarding

continuation of confinement. All such assessments shall ~~are to~~ be documented in the mental health record. If the decision is to continue confinement and that confinement extends beyond 90 days, a new psychological assessment will be completed ~~accomplished~~ each 90-day period. If no ~~there is not~~ psychological staff are available at the institution or facility, the warden Superintendent shall make the decision whether to continue the disciplinary confinement.

(3) Visits to Disciplinary Confinement.

(a) Disciplinary confinement areas housing inmates shall require a physical visit to each cell at least:

1. Hourly by a correctional officer.

2. Daily by the Officer in Charge on duty for the day or evening shift, except in the case of riot or other institutional emergency.

1.3. Daily by a clinical health care person representative of the Medical Department except at Road Prisons and Community Facilities where full-time medical staff is not available. At such facilities the correctional officer assigned to the confinement area will check inmates in confinement at least every two hours to see whether any inmate has any obvious medical abnormalities, whether there is a need for immediate health care, and whether there is a need to bring anything to the attention of the contract physician. The contract physician must see all inmates in disciplinary confinement at least weekly.

2.4. As frequently as necessary by a correctional probation officer Disciplinary Team members to ensure that the inmate's welfare is properly provided for and to determine the time and method of release.

3.5. Weekly by the Chaplain if possible. The Chaplain is also authorized to He may also provide spiritual guidance and counsel to inmates in confinement and may distribute religious materials.

(b) A documented visual health and welfare/security check shall be made of all inmates in disciplinary confinement:

1. Daily by the housing area supervisor.

2. At least every 30 minutes by a correctional officer, but on an irregular schedule. An Inspection of Confinement Record, DC4-814, will be maintained in each disciplinary confinement housing area in the institution. All persons making visits to confinement will sign this form at the time of each visit. By signing the form, the officer is certifying that he has checked the confinement area.

(c) Disciplinary confinement housing areas will be visited:

1. Daily by the officer-in-charge on duty for all shifts except in the case of riot or other institutional emergency.

2. Daily by the correctional officer chief (when on duty at the facility) except in cases of riot or other institutional emergency.

3. Weekly by the warden and assistant wardens.

(d)(e) For the purposes of this rule, "special management inmate" means Any inmate who has demonstrated behavior that is or could be harmful to himself or herself shall be designated as a special risk inmate. If the inmate exhibits bizarre, mentally disordered, or self-destructive behavior, the medical department shall be immediately contacted to determine if special watch or suicide watch procedures should be initiated. Suicidal inmates shall be removed to a designated area where a correctional officer or medical staff provide observation. Visual checks shall be made in accordance with medical protocols or at least every 30 minutes and shall be documented on Form DC4-650 until the inmate is no longer considered a special risk inmate. All actions taken by staff with regard to special risk inmates shall be noted on Form DC4-815 and shall be followed with an incident report. Form DC3-301 could place himself, other inmates, or staff in a situation where grievous harm may be inflicted or who has become an extreme security risk. An inmate who, in the opinion of staff, has become a special management inmate while in disciplinary confinement should be placed in a location, either in confinement or another designated area, where more frequent observation can be given and checks made by the correctional officer or medical staff at least every 30 minutes until the inmate is no longer considered a special management inmate.

(4) Daily Record of Segregation.

(a) A Daily Record of Segregation, Form DC4-815, will be maintained on each inmate in disciplinary confinement. Inmates placed in confinement shall be weighed. Inmates confined for 30 days or more shall be weighed after 30 days and weekly thereafter. The weight of the inmate shall be recorded on Form DC4-815, Daily Record of Segregation. The supervising officer of the day and the evening shift, health care representatives of the medical staff, and a disciplinary team member will sign the DC4-815 form whenever they make a visit to a specific inmate. Full and complete remarks are to be made in the following situations:

1.(a) Security Custodial Department – Supervising Officer.

a.1. Whenever a check of inmates is made on routine or special basis.

b.2. When there is an unusual occurrence in the inmate's behavior.

c.3. When it becomes necessary to notify the mMedical dDepartment.

d.4. When it becomes necessary to restrict any privilege or remove any clothing, bedding or comfort item for the inmate's own protection or to prevent destruction.

e.5. If the inmate refuses food.

f.6. Cell changes.

g.7. Release to population.

h.8. To further explain a notation made under the "Physical Appearances" or "Attitude" sections of the Daily Record of Segregation.

i.9. When medication is issued by the sSecurity sStaff upon medical instructions.

2.(b) Medical Department.

a.1. When the inmate is ordered removed from confinement and where relocated.

b.2. When the inmate's diet is ordered changed.

c.3. When changes of clothing, bedding or other restrictions are ordered.

d.4. When complaints are received and treatment is given.

e.5. When any unusual circumstances occur.

f.6. When medication is dispensed.

3.(e) Correctional Probation Officer Disciplinary Team.

a.1. Upon each review of the case.

b.2. Upon release from confinement.

(b) The DC4-815, Daily Record of Segregation, shall be maintained in the housing area for one week, at which time the form shall be forwarded to the warden for review. Once reviewed, the form shall be forwarded to classification to be filed in the institutional inmate record.

(5) Inspection of Confinement Record. Form DC4-814, Inspection of Confinement Record, shall be maintained in each disciplinary confinement area. Each staff person shall sign the form when entering and leaving the disciplinary confinement area. Prior to leaving the disciplinary confinement area, each staff member shall indicate any specific problems, including identification of any inmate who required special attention. Upon completion, the DC4-814 will be maintained in the housing area and will be forwarded to the correctional chief on a weekly basis where it will be maintained on file pursuant to the current retention schedule.

(6) Staffing issues.

(a) Officers assigned to a confinement unit shall be rotated every 18 months to another assignment for a period of at least one year. Any officer assigned to a confinement post shall be authorized a minimum period of five days annual leave or a five day assignment to a less stressful post every six months.

(b) The Inspector General shall notify the warden and regional director of any officer involved in eight or more use of force incidents in an 18 month period. The regional director will review the circumstances for possible reassignment.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09 FS. History--New 3-12-84, Formerly 33-3.084, Amended 7-10-90, 4-28-96, 12-7-97,

33-3.0085 Special Management Meal.

(1) through (3) No change.

(4) Placement on the Special Management Meal.

(a) When any employee observes inmate behavior that he believes meets the criteria for application of the special management meal, the employee shall prepare Form DC3-013, Special Management Meal Report, and forward the report to the Chief cCorrectional oOfficer chief for review. Form DC3-013, Special Management Meal Report, is hereby

incorporated by reference. A copy of this form may be obtained from the Office of Security and Institutional Management Operations, Department of Corrections, 2601 Blair Stone Road 1311 Winewood Boulevard, Tallahassee, Florida 32399-2500. If forms are to be mailed, the request must be accompanied by a self-addressed stamped envelope must accompany the request. The effective date of this form is \_\_\_\_\_ the same as the effective date of this rule.

(b) If the Chief cCorrectional oOfficer chief determines that the behavior cannot be corrected through routine counseling or by established disciplinary procedures, a discussion shall take place at the inmate's cell between the inmate, the oOfficer in cCharge, and the reporting officer, if needed. The oOfficer in cCharge shall complete the discussion section of the report. The Special Management Meal Report shall document the reasons for recommending the special management meal and shall include a summary of the inmate's comments or objections. When an inmate has been recommended for placement on the special management meal, the cChief hHealth oOfficer or other designated health care medical staff member shall indicate on the Special Management Meal Report whether there is any medical reason that would prohibit placing the inmate on special management meal status. When there is a medical problem, the cChief hHealth oOfficer or other designated medical staff member shall ~~then~~ determine whether the inmate can be placed on the special management meal or whether an alternative special meal can be prescribed. No inmate shall be placed on special management meal status without medical approval. The Chief cCorrectional oOfficer chief shall then forward the report to the warden Superintendent for approval.

(c) The warden Superintendent or his designee shall approve or disapprove all recommendations for placement on the special management meal based on the criteria set forth in subsection (2) above.

(5) Canteen privileges authorized by 33-3.0081(8)(9)(n)(m), 33-3.0082(9)(j)6, and 33-38.003 33-3.0083(3)(f) for inmates in administrative confinement; ~~protective confinement~~, and close management status shall be suspended for the duration of the period that an inmate is on special management meal status.

(6) The Chief cCorrectional oOfficer chief and a clinical health care person representative of the medical staff shall visit each inmate on special management meal status on a daily basis, except in case of riot or other institutional emergency. The shift supervisor shall act as the chief correctional officer's designee and shall conduct the daily visit in the chief's absence. The purpose of the daily visit is to follow the inmate's progress while on the special management meal and to determine when the inmate should be removed from the special management meal status.

(7) An inmate may be removed from special management meal status at any time based on:



(a) The recommendation of the ~~Chief~~ cCorrectional ~~Officer~~ chief and the approval of the ~~warden~~ Superintendent; or

(b) Medical reasons as determined by the ~~Chief~~ hHealth ~~Officer~~ or other designated health care ~~medical~~ staff.

(8) No change.

Specific Authority 20.315, 944.09 FS. Law Implemented 20.315, 944.09 FS. History—New 1-11-88, Amended 3-4-92, 5-27-97, 11-25-98, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Stan Czerniak

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael W. Moore

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 18, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 7, 1999

**DEPARTMENT OF CORRECTIONS**

RULE TITLES:	RULE NOS.:
General	33-38.001
Privileges in Close Management	33-38.003
Assignment to Close Management	33-38.005
Review of Assignment to Close Management	33-38.006
Case Management Responsibilities	33-38.009
Close Management Facilities	33-38.010
Other Conditions and Privileges	33-38.011
Close Management Records and Forms	33-38.012

PURPOSE AND EFFECT: The purpose and effect of the proposed rule amendments is as follows: restricts purchase of canteen items and possession of specific items by close management inmates; provides for more frequent observation of close management inmates; provides specific procedures for staff to follow when close management inmates demonstrate self-destructive behavior; provides for issuance of a modesty garment in situations where an inmate's clothes must be removed; increases the time limit for notice of close management review; removes the custody scoresheet requirement from the close management review process; and allows for electronic signature of the close management review form, corrects the title reference to a form incorporated by reference in another rule; and revises language concerning conditions of confinement for consistency throughout.

SUMMARY: The proposed rules clarify and strengthen requirements concerning administration of close management units. The proposed amendments specifically address the treatment of inmates exhibiting self-destructive or mentally disordered behavior, exercise for inmates in close management and assignment of officers to close management units.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 944.09 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:00 a.m., October 5, 1999

PLACE: Law Library Conference Room, Room B-404, 2601 Blair Stone Road, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Perri King Dale, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULES IS:

33-38.001 General.

(1) Close management is the confinement of an inmate apart from the general population, for reasons of security, or the order and effective management of the institution, where the inmate, through his own behavior, has demonstrated an inability to live in the general population without abusing the rights and privileges of others. The goal of close management shall be toward assignment of the inmate to the least restrictive level to meet the management needs of the inmate and returning the inmate to open population as soon as the facts of the case suggest it is in the best interest of the security and order of the institution and public safety. To aid in this transition back into open population, the close management review team is authorized to place Close Management III inmates in work assignments outside the close management unit and in assignments usually assigned to open population inmates. The secretary shall designate which institutions are authorized to house close management inmates, based on the needs of the department.

(2) Restraint and Escort Requirements.

(a) Prior to opening any cell for any purpose, including exercise, medical or disciplinary call-outs, telephone calls, recreation, and visiting, all inmates in the cell shall be handcuffed behind their backs. If documented medical conditions require that inmates be handcuffed in front, the escort officers shall be particularly vigilant.

(b) A minimum of two officers shall be physically present at a cell whenever the cell door is opened.

(c) When escorting an inmate from a cell the inmate shall be thoroughly searched. If the inmate is being taken outside the immediate housing unit, leg irons and other appropriate restraint devices shall be applied.

(d) Due to the unique mission of close management units, it is understood that more than one inmate may be out of his or her cell within the unit at any one time. However, whenever inmates are being escorted in restraints, there shall be one officer with each inmate and the inmates shall be kept at a distance from each other which would preclude any unauthorized physical contact.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History—Formerly 33-3.0083, Amended 10-1-95, 4-14-98, \_\_\_\_\_.

33-38.003 Privileges in Close Management.

The inmate's movements within the institution and contacts with other persons shall be restricted and privileges for specific management levels shall be limited.

(1) Privileges for inmates assigned to close management level I who maintain a satisfactory adjustment (as defined in rule 33-11.0035):

(a) through (c) No change.

(d) Make canteen purchases once per month, unless restricted by disciplinary team action. Canteen purchases are subject limited to the following limitations health and comfort items and writing supplies, including stamps, unless modified by rule 33-38.011(1) and (2):

1. Close management I and II inmates, including those inmates housed in disciplinary confinement status, shall not be allowed to purchase any canteen food items.

2. Close management I and II inmates shall be allowed to purchase a maximum of 5 non-food canteen items. In making this determination, with the exception of stamps and notebook paper it is the number of non-food items that is considered, not the type of item. For example, three security pens count as three items, not one item. 25 stamps or fewer count as one item and two packages or less of notebook paper count as one item.

(e) through (h) No change.

(2) No change.

(3) Privileges for inmates assigned to close management level III in addition to the privileges provided for in levels I or II are:

(a) through (b) No change.

(c) Inmates who are on close management III status and have not received a disciplinary report for 90 days while on close management III status shall be allowed to purchase a maximum of four canteen food items. In making this determination, it is the number of food items that is considered, not the type of food. For example, three packages of cookies count as three items, not one item. Any disciplinary reports received by the inmate between the time that the inmate requests canteen food items and the delivery of those items shall result in disapproval of those requested items.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History—Formerly 33-3.0083, Amended 10-1-95, 4-14-98, 9-2-98, \_\_\_\_\_.

33-38.005 Assignment to Close Management.

(1) The close management review shall be documented on a ~~R~~report of ~~C~~elose ~~M~~management, ~~F~~form DC4-813(c). The inmate shall be given a minimum of ~~48~~ ~~24~~ hours to prepare for the review and may present information verbally or in writing for consideration by the close management review team. The close management review team is authorized to postpone the case review to allow the inmate additional time to prepare. A staff assistant shall be assigned when the team determines the inmate is illiterate or does not understand English, or when the complexity of the issue makes it unlikely that the inmate will be able to properly represent himself or herself or when the inmate indicates that he or she needs or desires staff assistance. It is the responsibility of the staff assistant to explain the close management recommendations and procedures to the inmate. The designated staff assistant shall be authorized to:

(a) through (d) No change.

(2) The close management review team shall inform the inmate of the basis for its decision and provide a copy of the team's decision to the inmate after ~~at~~ the conclusion of the review.

(3) through (4) No change.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History—Formerly 33-3.0083, Amended 10-1-95, \_\_\_\_\_.

33-38.006 Review of Assignment to Close Management.

The close management review team shall convene as often as necessary to ensure each inmate is reviewed at least once every six months to determine if continuation, modification, or removal from close management status is appropriate.

(1) The report of close management will be completed by ~~a~~ ~~the~~ correctional probation officer ~~assigned to close management~~ and will serve as a scheduled progress report for the inmate. The following elements shall be considered:

(a) through (e) No change.

(2) The review by the close management review team shall include the following:

(a) The correctional probation officer review as documented on ~~F~~form DC4-813(c), ~~R~~report of ~~C~~elose ~~M~~management.

~~(b) Completion of an updated custody score sheet.~~

~~(b)(e)~~ Review of the ~~D~~aily ~~R~~ecord of ~~C~~onfinement, ~~F~~orm (DC4-815).

~~(c)(d)~~ Review of the reasons for placement into close management.

~~(d)(e)~~ Interview of the inmate by the close management review team pursuant to 33-38.005(3).

~~(e)(f)~~ Review of the inmate file or any other information essential to complete the review.

(3) The action of the team shall be documented on the Report of Close Management, Form DC4-813(c). Each team member shall sign the report by hand or electronically. If signed by hand, with the name shall be typed or printed under the signature.

(4) through (7) No change.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History—Formerly 33-3.0083, Amended 10-1-95, 4-14-98, \_\_\_\_\_.

33-38.009 Case Management Responsibilities.

(1) Inmates in close management shall be reviewed by the assigned correctional probation officer every week and the review shall be documented on the Daily Record of Segregation confinement, Form DC4-815.

(2) Any inmate assigned to close management for more than 30 continuous days shall be given a psychological assessment by appropriate mental health professional medical staff to determine his mental condition. For inmates who remain in confinement beyond 90 continuous days, a psychological assessment shall be completed each 90 day period. The assessment shall include a personal interview. All psychological assessments will be documented in the inmate's mental health record file. Only those cases recommended for a change in status need to have a report prepared for the warden superintendent. The warden superintendent shall then make a final decision regarding continuation of confinement based on the facts and recommendations in the report.

(3) A written assessment and evaluation report by a correctional probation officer ~~the inmate's classification team~~ is required on inmates in close management each six months for review by the close management review team on Form DC4-813(c).

(4) Inmates in close management shall receive a personal contact a minimum of:

(a) ~~At least every hour by a correctional officer.~~

(b) ~~Daily by the housing unit supervisor on duty for the day and evening shift, except in the case of an institutional emergency.~~

(a)(e) Daily by a clinical health care person representative of the medical department.

(b)(d) As frequently as necessary, but not less than weekly, by the inmate's assigned correctional probation officer to ensure that the inmate's welfare is properly provided for, and to determine the need for any program change recommendations.

(e) ~~The officer in charge on duty for the day or evening shift shall visit the housing unit to observe the operation and make any adjustments appropriate.~~

(c)(g) Weekly by the chaplain ~~if possible~~. More frequent visits shall ~~should~~ be made upon request of the inmate, if the chaplain's schedule permits.

(5) A documented visual health and welfare/security check shall be made of all inmates in close management:

(a) Daily by the area housing supervisor.

(b) At least every 30 minutes by a correctional officer, but on an irregular schedule.

(6) Close management housing areas will be visited:

(a) Daily by the officer in charge on duty for all shifts except in the case of riot or other institutional emergency.

(b) Daily by the correctional officer chief (when on duty at the facility) except in case of riot or other institutional emergency.

(c) Weekly by the warden and assistant wardens.

(7)(5) For the purposes of this rule, "special management inmate" means Any inmate who has demonstrated behavior that is or could be harmful to himself or herself shall be designated as a special risk inmate. If the inmate demonstrates bizarre, mentally disordered, or self-destructive behavior, the medical department shall be immediately contacted to determine if special watch or suicide watch procedures should be initiated. Suicidal inmates shall be removed to a designated area where a correctional officer or health care staff will provide observation. Visual checks shall be made in accordance with medical protocols or at least every 30 minutes and shall be documented on Form DC4-650 until the inmate is no longer considered a special risk inmate. All actions taken by staff with regard to special risk inmates shall be documented on Form DC4-815, to be followed by the completion of an Incident Report, Form DC3-301 could place himself, other inmates, or staff in a situation where grievous harm may be inflicted or who has become an extreme security risk. An inmate who, in the opinion of the senior correctional officer on duty, has become a special management inmate while in close management shall whenever possible be placed in a location, either in confinement or another designated area, where more frequent observation can be given and checks made by the correctional officer or medical staff at least every 30 minutes until the inmate is no longer considered a special management inmate.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History—Formerly 33-3.0083, Amended 10-1-95, 4-14-98, \_\_\_\_\_.

33-38.010 Close Management Facilities.

(1) The number of inmates housed in a close management cell shall not exceed the number of beds in the cell except during an emergency situation as approved by the superintendent. Such exceptions shall not continue for more than 24 hours without the specific authorization of the regional director.

(2) All close management cells will be equipped with toilet facilities and running water for drinking and other sanitary purposes. Water in the cell can be turned off when necessary due to misbehavior. In such event, the inmate occupant shall be furnished with an adequate supply of

drinking water by other means to prevent dehydration. This action shall be documented on Form DC4-815, Daily Record of Segregation.

(3) through (4) No change.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History—Formerly 33-3.0083, Amended 10-1-95, 4-14-98, \_\_\_\_\_.

### 33-38.011 Other Conditions and Privileges.

(1) Comfort Items – Inmates in close management shall be permitted personal hygiene items and other medically needed or prescribed items such as eye glasses, and hearing aids, etc., except when security requirements dictate otherwise. Inmates in close management shall not possess any products that contain baby oil, mineral oil, cocoa butter or alcohol. In the event certain items that inmates in close management are not normally prohibited from possessing are removed from inmates in close management, the senior supervising correctional officer on duty shall be notified and must approve the action taken, or the item must be returned to the inmate. Action taken will be recorded on the Daily Record of Segregation confinement, Form DC4-815, which must be reviewed and approved by the correctional officer chief. Property receipts will be given for any personal property removed. The following comfort items will be provided as a minimum: toothbrush, toothpaste, bar of soap, towel (or paper towels), internal and external feminine hygiene products ~~sanitary napkins~~ (female), and toilet tissue.

(2) Inmates shall be allowed to retain personal property including stamps, watches, rings and health and comfort items unless there is an indication of a security concern problem, in which case removal of any item will be documented on form DC4-815 and a property receipt issued. The warden superintendent shall determine, based on institutional considerations, whether additional property is to be allowed. Radios, tape players, record players, television sets, and other electronic entertainment devices are not authorized for inmates in close management, except as authorized by rule 33-3.002(17).

(3) Personal Hygiene – Inmates in close management shall meet the same standards in regard to personal hygiene as required of the general inmate population.

(a) through (b) No change.

~~(c) Bedding and linen will be issued and exchanged for close management inmates the same as for the general population.~~

(4) through (5) No change.

(6) Diet – All inmates in close management shall receive institutional meals as are available to the general inmate population, except that if any item on the menu might create a security problem in the close management area, then another item of comparable quality may be substituted. Other substitutions shall be documented on the Daily Record of Segregation confinement, Form DC4-815.

(7) No change.

~~(8) Clothing and Bedding – Belts may be removed. Inmates in close management shall be provided the same clothing and clothing exchange as the general inmate population unless there are facts to suggest that on an individual basis exceptions are required for the welfare of the inmate or the security of the institution. In such cases, the exceptions shall be documented on Form DC4-815 and approved by the correctional officer chief. Shower slides or slip-on canvas shoes for cell use may be substituted for regulation shoes. Otherwise the clothing for inmates in close management shall be comparable to that available to the general inmate population except when security concerns dictate otherwise. In such cases, when clothing is denied to an inmate it shall be noted on form DC4-815, stating the reasons for such denial. Any item may be removed from the cell in order to prevent the inmate from inflicting injury to himself or herself or others or to prevent the destruction of property or equipment. If an inmate's clothing is removed, a modesty shroud/garment shall be immediately obtained and given to the inmate. If the inmate chooses not to wear the garment, the garment shall be left in the cell and this action shall be documented on Form DC4-815. Under no circumstances shall an inmate be left without a means to cover himself or herself.~~

2. Bedding and linen for inmates in close management shall be issued and exchanged the same as is provided to the general inmate population. Any exceptions shall be based on potential harm to individuals or a threat to the security of the institution and shall be documented on Form DC4-815.

(9) Exercise – Those inmates confined on a 24 hour basis, excluding showers and clinic trips, may exercise in their cells. However, if confinement extends beyond a 30 day period, ~~there shall be an exercise schedule~~ shall be implemented to ensure providing a minimum of three ~~2~~ hours per week of exercise out of doors outside of the cell. Such exercise periods shall be documented on Form DC4-815 in the confinement records. The warden or assistant warden is authorized to restrict exercise for an individual inmate only when the inmate is found guilty of a major rule violation. In this instance, a major rule violation is defined as: any assault, battery, or attempted assault or battery; any spoken or written threat towards any person; inciting, attempting to incite, or participating in any riot, strike, mutinous act or disturbance; fighting; possession of weapons, ammunition, explosives or escape paraphernalia; escape or escape attempt. Inmates shall be notified in writing of this decision and may appeal through the grievance procedure. The denial of exercise shall be no more than 15 days per incident and for no longer than 30 days cumulative length and shall be documented on Form DC4-815. A document detailing an in-cell exercise plan will be provided to the affected inmate at the beginning of any period of exercise restriction and shall be documented on Form DC4-815. Exceptions to this requirement shall may be made

only when safety and security concerns can document such exercise periods should not be granted and the withholding of exercise is approved by the close management review team. Medical restrictions may also place limitations on the exercise periods. Wellness programs may be available for the exercise period provided such activity does not interfere with the safety of staff and inmates or security of the institution.

(10) No change.

(11) Writing Utensils. Inmates in close management status shall possess only security pens, with a possession limit of four pens. Other types of pens shall be confiscated and held until the inmate is released from close management status. A security pen is a specially designed pen, approved by the Bureau of Security Operations, that is flexible so that it bends under pressure and has a tip that retracts under excessive pressure. If no security pens are available, the inmate shall be allowed to sign out a regular pen from the close management unit officer. All care shall be taken to ensure that an inmate who requests access to a pen in order to prepare legal documents or legal mail or to file a grievance with the department has access to a pen for a time period sufficient to prepare the legal mail, documents, or grievances.

(12) Staffing Issues.

(a) Officers assigned to a close management unit shall be rotated to another assignment every 18 months for a period of at least one year. Any officer assigned to a close management post shall be authorized a minimum period of five days annual leave or a five day assignment to a less stressful post every six months.

(b) The Inspector General shall notify the warden or regional director of any officer involved in eight or more use of force incidents in an 18 month period. The regional director will review the circumstances for possible reassignment.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History—Formerly 33-3.0083, Amended 10-1-95, \_\_\_\_\_.

33-38.012 Close Management Records and Forms.

(1) A report of close management, form DC4-813(c), shall be kept for each inmate placed in close management. A photocopy of the DC4-813(c) shall be kept in the close management unit with the other close management records for each inmate. Upon completion of the DC4-813(c), the white copy of the form will be mailed to central office to be filed in the central office inmate record and the pink copy will be filed in the institutional inmate record.

(2) An inspection of confinement record, form DC4-814, shall be maintained in each close management area. Each such record shall be signed by the staff person shall sign the form when entering and leaving the close management area. Prior to leaving the close management area, each the staff member will indicate any specific problems including any inmate who required special attention. Upon completion, the DC4-814 Inspection of Confinement Record will be maintained in the

housing area and forwarded to the correctional chief on a weekly basis where it will be maintained on file pursuant to the current retention schedule.

(3) A Daily Record of Segregation eonf~~in~~ement, form DC4-815, shall be maintained for each inmate as long as he is in close management. The DC4-815 shall be utilized to document any and all activities, including cell searches, removal of any items, showers, recreation, and haircuts and shaves. If items that inmates in close management are not normally prohibited from possessing are denied or removed from the inmate, the shift officer in charge or the confinement or close management lieutenant senior correctional officer on duty must approve the action initially. The items denied or removed shall be documented noted on the Form DC4-815 and the chief correctional officer shall make the final decision in regard to the appropriateness of that action no later than the next working day following this action. The supervising officer shall make a notation of any unusual occurrences or changes in the inmate's behavior and any action taken. Changes in housing location or any other special action shall also be noted. The DC4-815, Daily Record of Segregation shall be maintained in the housing area for one week, at which time the form will be forwarded to the superintendent for review. Once reviewed, these forms will be forwarded to classification to be filed in the institutional inmate record.

(4) Form DC4-813(c), Report of Close Management, is hereby incorporated by reference. A copy of this form is available from the ~~Adult Services Program~~ Office of Security and Institutional Management, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. If the form is to be mailed, ~~the request must be accompanied by~~ a self-addressed stamped envelope must accompany the request. The effective date of this form is October 1, 1995.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History—Formerly 33-3.0083, Amended 10-1-95, 4-14-98, \_\_\_\_\_.

**FLORIDA LAND AND WATER ADJUDICATORY COMMISSION**

RULE CHAPTER TITLE:	RULE CHAPTER NO.
The Poinciana Community Development District	42AA-1
RULE TITLES:	RULE NOS.:
Establishment	42AA-1.001
Boundary	42AA-1.002
Supervisors	42AA-1.003

PURPOSE, EFFECT AND SUMMARY: The purpose of this proposed rule is to establish a community development district (CDD), The Poinciana Community Development District (“the District”), pursuant to Chapter 190, F.S. The amended petition to establish the District, filed by Avatar Properties, Inc., (Petitioner), requests that the Florida Land and Water Adjudicatory Commission establish by rule The Poinciana CDD. The land area proposed to be served by the District will be approximately 3,031 acres. All proposed lands in the

District are within Polk County, bounded on the North by Cypress Parkway; bounded on the South by Huckleberry Avenue and Juniper Street and lands of the South Florida Water Management District and Poinciana Village 3 Neighborhood 6 South; bounded on the West by Rhododendron Avenue and land of Parker-Poinciana, Inc.; and bounded on the East by Marigold Avenue, Walnut Avenue, and Haines City Road, and Poinciana Village 3 Neighborhood 3. This District is designed to provide community infrastructure, services, and facilities along with their operations and maintenance to the Poinciana development. The District will be a fully amenitized residential community oriented toward the active adult. The development plan for the proposed lands within the District includes the construction of approximately 6,500 single family and higher density residential dwelling units, neighborhood pools, an arts and crafts center, outdoor sports center, a ballroom, 18 holes of golf, golf clubhouse, spa and fitness center, restaurants, and parks. All are authorized for inclusion within the District. There is no real property within the external boundaries of the proposed District which is to be excluded from the District, other than a 0.20-acre lot which is in private ownership and a 2.5-acre substation owned by Florida Power Corporation. There will not be any adverse impact to the public or the proposed District or the two property owners resulting from the exclusion of the 0.20-acre lot or the 2.5-acre substation from the proposed District.

SPECIFIC AUTHORITY: 190.005 FS.

LAW IMPLEMENTED: 190.004, 190.005 FS.

SUMMARY OF THE STATEMENT OF ESTIMATED REGULATORY COSTS: The District has prepared a Statement of Estimated Regulatory Costs (SERC). The complete text of the SERC is contained as Exhibit 7 to the amended petition to establish the District. The Poinciana Community Development District will be empowered to own, operate and maintain community-wide infrastructure consisting of systems, facilities and services for the benefit of the property and residents within the boundaries of the District as authorized by Chapter 190, Florida Statutes. It is possible that the District will be asked to issue revenue or special assessment bonds to be used in providing capital and other facilities, which bonds would be repaid by non-ad valorem special assessments levied on all specially-benefited properties in the District, as well as user fees or charges. The cost of implementing this rule to Polk County, its residents and to all applicable state agencies for processing the documents is nominal. The cost to the present and future property owners in the establishment of the District as created by general law is nominal and in the operations of the District will be reasonable. The County was paid a \$15,000.00 processing fee to offset its cost of review of the petition to establish the District. Administrative costs will be incurred by the Florida Land and Water Adjudicatory Commission, the Division of

Administrative Hearings, the Bureau of Local Government Finance/Office of the Comptroller, and the Florida Department of Community Affairs. Other than administrative costs, no costs will be incurred by the State of Florida or the general citizenry from the establishment or operations of the District. The impact of District establishment and function on competition and employment market is marginal and generally positive, as is the impact on small business. None of the reasonable public or private alternatives, including an assessment of less costly and less intrusive methods and of probable costs and benefits of not adopting the rule, is as economically viable as establishing the District. Establishment of the District will not have any impact on small counties and cities. Polk County is not a small county as defined. Methodology is set forth in the economic impact statement on file.

Any person who wishes to provide the Florida Land and Water Adjudicatory Commission information regarding the statement of estimated regulatory costs, or wishes to provide a proposal for a lower cost regulatory alternative as provided by section 120.541(1), must do so in writing within twenty-one (21) days of the date of this notice. Information should be filed with: Teresa Tinker, Florida Land and Water Adjudicatory Commission, The Capitol, Room 2105, Tallahassee, Florida 32399-0001.

IF REQUESTED WITHIN TWENTY-ONE (21) DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., Monday, September 27, 1999

PLACE: Room 2106, The Capitol, Tallahassee, Florida

Any person requiring a special accommodation to participate in the hearing because of a disability should contact Barbara Leighty at (850)488-7793 at least 3 business days in advance to make appropriate arrangements.

COPIES OF THE PROPOSED RULES AND ESTIMATED REGULATORY COSTS STATEMENT MAY BE OBTAINED BY CONTACTING: Teresa Moore, Greenberg Traurig, Post Office Box 20629, West Palm Beach, Florida 33416-0629, telephone (561)650-7900 or Barbara Leighty, Senior Governmental Analyst, Florida Land and Water Adjudicatory Commission, The Capitol, Room 2105, Tallahassee, Florida 32399-0001, telephone (850)488-7793

THE FULL TEXT OF THE PROPOSED RULES IS:

42AA-1.001 Establishment.

Poinciana Community Development District is hereby established.

Specific Authority 190.005 FS. Law Implemented 190.004, 190.005 FS. History—New

42AA-1.002 Boundary.

The boundaries of the district are as follows:

PARCEL APERIMETER DESCRIPTIONLEGAL DESCRIPTION

A PORTION OF SECTIONS 13, 14, 15, 22, 23, 24, 25, 26, 35 AND 36, IN TOWNSHIP 27 SOUTH, RANGE 28 EAST, POLK COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A POINT LOCATED AT THE NORTHWEST CORNER OF POINCIANA NEIGHBORHOOD 1 EAST, VILLAGE 4, IN TOWNSHIP 27 SOUTH, RANGE 28 EAST, AS RECORDED IN PLAT BOOK 56, PAGE 25, OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA, THENCE RUN S04°54'45"E FOR A DISTANCE OF 301.04 FEET TO THE POINT OF BEGINNING. SAID POINT OF BEGINNING BEING LOCATED ON THE SOUTHERLY SIDELINE OF CYPRESS PARKWAY AND THE EASTERLY SIDELINE OF RHODODENDRON AVENUE; THENCE RUN

S89°554'30"E FOR A DISTANCE OF 2930.85 FEET; THENCE RUN S89°546'58"E FOR A DISTANCE OF 5321.93 FEET; THENCE RUN S89°558'45E FOR A DISTANCE OF 886.32 FEET; THENCE RUN EASTERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE NORTH HAVING A RADIUS OF 2059.86 FEET, THROUGH A CENTRAL ANGLE OF 19°504'49" A DISTANCE OF 685.96 FEET; THENCE RUN EASTERLY ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 25.00 FEET, THROUGH A CENTRAL ANGLE OF 93°512'37" A DISTANCE OF 40.67 FEET; THENCE RUN SOUTHERLY ALONG THE ARC OF A CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 3139.52 FEET, THROUGH A CENTRAL ANGLE OF 20°542'36" A DISTANCE OF 1134.80 FEET; THENCE RUN SOUTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 25.00 FEET, THROUGH A CENTRAL ANGLE OF 90°58'35" A DISTANCE OF 39.70 FEET; THENCE RUN N84°509'21"W FOR A DISTANCE OF 396.38 FEET; THENCE RUN WESTERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE SOUTH HAVING A RADIUS OF 650.53 FEET, THROUGH A CENTRAL ANGLE OF 23°40'59" A DISTANCE OF 268.90 FEET; THENCE RUN WESTERLY ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 540.00 FEET, THROUGH A CENTRAL ANGLE OF 67°517'36" A DISTANCE OF 634.23 FEET; THENCE RUN S04°552'04"W FOR A DISTANCE OF 1734.81 FEET; THENCE RUN SOUTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 560.00 FEET, THROUGH A CENTRAL ANGLE OF 28°542'35" A DISTANCE OF 280.60 FEET; THENCE RUN S33°534'39"W FOR A DISTANCE OF 472.17 FEET; THENCE RUN S56°525'21"E FOR A DISTANCE OF

1140.00 FEET; THENCE RUN EASTERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE SOUTH HAVING A RADIUS OF 25.00 FEET, THROUGH A CENTRAL ANGLE OF 90°500'00" A DISTANCE OF 39.27 FEET; THENCE RUN S33°534'39"W FOR A DISTANCE OF 258.00 FEET; THENCE RUN SOUTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE EAST HAVING A RADIUS OF 1825.00 FEET, THROUGH A CENTRAL ANGLE OF 35°513'56" A DISTANCE OF 1122.23 FEET; THENCE RUN S01°539'17"E FOR A DISTANCE OF 1818.87 FEET; THENCE RUN SOUTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 1125.00 FEET; THROUGH A CENTRAL ANGLE OF 37°545'34" A DISTANCE OF 741.41 FEET; THENCE RUN S36°506'17"W FOR A DISTANCE OF 469.92 FEET; THENCE RUN SOUTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE EAST HAVING A RADIUS OF 1525.00 FEET, THROUGH A CENTRAL ANGLE OF 46°506'17" A DISTANCE OF 1227.14 FEET; THENCE RUN S10°500'00"E FOR A DISTANCE OF 403.95 FEET; THENCE RUN SOUTHERLY ALONG THE ARC OF A CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 3350.00 FEET, THROUGH A CENTRAL ANGLE OF 10°500'00" A DISTANCE OF 584.69 FEET; THENCE RUN S00°500'00"E FOR A DISTANCE OF 1200.84 FEET; THENCE RUN SOUTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE EAST HAVING A RADIUS OF 2075.00 FEET, THROUGH A CENTRAL ANGLE OF 20°519'55" A DISTANCE OF 736.33 FEET; THENCE RUN S20°519'55"E FOR A DISTANCE OF 443.56 FEET; THENCE RUN SOUTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 1925.00 FEET, THROUGH A CENTRAL ANGLE OF 26°536'00" A DISTANCE OF 893.70 FEET; THENCE RUN S06°516'05"W FOR A DISTANCE OF 520.38 FEET; THENCE RUN SOUTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 6225.00 FEET, THROUGH A CENTRAL ANGLE OF 09°504'15" A DISTANCE OF 985.52 FEET; THENCE RUN S15°520'20"W FOR A DISTANCE OF 1617.02 FEET; THENCE RUN N74°539'40"W FOR A DISTANCE OF 269.91 FEET; THENCE RUN WESTERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE SOUTH HAVING A RADIUS OF 1575.00 FEET, THROUGH A CENTRAL ANGLE OF 15°520'20" A DISTANCE OF 421.65 FEET; THENCE RUN N90°500'00"W FOR A DISTANCE OF 1819.67 FEET; THENCE RUN WESTERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE NORTH HAVING A RADIUS OF 2950.00 FEET, THROUGH A CENTRAL ANGLE OF 52°536'25" A DISTANCE OF 2708.59 FEET; THENCE RUN N37°523'35"W FOR A DISTANCE OF 502.05 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 2300.00 FEET, THROUGH A CENTRAL

ANGLE OF 11°54'13" A DISTANCE OF 473.83 FEET; THENCE RUN N49°51'48"W FOR A DISTANCE OF 833.92 FEET; THENCE RUN WESTERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE NORTH HAVING A RADIUS OF 1875.00 FEET, THROUGH A CENTRAL ANGLE OF 30°53'00" A DISTANCE OF 998.11 FEET; THENCE RUN N18°54'48"W FOR A DISTANCE OF 940.00 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 1925.00 FEET, THROUGH A CENTRAL ANGLE OF 22°53'00" A DISTANCE OF 755.95 FEET; THENCE RUN N41°51'48"W FOR A DISTANCE OF 1295.00 FEET; THENCE RUN N48°54'12"E FOR A DISTANCE OF 475.00 FEET; THENCE RUN EASTERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE NORTH HAVING A RADIUS OF 1325.00 FEET, THROUGH A CENTRAL ANGLE OF 40°50'00" A DISTANCE OF 925.03 FEET; THENCE RUN N08°54'12"E FOR A DISTANCE OF 3153.37 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE EAST HAVING A RADIUS OF 1825.00 FEET, THROUGH A CENTRAL ANGLE OF 24°50'18" A DISTANCE OF 765.68 FEET; THENCE RUN N32°55'30"E FOR A DISTANCE OF 855.99 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 1450.00 FEET, THROUGH A CENTRAL ANGLE OF 65°50'00" A DISTANCE OF 1644.97 FEET; THENCE RUN N32°50'30"W FOR A DISTANCE OF 749.99 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE EAST HAVING A RADIUS OF 1300.00 FEET, THROUGH A CENTRAL ANGLE OF 16°53'00" A DISTANCE OF 374.37 FEET; THENCE RUN N15°53'30"W FOR A DISTANCE OF 740.00 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 1975.00 FEET, THROUGH A CENTRAL ANGLE OF 24°50'00" A DISTANCE OF 827.29 FEET; THENCE RUN N39°53'30"W FOR A DISTANCE OF 765.00 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE EAST HAVING A RADIUS OF 1225.00 FEET, THROUGH A CENTRAL ANGLE OF 39°54'50" A DISTANCE OF 849.87 FEET; THENCE RUN N00°50'30"E FOR A DISTANCE OF 229.96 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE EAST HAVING A RADIUS OF 25.00 FEET, THROUGH A CENTRAL ANGLE OF 90°50'00" A DISTANCE OF 39.27 FEET TO THE POINT OF BEGINNING, CONTAINING 2875.650 ACRES MORE OR LESS.

ALSO INCLUDING:

PARCEL C

PERIMETER DESCRIPTION

LEGAL DESCRIPTION

A PORTION OF SECTIONS 13, 24, AND 25, IN TOWNSHIP 27 SOUTH, RANGE 28 EAST, POLK COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF POINCIANA NEIGHBORHOOD 3, VILLAGE 3, IN TOWNSHIP 27 SOUTH, RANGE 28 EAST, AS RECORDED IN PLAT BOOK 52, PAGE 19, OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA, SAID POINT BEING ON THE SOUTHERLY SIDELINE OF WALNUT STREET AND THE EASTERLY SIDELINE OF MARIGOLD AVENUE. THENCE RUN

FROM A TANGENT BEARING OF S56°52'21"E RUN EASTERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE NORTH HAVING A RADIUS OF 2392.77 FEET, THROUGH A CENTRAL ANGLE OF 34°53'51" A DISTANCE OF 1446.24 FEET; THENCE RUN N88°55'48"E FOR A DISTANCE OF 97.67 FEET; THENCE RUN S04°50'28"W FOR A DISTANCE OF 330.04 FEET; THENCE RUN S54°50'28"W FOR A DISTANCE OF 153.75 FEET; THENCE RUN S61°54'51"W FOR A DISTANCE OF 211.04 FEET; THENCE RUN S08°50'02"E FOR A DISTANCE OF 40.95 FEET; THENCE RUN S47°53'48"E FOR A DISTANCE OF 170.24 FEET; THENCE RUN S05°50'14"W FOR A DISTANCE OF 170.69 FEET; THENCE RUN S08°53'10"W FOR A DISTANCE OF 224.90 FEET; THENCE RUN S01°54'55"W FOR A DISTANCE OF 227.80 FEET; THENCE RUN S05°50'14"W FOR A DISTANCE OF 1230.28 FEET; THENCE RUN S18°53'59"W FOR A DISTANCE OF 582.94 FEET; THENCE RUN S37°55'48"W FOR A DISTANCE OF 336.99 FEET; THENCE RUN S00°50'26"W FOR A DISTANCE OF 170.14 FEET; THENCE RUN S38°51'16"W FOR A DISTANCE OF 323.43 FEET; THENCE RUN S49°54'20"W FOR A DISTANCE OF 257.88 FEET; THENCE RUN S56°54'06"W FOR A DISTANCE OF 156.10 FEET; THENCE RUN S75°51'59"W FOR A DISTANCE OF 146.98 FEET; THENCE RUN S46°54'14"W FOR A DISTANCE OF 268.65 FEET; THENCE RUN S61°55'00"W FOR A DISTANCE OF 158.15 FEET; THENCE RUN N78°52'54"W FOR A DISTANCE OF 169.83 FEET; THENCE RUN N53°55'43"W FOR A DISTANCE OF 180.00 FEET; THENCE RUN S36°50'17"W FOR A DISTANCE OF 70.00 FEET; THENCE RUN S52°54'05"W FOR A DISTANCE OF 157.04 FEET; THENCE RUN N81°51'40"W FOR A DISTANCE OF 148.46 FEET; THENCE RUN N77°50'34"W FOR A DISTANCE OF 59.12 FEET; THENCE RUN S12°55'12"W FOR A DISTANCE OF 80.00 FEET; THENCE RUN N77°50'34"W FOR A DISTANCE OF 166.57 FEET; THENCE RUN FROM A



TANGENT BEARING OF N10°500'00"W RUN NORTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE EAST HAVING A RADIUS OF 1375.00 FEET, THROUGH A CENTRAL ANGLE OF 24°550'04" A DISTANCE OF 595.98 FEET; THENCE RUN N36°506'17"E FOR A DISTANCE OF 469.92 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 1275.00 FEET, THROUGH A CENTRAL ANGLE OF 37°545'33" A DISTANCE OF 840.25 FEET; THENCE RUN N01°539'17"W FOR A DISTANCE OF 1818.87 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 1675.00 FEET, THROUGH A CENTRAL ANGLE OF 35°513'55" A DISTANCE OF 1029.98 FEET; THENCE RUN N33°534'39"E FOR A DISTANCE OF 258.09 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE EAST HAVING A RADIUS OF 25.00 FEET, THROUGH A CENTRAL ANGLE OF 90°500'00" A DISTANCE OF 39.27 FEET TO THE POINT OF BEGINNING. CONTAINING 154.728 ACRES MORE OR LESS.

LESS AND EXCEPT:

LOT 1, BLOCK 302, "POINCIANA NEIGHBORHOOD 6 NORTH VILLAGE 3", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 52, PAGES 42 THROUGH 49 OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 35, TOWNSHIP 27 SOUTH, RANGE 28 EAST, POLK COUNTY, FLORIDA, RUN NORTH 89°556'36" EAST ALONG THE NORTH LINE OF SAID SECTION 35 A DISTANCE OF 644.07 FEET; THENCE DEPARTING SAID NORTH LINE, SOUTH 00°503'25" EAST A DISTANCE OF 102.49 FEET TO THE NORTHERLYMOST CORNER OF SAID LOT 1 AND THE POINT OF BEGINNING; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF SAID LOT 1, BEING A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 2519.00 FEET, A CENTRAL ANGLE OF 01°555'54" AND A CHORD OF 84.92 FEET THAT BEARS SOUTH 41°532'37" EAST; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 84.96 FEET; THENCE SOUTH 46°534'51" WEST, A DISTANCE OF 74.50 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 91°526'07" AND A CHORD OF 35.80 FEET THAT BEARS NORTH 87°542'05" WEST, SAID POINT BEING HEREAFTER REFERRED TO AS POINT "A"; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 39.90 FEET TO A POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE

NORTHEASTERLY, HAVING A RADIUS OF 2619.00 FEET, A CENTRAL ANGLE OF 01°524'21" AND A CHORD OF 64.25 FEET THAT BEARS NORTH 41°516'50" WEST, THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 64.28 FEET; THENCE NORTH 49°525'20" EAST A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING. (CONTAINING 0.20 ACRES, MORE OR LESS.)

ALSO LESS AND EXCEPT:

AN APPROXIMATE 2 1/2 ACRE PARCEL LOCATED IN TRACT C, NEIGHBORHOOD 1-E VILLAGE 4, AS RECORDED IN PLAT BOOK 56, PAGE 31, BEING IN SECTION 14, TOWNSHIP 27 SOUTH, RANGE 28 EAST, POLK COUNTY, FLORIDA.

Specific Authority 190.005 FS. Law Implemented 190.004, 190.005 FS. History--New

42AA-1.003 Supervisors.

The following five persons are designated as the initial members of the Board of Supervisors: Lawrence R. Sherry, Harold Cohen, William Coward, Anthony S. Iorio, and Dennis J. Getman.

Specific Authority 190.005 FS. Law Implemented 190.004, 190.005 FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE: Teresa Tinker, Florida Land and Water Adjudicatory Commission

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Teresa Tinker, Florida Land and Water Adjudicatory Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 24, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 18, 1999

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Medicaid**

**RULE TITLE:** Medicaid Certified School Match Program **RULE NO.:** 59G-4.035

**PURPOSE AND EFFECT:** The purpose of this rule amendment is to incorporate by reference the Florida Medicaid Certified School Match Program Coverage and Limitations Handbook, August 1999. The effect will be to incorporate by reference in the rule the current Florida Medicaid Certified School Match Program Coverage and Limitations Handbook.

**SUMMARY:** This proposed rule would incorporate by reference the current Florida Medicaid Certified School Match Coverage and Limitations Handbook.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** No statement of estimated regulatory cost has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 236.0812, 409.905, 409.906, 409.9071, 409.908, 409.9122, 409.9126 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD.)

TIME AND DATE: 9:00 a.m., EST, on September 27, 1999

PLACE: Ft. Knox Office Complex, Building 3, Conference Room D, 2727 Mahan Drive, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kim Corsmeier, Medicaid Program Development, P. O. Box 12600, Tallahassee, Florida 32317-2600, (850)922-7318

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-4.035 Medicaid Certified School Match Program.

(1) This rule applies to all school districts enrolled in the Medicaid certified school match program as described in 409.9071, F.S.

(2) All school district providers enrolled in Medicaid under the certified school match program must be in compliance with the Florida Medicaid Certified School Match Coverage and Limitations Handbook, August 1999 ~~December 1997~~, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, HCFA-1500 and Child Health Check-Up EPSDT 221, which is incorporated in 59G-5.020. Both handbooks are available from the Medicaid fiscal agent.

Specific Authority 409.919 FS. Law Implemented 236.0812, 409.905, 409.906, 409.9071, 409.908, 409.9122, 409.9126 FS. History—New 4-9-98, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kim Corsmeier

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ruben King-Shaw, AHCA Director  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 3, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 30, 1999

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Auctioneers**

RULE TITLE: Examination for Licensure  
RULE NO.: 61G2-2.002

PURPOSE AND EFFECT: Rule 61G2-2.002 is being amended to specify that examination fees paid to a professional testing service by a candidate who is denied approval to sit for the examination for which the fee was paid shall be refunded and that fees paid to the Department by a candidate who is denied approval to sit for the examination for which the fee was paid shall be refunded or, at the applicant's request, shall be transferred to a future examination.

SUMMARY: The proposal requires that, upon request of a candidate for examination who has been denied approval to sit for an examination, examination fees paid to the Department by that candidate shall be Transferred to a future examination rather than be refunded to the candidate.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 468.384(2) FS.

LAW IMPLEMENTED: 455.217(1)(b), 468.385, 120.60(2) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD).

TIME AND DATE: 10:00 a.m., September 28, 1999

PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, FL 32310

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Ed Broyles, Executive Director, Board of Auctioneers, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G2-2.002 Examination for Licensure.

(1) through (4) No change.

(5) The Board shall review all applicants for licensure by examination and approve their qualifications before an applicant will be permitted to sit for the examination. The application fee is non-refundable. Should an applicant be denied approval to sit for the examination, the examination fee shall be refunded. The examination fee paid to the Department shall ~~may~~ be transferred to a subsequent examination upon the applicant's written request, if the request is received in the Board office at least 20 days prior to the scheduled examination date.

(6) No change.

Specific Authority 468.384(2) FS. Law Implemented 455.217(1)(b), 468.385, 120.60(2) FS. History—New 5-10-87, Amended 10-20-87, 6-5-88, 5-11-89, Formerly 21BB-2.002, Amended 9-27-93, 8-20-96,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Auctioneers

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Auctioneers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 4, 1998

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 30, 1999

**DEPARTMENT OF HEALTH**

**Board of Acupuncture**

RULE TITLE: Acupuncture Program Requirements

RULE NO.: 64B1-4.001

PURPOSE AND EFFECT: The purpose for the rule is to ensure that applicants are completing their education before applying for licensure.

SUMMARY: In order to be certified to take the licensure examination, applicants must establish that s/he has met minimal requirements.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 457.104, 457.105 FS.

LAW IMPLEMENTED: 457.105 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., September 27, 1999

PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, FL 32310

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: William Buckhalt, Executive Director, Board of Acupuncture, 2020 S. E. Capital Circle, BIN #C09, Tallahassee, Florida 32399-3259

THE FULL TEXT OF THE PROPOSED RULE IS:

64B1-4.001 Acupuncture Program Requirements.

In order to be certified to take the licensure examination, the applicant must establish that s/he has met the following minimal requirements. For persons who enrolled on or after July 1, 1997, the applicant must complete the program in which they have enrolled. No person may be certified to take

~~the examination until he/she has completed a program of course work and clinical experience that meets the following requirements:~~

(1) through (2) No change.

Specific Authority 457.104 FS. Law Implemented 457.105 FS. History—New 8-30-84, Formerly 21AA-4.01, Amended 7-20-88, 4-30-89, 9-19-89, 3-18-92, Formerly 21AA-4.001, 61F1-4.001, Amended 3-24-96, Formerly 59M-4.001, Amended 12-31-97,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Acupuncture

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Acupuncture

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 7, 1997

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 7, 1999

**FLORIDA HOUSING FINANCE CORPORATION**

RULE TITLES:	RULE NOS.:
Definitions	67-32.002
Notice of Fund Availability	67-32.003
General Program Restrictions	67-32.004
Application Procedures	67-32.005
Terms and Conditions of Loan	67-32.006
Selection Criteria, Rejection Criteria, and Scoring and Ranking Guidelines	67-32.007
Selection for Participation in Program	67-32.008
Right to Inspect and Monitor Funded Developments	67-32.010
Fees	67-32.011

PURPOSE AND EFFECT: Pursuant to Florida Statutes Chapter 420.5087(3)(c)2., the Florida Housing Finance Corporation administers the Elderly Housing Community Loan (EHCL) Program. This program provides loans to sponsors of affordable rental housing for very low income elderly households. Chapter 67-32 provides the procedures for the administration of this loan program and criteria for receiving, evaluating, and competitively ranking all applications for loans under the EHCL Program.

The intent of this Rule is to provide loans to sponsors of housing for the elderly to make building preservation, health, or sanitation repairs or improvements which are required by federal, state, or local regulation or code, or life-safety or security-related repairs or improvements to such housing.

SUMMARY: The proposed Rule with its amendments sets out the procedures by which projects will be selected to participate in the Elderly Housing Community Loan Program and receive funds under the State Apartment Incentive Loan Program's allocation. This proposed Rule provides the procedures for program administration and will enable the corporation to make or participate in the making of mortgage loans for

life-safety, building preservation, health, sanitation, and security-related repairs or improvements to eligible developers of rental housing projects for the elderly community.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 420.5087 FS.

LAW IMPLEMENTED: 420.5087 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., September 27, 1999

PLACE: Florida Housing Finance Corporation, 227 North Bronough Street, 6th Floor, Seltzer Room, Tallahassee, Florida 32301-1329

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Sue W. Early, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850)488-4197

THE FULL TEXT OF THE PROPOSED RULES IS:

67-32.002 Definitions.

For the purposes of this rule the following definitions shall apply:

(1) "Act" means the Florida Housing Finance Corporation Act as found in Chapter 420, Part V, of the Florida Statutes.

(2) "Applicant" means any not-for-profit Sponsor of Housing for the Elderly who is requesting a loan from the Corporation for financing life-safety or security-related repairs or improvements.

(3) "Corporation" or "FHFC" or "Florida Housing" means the Florida Housing Finance Corporation.

(4) "Development" or "Project" means the rental housing unit or units to be repaired or improved by a loan from the Program.

(5) "Elderly" describes a person 62 years of age or older. Persons meeting the Federal Fair Housing Act requirements for Elderly shall be considered Elderly.

(6) "Housing for the Elderly" means any nonprofit housing community which is financed by a mortgage loan made or insured by the United States Department of Housing and Urban Development under s. 202, s. 202 with a s. 8 subsidy, s. 221(d)(3) or (4), or s. 236 of the National Housing Act, as amended, and which is subject to the income limitations as established by the United States Department of Housing and Urban Development, or any program funded by the Farmers Home Administration or its successor, U.S. Department of

Agriculture Rural Development, and subject to the income limitations as established by the United States Department of Agriculture.

(7) "Program" means the Elderly Housing Community Loan Program.

(8) "Review Committee" means a committee of five persons who will organize the scoring of the applications. Four will be staff of the Florida Housing Finance Corporation and appointed by the Board of Directors of the Corporation and one will be a staff person of the Florida Department of Elder Affairs. Meetings of the Review Committee shall be at the call of the Chairman who shall also be designated by the Executive Director.

(9) "Section 8 Eligible" means one or more persons or families who have incomes which meet the income eligibility requirements of Section 8 of the United States Housing Act of 1937, as amended, as of February 1995.

(10) "Sponsor" means an Applicant selected for participation in the Program.

Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History—New 10-2-89, Amended 2-25-96, Formerly 91-32.002, Amended 11-9-98, \_\_\_\_\_.

67-32.003 Notice of Fund Availability.

(1) Applications shall be submitted to the Corporation within the deadline which will be noticed in the Florida Administrative Weekly. The notice shall also be mailed to each person or organization on the Corporation's mailing list for the Program. The application cycle shall be open for 90 days.

(2) Such notice shall provide notice of the temporary reservation of funds established in s. 420.5087(3)(c)2., Florida Statutes.

(3) After scoring and ranking of applications, the appeal period and final loan commitments, any remaining funds shall be made available to Applicants under the State Apartment Incentive Loan Program.

Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History—New 10-2-89, Formerly 91-32.003, Amended 11-9-98, Repromulgated \_\_\_\_\_.

67-32.004 General Program Restrictions.

(1) Loans shall be subject to the following restrictions:

(a) A loan for life-safety, building preservation, health, sanitation, or security-related repairs or improvements may not exceed \$200,000 per housing community for the Elderly.

(b) Loans under this Program shall be made:

1. For life-safety related installations, modifications, or improvements, building preservation, health, sanitation, or security-related installations, modifications, or improvements as set forth in NFPA 101 (1985) and all publications referenced in Chapter 32 and Appendix B. Examples shall include smoke detectors, smoke detection systems, automatic door closures and alarm systems; and

2. For the purpose of meeting and maintaining the standards set forth in applicable HUD manuals, policies, procedures and Development regulatory agreements to assure a safe and secure environment for Development residents. Examples include emergency call systems, enhanced lighting in halls, stairwells, public areas, and exterior entrances and exits; intercom systems, fencing, security surveillance systems and automated entrance and exit door latch systems.

(2) The Sponsor of the housing community for the Elderly must match at least 15 percent of the loan amount to pay the cost of such repair or improvement.

Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History—New 10-2-89, Amended 1-9-92, 2-25-96, Formerly 9I-32.004, Amended 11-9-98, Repromulgated.

67-32.005 Application Procedures.

(1) The Review Committee shall review all applications that are received by the noticed application deadline. Received means delivery by hand, U. S. Postal Service, or other courier service, to the offices of the Corporation no later than 5:00 p.m., Tallahassee time, on the final day of the application period.

(2) The Corporation hereby adopts and incorporates herein by reference the Elderly Housing Community Loan Program Application packet (adopted \_\_\_\_\_ ~~October 1998~~) which provides forms, instructions and other information necessary for submission of an application under this Program.

(3) Application packets may be obtained from the Corporation, which is located in Suite 5000, City Centre Building, 227 North Bronough Street, Tallahassee, Florida 32301-1329.

(4) All applications must be complete, accurate, legible and timely when submitted. A failure to comply with the aforementioned will result in the application being rejected.

(5) An original and two photocopies of the original application must be submitted.

Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History—New 10-2-89, Amended 1-9-92, 2-25-96, Formerly 9I-32.005, Amended 11-9-98, Amended.

67-32.006 Terms and Conditions of Loan.

(1) All loans shall be in compliance with the Act and shall at a minimum contain the following terms and conditions:

(a) The loans shall be non-amortizing and shall have an interest rate of three percent;

(b) Repayment of interest shall be deferred until maturity of the note;

(c) Repayment of principal shall occur at maturity of the note;

(d) The loan term shall not exceed fifteen years, and shall be established on the basis of a credit analysis of the Applicant. Development cash flow and the financial condition of the Applicant, including available reserve accounts, shall be examined to determine the specific loan term.

(2) The loan shall not be assumable upon Development sale, transfer or refinancing.

(3) If the loan is repaid upon sale, transfer, or refinancing of the Elderly housing community, all available proceeds shall be applied to pay the following items in order of priority:

(a) First Mortgage debt service and fees;

(b) Expenses of the sale;

(c) Elderly Housing Community Loan principal and accrued interest.

(4) The Corporation or an authorized representative of the Corporation shall monitor compliance of all terms and conditions of the loan and shall require that such terms and conditions be recorded in the public records of the county wherein the Development is located. Violation of any term or condition shall constitute a default on the loan.

(5) The Corporation shall require adequate insurance to be maintained on the property as determined by the first mortgage lender, but which shall, in any case, include fire, hazard and other insurance sufficient to meet the standards established by the U. S. Department of Housing and Urban Development or the Farmers' Home Administration in the Program providing the first mortgage loan for the facility.

(6) All loans must provide that any violation of the terms and conditions required by Chapter 67-32 constitute a default under the loan documents allowing the Corporation to accelerate its loan and to seek foreclosure as well as any other remedies legally available to it.

(7) The proceeds of all loans shall be used for life-safety, building preservation, health, sanitation, or security-related repairs or improvements which result in making the Elderly housing community safe and secure, and meeting requirements of state, federal, or local regulation.

(8) Loan proceeds shall not be used to pay for administrative costs, routine maintenance or new construction.

Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History—New 10-2-89, Amended 1-9-92, 2-25-96, Formerly 9I-32.006, Amended 11-9-98, Repromulgated.

67-32.007 Selection Criteria, Rejection Criteria, and Scoring and Ranking Guidelines.

(1) The content of each application shall be evaluated and preliminarily ranked by the Review Committee using the following factors with points being recommended to the Corporation Board by the Review Committee up to the maximum indicated. Final award of points shall be made by the Corporation Board. Details on criteria to be utilized to award full and partial points for each factor shall be provided in the application packet:

(a) Ability of the Applicant to provide matching funds in excess of minimum requirements – 75 points.

(b) Ability to proceed on the Development – 100 points. Points shall be awarded to Applicants able to move quickly to begin and complete the proposed Development.

(c) Economic viability as determined by Corporation staff – 125 points. The Applicant's ability to repay the principal and interest due upon maturity of the note will be evaluated.

(d) Relative priority of type of repair or improvement to be completed – 100 points.

(e) Local government planning and financial contributions to the Development – 100 points.

(2) The Review Committee shall recommend to the Corporation Board a numerical ranking of all Developments. The final ranking shall be made by the Corporation Board. In the event of a tie, the Corporation shall fund all Applicants which achieved tie scores, provided that the tie score places them within funding range, up to the amount of funds available. Should there be insufficient funds available to fund all applications with tie scores, such applications will equally divide available funds for their rank.

(3) An application shall not be considered for funding if it does not score a minimum of 200 points.

(4) An application shall not be considered for funding if it does not reflect that at least a fifteen (15) ~~25~~ percent match is being made by the Applicant to complete the proposed repairs or improvements.

Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History–New 10-2-89, Formerly 9I-32.007, Amended 11-9-98, \_\_\_\_\_.

67-32.008 Selection for Participation in Program.

(1) The Review Committee shall analyze the proposed Development including financial information and other application materials.

(a) The Corporation shall have the ability to request additional exhibits from the Applicant to clarify application materials or to complete underwriting of the application.

(2) A loan amount shall be determined by the Corporation's Board of Directors following review of the applications and the recommendation of the Review Committee.

(3) Based upon fund availability, the Corporation shall notify Applicants of pre-appeal selection for participation in the Program in order of the Applicant's ranking.

(4) Rejection of an offer of a loan amount will cause the Corporation to make the offer to the next highest ranked Applicant.

(5) If determination of final loan amounts for Applicants selected for participation in the Program results in remaining funds being available, additional Applicants shall be selected for participation by moving down the list of Applicants meeting threshold requirements in rank order.

(6) Final selection for Program participation is contingent upon fund availability after determination of loan amounts and the appeals process.

(7) The loan must close within 90 days of the date of receipt by the Sponsor of the commitment for the loan.

(8) A failure to comply with any part of this section without the written permission of the Corporation will result in the disqualification of the application and withdrawal of the loan commitment.

Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History–New 10-2-89, Formerly 9I-32.008, Amended 11-9-98, Repromulgated.

67-32.010 Right to Inspect and Monitor Funded Developments.

The Corporation or its agents shall have the right to inspect and monitor the records and facilities of all of the funded Developments. Such inspections may occur without notice at any reasonable time.

Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c) FS. History–New 10-2-89, Formerly 9I-32.010, Amended 11-9-98, Repromulgated.

67-32.011 Fees.

(1) The Corporation shall collect the following fees and charges in conjunction with the Elderly Housing Community Program loans:

~~(a) Application Package fee of \$20.00 which will entitle the Applicant to one set of rules and the application package;~~

~~(a)(b)~~ Application fee to be paid upon submission of application of ~~\$50~~ \$100 per Development for each Elderly Housing Community Program loan requested.

~~(b)(e)~~ Credit underwriting fee ~~(\$2,100)~~ (\$1,000) pursuant to contract between the Corporation and the credit underwriter to be paid to the credit underwriter within seven (7) calendar days after selection for participation in the Elderly Housing Community Loan Program and issuance of post-appeal scores and rankings and prior to credit review by the Corporation's credit underwriter. If a Development involves scattered sites of units within a single market area, a single credit underwriting fee shall be charged.

~~(c)(d)~~ Commitment fee of \$250.00 from each Sponsor to be paid to the Corporation which shall be due upon acceptance of the firm commitment and which is not refundable.

1. Not-for-profit Sponsors who provide a certification indicating that funds will not be available prior to closing shall be permitted to pay the commitment fee at closing.

2. All Sponsors shall remit the commitment fee payable to the Florida Housing Finance Corporation.

~~(d)(e)~~ Inspection and processing fee.

~~(e)(f)~~ Servicing fee equivalent to 25 basis points on the unpaid principal balance of the loan shall be paid annually by the Borrower to Servicer.

(2) Fees are part of Development cost and may be included in a loan commitment if requested in the application and approved by the credit underwriter.

(3) Failure to pay any fee shall cause the firm Elderly Housing Community loan commitment to be terminated or shall constitute a default on the loan.

Specific Authority 420.5087(3)(c)2. FS. Law Implemented 420.5087(3)(c), 420.507(32.011)(19) FS. History--New 10-2-89, Amended 2-25-96, Formerly 9F-32.011, Amended 11-9-98,\_\_\_\_\_.

**NAME OF PERSON ORIGINATING PROPOSED RULE:**  
Gayle White, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850)488-4197

**NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE:** Sue W. Early, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850)488-4197

**DATE PROPOSED RULE APPROVED BY AGENCY HEAD:** August 20, 1999, Corporation Board Meeting

**DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:** March 26, 1999

**FLORIDA HOUSING FINANCE CORPORATION**

<b>RULE TITLES:</b>	<b>RULE NOS.:</b>
Purpose and Intent	67-48.001
Definitions	67-48.002
Notice of Funding or Credit Availability	67-48.003
Application and Selection Procedures for Developments	67-48.004
Applicant Administrative Appeal Procedures	67-48.005
Compliance and Reporting Requirements	67-48.006
Fees	67-48.007
No Discrimination	67-48.008
SAIL General Program Procedures and Restrictions	67-48.009
Additional SAIL Application Ranking and Selection Procedures	67-48.0095
Terms and Conditions of SAIL Loans	67-48.010
Sale or Transfer of a SAIL Development	67-48.0105
SAIL Credit Underwriting and Loan Procedures	67-48.012
SAIL Construction Disbursements and Permanent Loan Servicing	67-48.013
HOME General Program Procedures and Restrictions	67-48.014
Match Contribution Requirements for HOME Allocation	67-48.015
Eligible HOME Activities	67-48.017
Eligible HOME Applicants	67-48.018
Eligible and Ineligible HOME Development Costs	67-48.019
Terms and Conditions of Loans for HOME Rental Developments	67-48.020
Sale or Transfer of a HOME Development	67-48.0205
HOME Credit Underwriting and Loan Procedures	67-48.021
HOME Disbursements Procedures and Loan Servicing	67-48.022
HC General Program Procedures and Requirements	67-48.023
Qualified Allocation Plan	67-48.025

Housing Credit Underwriting Procedures	67-48.026
Tax-Exempt Bond-Financed Developments	67-48.027
Carryover Allocation Provisions	67-48.028
Extended Use Agreement	67-48.029
Sale or Transfer of a Housing Credit Development	67-48.030
Termination of Extended Use Agreement and Disposition of Housing Credit Developments	67-48.031
Minimum Set-Aside for Non-Profit Organizations Under HC Program	67-48.032

**PURPOSE AND EFFECT:** The purpose of this Rule Chapter is to establish the procedures by which the Corporation shall:

(1) Administer the Application process, determine loan amounts, make and service mortgage loans for new construction or rehabilitation of affordable rental units under the State Apartment Incentive Loan (SAIL) Program authorized by Section 420.5087, Florida Statutes; and the HOME Investment Partnerships (HOME) Program authorized by Section 420.5089, Florida Statutes; and

(2) Administer the Application process, determine Housing Credit amounts and implement the provisions of the Housing Credit (HC) Program authorized by Section 42 of the Code and Section 420.5099, Florida Statutes.

The intent of this Rule Chapter is to encourage public-private partnerships to invest in residential housing; to stimulate the construction and rehabilitation of residential housing which in turn will stimulate the job market in the construction and related industries; and to increase and improve the supply of affordable housing in the State of Florida.

**SUMMARY:** Prior to the opening of an Application Cycle, the Corporation (1) researches the market need for affordable housing throughout the state of Florida and (2) evaluates prior Application Cycles to determine what changes or additions should be added to the Rule, Application and/or QAP. The proposed amendments to the Rule and adopted reference material include changes that will create a formulated process for selecting Developments that will apply in the 2000 Application Cycle.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** 420.507 FS.

**LAW IMPLEMENTED:** 420.5087, 420.5089, 420.5099 FS.

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

**TIME AND DATE:** 10:00 a.m., September 27, 1999

**PLACE:** Florida Housing Finance Corporation, 227 North Bronough Street, 6th Floor Seltzer Room, Tallahassee, Florida 32301-1329

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Sue W. Early, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850)488-4197

THE FULL TEXT OF THE PROPOSED RULES IS:

PART I – ADMINISTRATION

67-48.001 Purpose and Intent.

The purpose of this Rule Chapter is to establish the procedures by which the Corporation shall:

(1) Administer the Application process, determine loan amounts, make and service mortgage loans for new construction or rehabilitation of affordable rental units under the State Apartment Incentive Loan (SAIL) Program authorized by Section 420.5087, Florida Statutes; and the HOME Investment Partnerships (HOME) Program authorized by Section 420.5089, Florida Statutes; and

(2) Administer the Application process, determine Housing Credit amounts and implement the provisions of the Housing Credit (HC) Program authorized by Section 42 of the Code and Section 420.5099, Florida Statutes.

The intent of this Rule Chapter is to encourage public-private partnerships to invest in residential housing; to stimulate the construction and rehabilitation of residential housing which in turn will stimulate the job market in the construction and related industries; and to increase and improve the supply of affordable housing in the State of Florida.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089(2), 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 91-48.001, Amended 11-9-98, Repromulgated.

67-48.002 Definitions.

(1) "Act" means the Florida Housing Finance Corporation Act as found in Chapter 420, Part V, Florida Statutes, as in effect on the date of this Rule Chapter.

(2) "Adjusted Income" means, with respect to a HOME Development, the gross income from wages, income from assets, regular cash or noncash contributions, and any other resources and benefits determined to be income by HUD, adjusted for family size, minus the deductions allowable under Section 61 of the Code.

(3) "Affiliate" means any person that, (i) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant, (ii) serves as an officer or director of the Applicant or of any Affiliate of the Applicant, or (iii) is the spouse, parent, child, sibling, or relative by marriage of a person described in (i) or (ii) above.

(4) "Allocation Authority" means the total dollar volume of Housing Credits available for distribution by the Corporation and authorized pursuant to Section 42 of the Code.

(5) "Annual Owner Compliance Certification Form" or "Form AOC-1" means, with respect to a Housing Credit Development, a report format which is required to be completed and submitted to the Corporation, pursuant to Fla. Admin. Code Ann. r. 67-48.006(6), and is adopted and incorporated herein by reference, effective November 9, 1998.

(6) "Applicable Fraction" means the fraction, the numerator of which is the number of Housing Credit Rent-Restricted Units and the denominator of which is the total number of residential rental units less any unit exempted by Revenue Ruling 92-61, or the fraction, the numerator of which is the floor space of the Housing Credit Rent-Restricted Units and the denominator of which is the total floor space of the residential rental units less any unit exempted by Revenue Ruling 92-61, whichever is less. The Applicable Fraction is applied to the eligible basis of a building to determine the qualified basis of a building for Housing Credit purposes.

(7) "Applicant" means any person or entity, public or private, for-profit or not-for-profit, proposing to build or rehabilitate affordable rental housing (i) with respect to the SAIL and/or HOME Program(s) for Low-Income or Very Low-Income persons or households and (ii) with respect to the HC Program for qualified tenants, as defined in Section 42 of the Code.

(8) "Application" means the completed forms from the Application Package together with exhibits submitted to the Corporation in accordance with this Rule Chapter in order to apply for the SAIL, HOME and/or HC Program(s).

(9) "Application Deadline" means 5:00 p.m., Tallahassee time, on the final day of the Application Period.

(10) "Application Package" or "Form CAP00" ~~CAP99~~ means the computer disks, forms, tabs and instructions thereto, obtained from the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, which shall be completed and submitted to the Corporation in accordance with this Rule Chapter in order to apply for the SAIL, HOME, and/or HC Program(s). The Application Package is adopted and incorporated herein by reference, effective November 9, 1998.

(11) "Application Period" means the period during which Applications shall be accepted by the Corporation as described in the Notice of Funding or Credit Availability published in the Florida Administrative Weekly.

(12) "Application Tab Kit" means the tabs and form dividers provided by the Corporation which must be used when submitting an Application.

(13) "Binding Commitment" means, with respect to a Housing Credit Development, an agreement between the Corporation and an Applicant by which the Corporation allocates and the Applicant accepts Housing Credits from a later year's Allocation Authority in accordance with Section 42(h)(1)(C) of the Code.



(14) "Board of Directors" or "Board" means the Board of Directors of the Corporation.

(15) "Building Identification Number" means, with respect to a Housing Credit Development, the number assigned by the Corporation to describe each building in a Housing Credit Development, pursuant to Internal Revenue Service Notice 88-91.

(16) "Carryover" means the provision under Section 42 of the Code which allows a Development, under certain conditions allowed by Section 42 of the Code, to receive a Housing Credit Allocation in a given calendar year and be placed in service within a period of two calendar years from the date the Applicant qualifies for Carryover, pursuant to Fla. Admin. Code Ann. r. 67-48.028.

(17) "Code" means the Internal Revenue Code of 1986, as in effect on the date of this Rule Chapter, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued with respect thereto by the Treasury or the Internal Revenue Service of the United States.

(18) "Commercial Fishing Worker" means a laborer who is employed on a seasonal, temporary, or permanent basis in fishing in saltwater or freshwater and who derived at least 50% of his income in the immediately preceding 12 calendar months from such employment. The term includes a person who has retired as a laborer due to age, disability, or illness. In order to be considered retired due to age, a person must be 50 years of age or older and must have been employed for a minimum of 5 years as a commercial fishing worker. In order to be considered retired due to disability or illness, a person must:

(a) Establish medically that the person ~~he~~ is unable to be employed as a commercial fishing worker due to such ~~that~~ disability or illness; and

(b) Establish that he or she was previously employed as a commercial fishing worker.

(19) "Commercial Fishing Worker Household" means a household of one or more persons wherein at least one member of the household is a Commercial Fishing Worker.

(20) "Community Housing Development Organizations" or "CHDO's" means private non-profit organizations that are organized pursuant to the definition in the HUD Regulations.

(21) "Compliance Period" means, with respect to a SAIL Development, a minimum period of 15 years from the date the first residential unit is occupied; with respect to a HOME Development, a minimum period of 15 years for rehabilitation Developments and 20 years for new construction Developments, beginning from the date the first residential unit is occupied; However, for SAIL and HOME Developments which contain occupied units to be rehabilitated, the Compliance Period shall begin at closing of the SAIL or HOME loan. Wwith respect to any building that is included in a Housing Credit Development, "Compliance

Period" means a minimum period of 15 years beginning on the first day of the first taxable year of the Housing Credit Period with respect thereto in which a Housing Credit Development shall continue to maintain the Housing Credit Set-Aside chosen by the Applicant in the Application, pursuant to Section 42 of the Code.

(22) "Consolidated Plan" means the plan prepared in accordance with HUD Regulations, 24 CFR § 91 (1994), which describes needs, resources, priorities and proposed activities to be undertaken with respect to certain HUD programs, including the HOME Program.

(23) "Contact Person" means a person with decision making authority for the Applicant, Developer or the owner of the Development with whom the Corporation will correspond concerning the Application and the Development.

(24) "Corporation" or "Florida Housing" or "FHFC" means the Florida Housing Finance Corporation created pursuant to the Act.

(25) "Credit Underwriter" means the legal representative under contract with the Corporation having the responsibility for providing stated credit underwriting services. Such services shall include a comprehensive analysis of the Applicant, the real estate, the economics of the Development, the ability of the Applicant and the Development team to proceed, the evidence of need for affordable housing in order to determine that the Development meets the program requirements and determine a recommended SAIL or HOME loan amount, housing credit allocation amount or a combined SAIL or HOME loan amount and a housing credit allocation amount, if any.

(26) "Default Interest Rate" means 18% per annum.

(27) "Department" or "DCA" means the Department of Community Affairs of the State of Florida.

(28) "Development Costs" means with respect to the SAIL and HOME Programs the sum total of all costs incurred in the completion of a Development, all of which shall be subject to the approval by the Credit Underwriter and the Corporation as reasonable and necessary. Such costs include, for example, the following:

(a) The cost of acquiring real property and any buildings thereon, including payment for options, deposits, or contracts to purchase properties.

(b) The cost of site preparation, demolition, and development.

(c) Any expenses relating to the issuance of tax-exempt bonds or taxable bonds, if any, related to the particular Development.

(d) Fees in connection with the planning, execution, and financing of the Development, such as those of architects, engineers, attorneys, accountants, and the Corporation.

(e) The cost of studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction, rehabilitation, or reconstruction of the Development.

(f) The cost of the construction, rehabilitation, and equipping of the Development.

(g) The cost of land improvements, such as landscaping and offsite improvements related to the Development, whether such costs are paid in cash, property, or services.

(h) Expenses in connection with initial occupancy of the Development.

(i) Allowances established by the Corporation for working capital, contingency reserves, and reserves for any anticipated operating deficits during the first 2 years after completion of the Development.

(j) The cost of such other items, including relocation costs, indemnity and surety bonds, premiums on insurance, and fees and expenses of trustees, depositories, and paying agents for the Corporation's bonds, as the Corporation shall determine to be reasonable and necessary for the construction or rehabilitation of the Development.

(29) "Developer" means any individual, association, corporation, joint venturer, or partnership which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable multifamily housing pursuant to this Rule Chapter. The Developer, as identified in an Application, may not change until the Development is complete.

(30) "Development Cash Flow" means, with respect to SAIL Developments, actual cash flow of a SAIL Development as calculated in the statement of cash flows prepared in accordance with generally accepted accounting principles and as adjusted for items including but not limited to extraordinary fees and expenses, payments on debt subordinate to the SAIL loan and capital expenditures.

(31) "Development Expenses" means, with respect to SAIL Developments, usual and customary operating and financial costs. As it relates to the application of Development Cash Flow described in Fla. Admin. Code Ann. R. 67-48.010(4), the term does not include extraordinary capital expenses, developer fees and other non-operating expenses.

(32) "Difficult Development Area" means any area designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income in accordance with Section 42(d)(5), IRC.

(33) "Draw" means the disbursement of funds to a Development under the SAIL and/or HOME Program(s).

(34) "Elderly" means a person 62 years of age or older. With respect to the HOME and HC Programs, persons meeting the Federal Fair Housing Act requirements for Elderly shall be considered Elderly.

(35) "Elderly Household" describes a household of one or more persons wherein at least one-half of the residents is Elderly.

~~(36) "Eligible Localities" means those counties and cities identified within Form 17 of the Application Package as jurisdictions which do not receive HOME entitlements directly from HUD.~~

~~(36)(37)~~ "Eligible Persons" or "Eligible Household" means one or more natural persons or a family, irrespective of race, creed, national origin, or sex, determined by the Corporation to be of low or very low income. In determining the income standards of eligible persons for its various programs, the Corporation shall take into account the following factors:

(a) Requirements mandated by federal law.

(b) Variations in circumstances in the different areas of the state.

(c) Whether the determination is for rental housing.

(d) The need for family size adjustments to accomplish the purposes set forth in this Rule Chapter.

With respect to the HC Program, an "Eligible Person" or "Eligible Household" shall mean one or more persons or a family having a combined income which meets the income eligibility requirements of the Program and Section 42 of the Code.

~~(37)(38)~~ "Executive Director" means the Executive Director of the Corporation.

~~(38)(39)~~ "Extended Use Agreement" or "Extended Low-Income Housing Agreement" means, with respect to the HC Program, an agreement between the Corporation and the Applicant which sets forth the Set-Aside requirements and other Development requirements, if any, under the HC Program.

~~(39)(40)~~ "Family" or "Family Household" describes a household composed of one or more persons.

~~(40)(41)~~ "Farmworker" means any laborer who is employed on a seasonal, temporary or permanent basis in the planting, cultivating, harvesting or processing of agricultural or aquacultural products and who has derived at least 50% of his income in the immediately preceding 12 calendar months from such employment. "Farmworker" also includes a person who has retired as a laborer due to age, disability or illness. In order to be considered retired from farmwork due to age, a person must be 50 years of age or older and must have been employed for a minimum of 5 years as a farmworker immediately preceding retirement. In order to be considered retired from farmwork due to disability or illness, it must be:

(a) Medically established that the person is unable to be employed as a farmworker due to such disability or illness; and

(b) Established that he or she had previously met the definition of Farmworker.

~~(41)~~~~(42)~~ "Farmworker Household" means a household of one or more persons wherein at least one member of the household is a Farmworker.

~~(42)~~~~(43)~~ "Farmer's Home" or "FmHA" means the Farmer's Home Administration of the United States Department of Agriculture, which is now known as "USDA - Rural Development" or "RD" and formerly known as "Rural Economic and Community Development" or "RECD".

~~(43)~~~~(44)~~ "Financial Beneficiary" means one who is to receive a financial benefit of:

(a) 3% or more of total Development Cost (including deferred fees) if total Development Cost is \$5 million or less; and

(b) 3% of the first \$5 million and 1% of any costs over \$5 million (including deferred fees) if total Development Cost is greater than \$5 million.

This definition includes any party which meets the above criteria, such as the Developer and its principals and principals of the Applicant entity. This definition does not include third party lenders, Housing Credit Syndicators, Credit Enhancers who are regulated by a state or federal agency and who do not share in the profits of the Development or building contractors whose total fees are within the limit described in Rule 67-48.002~~(47)~~~~(48)~~, F.A.C.

~~(44)~~~~(45)~~ "Final Cost Certification" or "Form FCCA" means, with respect to a Housing Credit Development, that Form FCCA which is adopted and incorporated herein by reference, revised \_\_\_\_\_ June 1998, and which shall be used by an Applicant to itemize all expenses incurred in association with construction or rehabilitation of a Housing Credit Development. Such form will be made available from the Corporation and shall be completed, executed and submitted to the Corporation, as specified in Fla. Admin. Code Ann. r. 67-48.023(7)-(8), along with the recorded Extended Use Agreement, a copy of the syndication agreement disclosing the rate and all terms, the required certified public accountant opinion letter, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in FCCA instructions. The Final Housing Credit Allocation will not be issued until such time as all items in the preceding sentence are received and processed by the Corporation.

~~(45)~~~~(46)~~ "Final Housing Credit Allocation" means, with respect to a Housing Credit Development, the issuance of Housing Credits by the Corporation Executive Director to an Applicant upon completion of construction or rehabilitation of a Development and submission to the Corporation by the Applicant of a completed and executed Form FCCA pursuant to Fla. Admin. Code Ann. r. 67-48.023(7)-(8).

~~(46)~~~~(47)~~ "Funding Cycle" means the period of time commencing with the Notice of Funding or Notice of Credit Availability pursuant to this Rule Chapter and concluding with the issuance of Allocations or loans to Applicants who applied during a given Application Period.

~~(47)~~~~(48)~~ "General Contractor" means a duly licensed entity which, to be eligible for the maximum 14% fee, must meet the following conditions:

(a) A project superintendent must be employed by the General Contractor and the costs of that employment must be charged to the general requirements line item of the General Contractor's budget;

(b) Development construction trailer and other overhead must be paid directly by the General Contractor and charged to general requirements;

(c) Building permits must be issued in the name of the General Contractor;

(d) Payment and performance bond (or approved alternate security for General Contractor's performance, such as a letter of credit or other acceptable guarantee) must be issued in the name of the General Contractor; and

(e) Not more than 20% of the Development cost is sub-contracted to any one entity unless otherwise approved by the Board for a specific Development.

~~(48)~~~~(49)~~ "Geographic Set-Aside" means, with respect to a Housing Credit Development, the amount of Allocation Authority which has been designated by the Corporation to be allocated for Housing Credit Developments located in specific geographical regions within the State of Florida pursuant to the Qualified Allocation Plan.

~~(49)~~~~(50)~~ "HC Program" means the Low-Income or Very Low-Income rental housing program administered by the Corporation pursuant to Section 42 of the Code and Section 420.5099, Florida Statutes, under which the Corporation is designated the Housing Credit agency for the State of Florida within the meaning of Section 42(h)(7)(A) of the Code, and this Rule Chapter.

~~(50)~~~~(51)~~ "HOME" or "HOME Program" means the HOME Investment Partnerships Program pursuant to the HUD Regulations.

~~(51)~~~~(52)~~ "HOME-Assisted Unit" means the specific units that are funded with HOME funds. HOME units shall adhere to rent controls and income targeting requirements pursuant to 24 CFR § 92.252.

~~(52)~~~~(53)~~ "HOME Development" means any Development which receives financial assistance from the Corporation under the HOME Program.

~~(53)~~~~(54)~~ "HOME Minimum Set-Aside Requirement" means the minimum set-aside requirement of 20% of the HOME-Assisted Units in the Development shall be rented to persons at 50% of the median income adjusted for family size

and 80% of the HOME-Assisted Units in the Development shall be rented to persons at 60% of the median income adjusted for family size.

~~(54)(55)~~ "HOME Rental Development" means a Development proposed to be constructed or rehabilitated with HOME funds. A Development which is under construction may be eligible to apply for HOME funds only if the building permit is dated within 6 months from the Application Deadline and the Development certifies compliance with federal labor standards (if more than 12 HOME-Assisted Units).

~~(55)(56)~~ "HOME Rent-Restricted Unit" means the maximum allowable rents designed to ensure affordability on the HOME-Assisted Units:

(a) High HOME rent means 80% of the HOME-Assisted Units in a Development must have rents set at no more than the lesser of the Section 8 Fair Market Rent (FMRs) or rents that are 30% for a Family at 65% of median income limit, minus tenant-paid utilities.

(b) Low HOME rent means 20% of the HOME-Assisted Units in a Development must have rents set at no more than the lesser of the Section 8 Fair Market Rent (FMRs), or 30% of the gross income of a Family at 50% of the area median income, minus tenant-paid utilities.

~~(56)(57)~~ "Housing Credit" means the tax credit issued in exchange for the development of rental housing pursuant to Section 42 of the Code and the provisions of this Rule Chapter 67-48, F.A.C.

~~(57)(58)~~ "Housing Credit Allocation" means the amount of Housing Credits determined by the Corporation as necessary to make a Development financially feasible and viable throughout the Development's Housing Credit Compliance Period pursuant to Section 42(m)(2)(A) of the Code.

~~(58)(59)~~ "Housing Credit Extended Use Period" means, with respect to any building that is included in a Housing Credit Development, the period that begins on the first day of the Compliance Period in which such building is part of the Development and ends on the later of: (i) the date specified by the Corporation in the Extended Use Agreement or (ii) the date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the Code.

~~(59)(60)~~ "Housing Credit Period" means with respect to any building that is included in a Housing Credit Development, the period of 10 years beginning with:

(a) the taxable year in which such building is placed in service, or

(b) at the election of the Developer, the succeeding taxable year.

~~(60)(61)~~ "Housing Credit Development" means the proposed or existing rental housing Development(s) for which Housing Credits have been applied for or received.

~~(61)(62)~~ "Housing Credit Rent-Restricted Unit" means, with respect to a Housing Credit Development, a unit for which the gross rent does not exceed 30% of the imputed income limitation (Low-Income or Very Low-Income) applicable to such unit as chosen by the Applicant in the Application and in accordance with the Code. Gross rent must be determined from the rent charts included in the Application and must correspond to the percentage of area median income committed to by the Applicant in the Application.

~~(62)(63)~~ "Housing Credit Set-Aside" means the number of units in a Housing Credit Development necessary to satisfy the percentage of Low-Income or Very Low-Income units chosen by the Applicant in the Application.

~~(63)(64)~~ "Housing Credit Syndicator" means a person, partnership, corporation, trust or other entity that regularly engages in the purchase of interests in entities that produce Qualified Low Income Housing Projects (as defined in Section 42(g) of the Internal Revenue Code) and provides at least one written reference in the Application that such person, partnerships, corporation, trust or other entity has performed its obligation under the partnership agreements and is not currently in default under those agreements.

~~(64)(65)~~ "Housing Provider" means, with respect to a HOME Development, local government, consortia approved by HUD under the HUD Regulations, for-profit and non-profit Developers, and qualified CHDO's, with demonstrated capacity to construct or rehabilitate affordable housing.

~~(65)(66)~~ "HUD" means the U. S. Department of Housing and Urban Development.

~~(66)(67)~~ "HUD Regulations" means, with respect to the HOME Program, the regulations of HUD in 24 CFR § 92 (1994) issued under the authority of Title II of the National Affordable Housing Act of 1990 (Public Law 101-625, November 28, 1990), as in effect on the date of this Rule Chapter.

~~(67)(68)~~ "Income Certification", "Tenant Income Certification" or "Form TIC-1" means that Form TIC-1 which is adopted and incorporated herein by reference, revised ~~February 1999 January 1998~~, and which shall be used to certify the income of all tenants residing in a set-aside unit in a Development.

~~(68)(69)~~ "Local Government" means a unit of local general-purpose government as defined in Section 218.31(2), F.S. (1995).

~~(69)(70)~~ "Low Income" means, with respect to the HOME Program, income which does not exceed 80% of the median income for the area, as determined by HUD, with adjustments for family size, except that HUD may establish income ceilings higher or lower than 80% of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes, provided;

however, with respect to the HC Program, "Low Income" shall mean income which is at or below 50% or 60% of the area median income, adjusted for family size, whichever is elected.

~~(70)(74)~~ "Match" means non-federal contributions to a HOME Development eligible pursuant to the HUD Regulations.

~~(71)(72)~~ "Non-Profit" means a qualified non-profit entity as defined in the HUD Regulations, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the Code and organized under Chapter 617, Florida Statutes, if Florida Corporation, or organized under similar state law if organized in a jurisdiction other than Florida, to provide housing and other services on a not-for-profit basis, which owns at least 51% of the ownership interest in the Development held by the general partner entity and which entity is acceptable to federal and state agencies and financial institutions as a Sponsor for affordable housing. Qualification as a Non-Profit entity must be evidenced to the Corporation by the receipt from the Applicant, upon Application, of a written opinion from legal counsel. The total cost of securing this written legal opinion will be borne entirely by the Applicant. A Non-Profit entity shall own an interest in the Development, either directly or indirectly; shall not be affiliated with or controlled by a for-profit corporation; and shall materially participate in the development and operation of the Development throughout the total affordability period as stated in the Land Use Restriction Agreement and/or the Extended Use Agreement. If an Applicant submits Application to the Corporation as a Non-Profit entity but does not qualify as such, the Applicant will be disqualified from participation for the current cycle.

~~(72)(73)~~ "Note" means a unilateral agreement containing an express and absolute promise to pay to the Corporation a principal sum of money for the SAIL or HOME Program loan together with interest on a specified date. The Note will provide the interest rate and will be secured by a mortgage.

~~(73)(74)~~ "Portfolio Diversification" means a distribution of SAIL and HOME Program loans to Developments in varying geographic locations with varying design structures and size and with different types and identity of Sponsors.

~~(74)(75)~~ "Preliminary Allocation" means a non-binding reservation of Housing Credits issued by the Corporation Executive Director to a Housing Credit Development which has successfully completed the credit underwriting process and demonstrated a need for Housing Credits.

~~(75)(76)~~ "Preliminary Determination" means an initial determination by the Corporation of the amount of Housing Credits outside the Corporation's Allocation Authority needed from the Treasury to make a Tax-Exempt Bond-Financed Development financially feasible and viable.

~~(76)(77)~~ "Principal" means an Applicant, any general partner of an Applicant, and any officer, director, or any shareholder of any Applicant or shareholder of any general partner of an Applicant.

~~(77)(78)~~ "Program" or "Programs" means the SAIL, HOME and/or HC Program(s) as administered by the Corporation.

~~(78)(79)~~ "Program Report" or "Form PR-1" means the report format which is required to be completed and submitted to the Corporation pursuant to Fla. Admin. Code Ann. r. 67-48.006 and is adopted and incorporated herein by reference, effective November 9, 1998.

~~(79)(80)~~ "Progress Report" or "Form Q/M Report" means, with respect to a Housing Credit Development, a report format that is required to be completed and submitted to the Corporation pursuant to Fla. Admin. Code Ann. r. 67-48.028~~(4)(3)~~, and is adopted and incorporated herein by reference, effective July 22, 1996.

~~(80)(81)~~ "Project," "Property" or "Development" means any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing for persons or families, whether new construction, the acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing housing, together with such related non-housing facilities as the Corporation determines to be necessary, convenient, or desirable.

~~(81)(82)~~ "Qualified Allocation Plan" or "QAP" means, with respect to the HC Program, the Qualified Allocation Plan which is adopted and incorporated herein by reference, effective November 9, 1998, and which was approved by the Governor of the State of Florida on ~~September 25, 1998~~, pursuant to Section 42(m)(1)(B) of the Code and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits.

~~(82)(83)~~ "Qualified Census Tract" means any census tract which is designated by the Secretary of Housing and Urban Development as having 50% or more of the households at an income which is less than 60% of the area median gross income in accordance with Section 42(d)(5), IRC.

~~(83)(84)~~ "Recap of Tenant Income Certification Information" or "Form AR-1" means, with respect to the HOME and/or HC Program(s), a report format which is required to be completed and submitted to the Corporation pursuant to this Rule Chapter and is adopted and incorporated herein by reference, effective November 9, 1998.

~~(84)(85)~~ "Rehabilitation" means, with respect to the HOME Program, the alteration, improvement or modification of an existing structure. It also includes moving an existing structure to a foundation constructed with HOME funds. Rehabilitation may include adding rooms outside the existing walls of a structure, but adding a housing unit is considered new construction. "Rehabilitation" means, with respect to the Housing Credit Program, what is stated in Sec. 42 (e) of the

IRC with the exception of Sec. 42(e) (3) (A) (II) which is changed to read: "II. The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units, in the building, is \$6,000 or more.

~~(85)(86)~~ "Return on Equity" means, with respect to SAIL Developments, the amount of income from the SAIL Development that may accrue to the Sponsor as investment earnings on SAIL Equity contributed to the SAIL Development, not to exceed 12% per annum.

~~(86)(87)~~ "Review Committee" means a committee of seven FHFC staff persons appointed by the Board who will oversee the scoring of the Applications. Meetings of the Review Committee shall be at the call of the Chairperson of the Review Committee who shall be appointed by the Executive Director.

~~(87)(88)~~ "Rural Development" or "RD" or "USDA-RD" means (previously called "Farmer's Home Administration" or "FmHA") the United States Department of Agriculture-Rural Development or other agency or instrumentality created or chartered by the United States to which the powers of the RD have been transferred.

~~(88)(89)~~ "SAIL" or "SAIL Program" means the State Apartment Incentive Loan Program created pursuant to Section 420.5087, Florida Statutes.

~~(89)(90)~~ "SAIL Equity" means the cash contributed towards the construction of a SAIL Development at the time of the SAIL loan closing and the purchase price of land less any land debt financed.

(a) For a public or Non-Profit Sponsor or Developer, an outright grant of funds, not to exceed 15% of Development cost minus SAIL Equity provided as described above.

(b) For a public or Non-Profit Sponsor or Developer, a loan subordinate to the SAIL loan from a local government may be considered "SAIL Equity".

The rate used to calculate Return on Equity on such loan shall not exceed the lesser of the loan rate or 12%.

~~(90)(91)~~ "SAIL Development" means a residential development which provides one or more housing units proposed to be constructed or substantially rehabilitated with SAIL funds for Eligible Persons. A SAIL Development which is under construction, in the process of rehabilitation or which has been completed may be considered for SAIL Program funding only if:

(a) The pro forma submitted for the SAIL Development in other programs of the Corporation within the last year reflected SAIL funding;

(b) Permanent financing of the costs associated with construction or rehabilitation of the SAIL Development has not closed as of the date the SAIL loan Application was received by the Corporation; and

(c) The Application and attached exhibits demonstrate that SAIL funds will enable the SAIL Development to provide at least 10% lower rents, provide additional amenities, or incorporate some additional features which benefit Very Low-Income persons or households.

Developments that are not eligible to obtain SAIL funds are those Developments that have already received funding through the SAIL Program. Developments that have extraordinary conditions such as acts of God, restrictions of any Governmental Authority, enemy action, civil disturbance, fire, or any other act beyond the reasonable control of the Developer will need to approach the Board to obtain permission to process an Application through SAIL for additional funding.

~~(91)(92)~~ "SAIL Minimum Set-Aside Requirement" means the least number of set-aside units in a SAIL Development which must be held for Very Low-Income persons or households pursuant to the category (i.e., Family; Elderly; or Farmworker and Commercial Fishing Worker) under which the Application has been made. The SAIL Minimum Set-Aside Requirement shall be either (a) 20% of the SAIL Development's units set-aside for tenants (i.e., Family; Elderly; or Farmworker and Commercial Fishing Worker) with annual household incomes at or below 50% of the area, metropolitan statistical area ("MSA") or state median income, adjusted for family size, whichever is higher, or (b) 40% of the SAIL Development's units set aside for tenants (i.e., Family; Elderly; or Farmworker and Commercial Fishing Worker) with annual household incomes at or below 60% of the area, MSA or state median income, whichever is higher, adjusted for family size. Sponsors of SAIL-funded Developments shall have the option of selecting (b) above only if the SAIL Development is scheduled to be assisted with Housing Credits, in addition to the SAIL loan.

~~(92)(93)~~ "Section 8 Eligible" means one or more persons or families who have incomes which meet the income eligibility requirements of Section 8 of the United States Housing Act of 1937, as in effect on the date of this Rule Chapter.

~~(93)(94)~~ "Single Room Occupancy" or "SRO" means housing, consisting of single room dwelling units, that is the primary residence of its occupant or occupants. Each ~~The~~ unit must contain either food preparation or sanitary facilities (and may contain both) if the Development consists of new construction, conversion of non-residential space, or reconstruction. For acquisition or rehabilitation of an existing structure or hotel, neither food preparation nor sanitary facilities are required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by the tenants. An SRO does not include facilities for Students.

~~(94)(95)~~ "Site Control Loans" means, with respect to a HOME Development, funds provided to cover Development expenses necessary to determine Development feasibility, including costs of an initial feasibility study, consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, site control and title clearance. General operational expenses of a CHDO are not allowable expenses.

~~(95)(96)~~ "Sponsor" means any individual, association, corporation, joint venture, partnership, trust, local government, or other legal entity or any combination thereof which:

(a) Has been approved by the Corporation as qualified to own, construct, acquire, rehabilitate, reconstruct, operate, lease, manage, or maintain a Development; and

(b) Except for a local government, has agreed to subject itself to the regulatory powers of the Corporation.

~~(96)(97)~~ "Student" means, with respect to a SAIL and Housing Credit Development(s), for the purposes of income certification, any individual who is, or will be, a full-time student at an educational institution during 5 months of the year, or a correspondence school with regular facilities. "Student" shall not be construed to include persons participating in an educational or training program approved by the Corporation.

~~(97)(98)~~ "Substantial Rehabilitation" means, with respect to the SAIL Program, to bring a Development back to its original state with added improvements, where the value of such repairs or improvements (excluding the costs of acquiring or moving a structure) exceeds 40% of the appraised as is value (excluding land) of such Development before repair. For purposes of this definition, the value of the repairs or improvements means the Development Costs, exclusive of the cost of acquiring or moving the structure. To be considered "Substantial Rehabilitation," there must be at least the foundations remaining from the previous structures, suitable to support the proposed construction.

~~(98)(99)~~ "Tax Exempt Bond-Financed Development" means a Development which has been financed by the issuance of tax-exempt bonds subject to applicable volume cap pursuant to Section 42(h)(4) of the Code.

~~(99)(100)~~ "Treasury" means the United States Department of Treasury or other agency or instrumentality created or chartered by the United States to which the powers of the Department of Treasury have been transferred.

~~(100)(101)~~ "Very Low-Income" means

(a) With respect to the SAIL Program,

1. If using tax-exempt bond financing for the first mortgage, income which meets the income eligibility requirements of Section 8 of the United States Housing Act of 1937, as in effect on the date of this Rule Chapter; or

2. If using taxable financing for the first mortgage, total annual gross household income which does not exceed 50% of the median income adjusted for family size, or 50% of the

median income adjusted for family size for households within the MSA, within the county in which the person or family resides, or within the State of Florida, whichever is greater; or

3. If used in a Development using Housing Credits, income which meets the income eligibility requirements of Section 42 of the Code; or

(b) With respect to the HOME Program, income which does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for family size, except that HUD may establish income ceilings higher or lower than 50% of the median for the area on a basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

(c) With respect to the HC Program, if residing in a Development using the Housing Credit, income which is at or below 40% or 45% of the area median income whichever is selected in the Application.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089(2) FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.002, Amended 11-9-98, \_\_\_\_\_.

67-48.003 Notice of Funding or Credit Availability.

(1) Applications shall be received by the Corporation by the deadline noticed in the Florida Administrative Weekly, which notice shall be published at least 60 calendar days prior to any such deadline. Such notice shall also be mailed to each person and entity on the Corporation's HOME/SAIL/HC mailing list.

(2) With respect to the SAIL, HOME and HC Programs, funds will initially be allocated as necessary to satisfy any judgment of a court of law or recommended order of a hearing officer or administrative law judge or settlement agreement in connection with litigation with respect to a previous cycle.

~~(3)(2)~~ With respect to the HOME Program, said notice shall also set forth the allocation authority available for eligible activities enumerated in Fla. Admin. Code Ann. r. 67-48.018 as follows:

(a) The Corporation shall utilize up to 10% of the HOME allocation for administrative costs pursuant to the HUD Regulations.

(b) The Corporation shall utilize at least 15% of HOME allocation for CHDO's pursuant to the HUD Regulations, to be divided between the multifamily and single family cycles as approved by the Board of Directors. In order to apply under the CHDO set-aside, Applicants must have at least 51% ownership interest in the Development held by the General Partner entity.

(c) Within the multifamily cycle administered pursuant to Fla. Admin. Code Ann. r. 67-48, the Corporation will distribute funds ~~give funding priority to Applications for proposed Developments located in Eligible Localities. Funds will be distributed~~ in the following order:

1. Funds will be allocated to qualified CHDO's ~~located in Eligible Localities~~, in order of ranking, until 15% of the available funds have been allocated.

~~2. If the Corporation is unable to allocate 15% of the available funds to qualified CHDO's located in Eligible Localities due to insufficient eligible Applications, the Corporation will next allocate to qualified CHDO Applicants, in order of ranking, regardless of location, the additional funds necessary to reach the 15% set-aside amount.~~

~~2.3.~~ The remaining funds will then be allocated to Applications for proposed Developments ~~located in Eligible Localities~~, in order of ranking.

~~4. If the Corporation is unable to allocate the remaining funds to Applications for proposed Developments located in Eligible Localities due to insufficient eligible Applications, the Corporation will then allocate any remaining funds to Applications regardless of location.~~

(d) The Board shall determine any geographic or other targeting requirements that will be included in said notice and published in the Florida Administrative Weekly and mailed to all interested parties on the Corporation mailing list.

~~(4)(3)~~ With respect to the HC Program, said notice shall also set forth the anticipated Allocation Authority and any geographic or other targeting requirements.

~~(5)(4)~~ After selection of Applicants is made pursuant to Fla. Admin. Code Ann. r. 67-48.004, the availability of any remaining funds or Allocation Authority shall be noticed in the same manner as detailed in subsections (1) and ~~(3)(2)~~ above or offered to a Development as approved by the Board of Directors or, for purposes of the HC Program, in accordance with the QAP.

~~(6)(5)~~ With respect to the HC Program, the Corporation shall be exempt from the notice requirements in subsections (1) and ~~(4)(3)~~ above if, during any Funding Cycle, the Corporation has not fully used its Allocation Authority for any reason and the Corporation determines that:

(a) A new Funding Cycle is necessary in order for the Corporation to distribute the balance of its Allocation Authority to eligible Developers; and

(b) Due to the shortness of the time remaining in the calendar year, the delay resulting from compliance with the notice requirements in subsections (1) and ~~(4)(3)~~ above would interfere with the ability of the Corporation to distribute the balance of its Allocation Authority.

~~(7)(6)~~ With respect to the HC Program, in the event there remains Allocation Authority after the Corporation has exhausted its waiting list of Applicants during a Funding Cycle and time requirements preclude an Application Period and notice thereof, the Corporation shall allocate any unused Allocation Authority to any eligible Development meeting the requirements of the Code and in accordance with the Qualified Allocation Plan.

~~(8)(7)~~ With respect to the SAIL Program, said notice shall also set forth minimum and maximum funding distribution levels by geographic category, as well as information related to demographic distribution objectives.

~~(9)(8)~~ In the event of a federally declared disaster, any Allocation Authority not preliminarily allocated, as well as any Authority remaining after Preliminary Allocation, may be diverted to one or more federally declared disaster areas.

~~(10)(9)~~ Prior to the issuance of The Notice of Funding or Credit Availability, ~~Florida Housing Finance Corporation's Board can allocate a specific~~ shall reference the amount of allocation housing credits to be set aside for Demonstration Developments or in connection with Developments receiving a State Housing Tax Credit allocation authorized by Section 220.185, Florida Statutes.

Specific Authority 420.507, FS. Law Implemented 420.5087, 402.5089, 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 91-48.003, Amended 11-9-98, \_\_\_\_\_.

67-48.004 Application and Selection Procedures for Developments.

(1) The Corporation hereby adopts by reference the Application Package (Form CAP 0099) which provides forms, computer disks, tabs, threshold requirements, instructions and other information necessary for submission of an Application under each Program.

(2) Application Packages may be obtained for a fee in accordance with this Rule Chapter, from the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

(3) All Applications must be complete, accurate, legible and timely when submitted. All Applications must be received by the Application Deadline as specified in the Notice of Funding or Credit Availability for each Program. Neither Applications nor any additional or replacement items will be accepted by facsimile machine. Subject to the limited exceptions contained within Rule 67-48.005, F.A.C., oOnce the Application has been received by the Corporation, no additions, deletions, or changes will be accepted for Application or scoring purposes. Corporation staff may not assist any Applicant by copying, collating, or adding documents to an Application nor shall any Applicant be permitted to use the Corporation's facilities or equipment for purposes of compiling or completing an Application. Applications must be submitted on the forms provided in the Application Package or on forms generated by the computer disks provided in the Application Package. Failure to comply with this provision will result in rejection of the Application. Exhibits must be placed behind each form to which they refer. Failure to submit an Application completed in ~~strict~~ accordance with the Application instructions will result in a reduction of points awarded or rejection in accordance with the instructions in the Application.



(4) An original and ~~three~~ ~~two~~ photocopies of the original Application shall be securely bound in separate three ring binders with numbered index tabs for each form and exhibit with the materials provided in the Application Package when submitted. The submitted Application which is considered the original ~~shall~~ ~~must~~ contain authentic, penned in ink signatures on those forms which specifically request original signatures. Signatures which are faxed, scanned, photocopied, or otherwise duplicated will not be considered acceptable signatures within the original Application and will cause rejection of the Application, unless the form containing the original signature is located in one of the copies of the Application, in which case the five-point penalty shall be applied in accordance with Application Instructions.

(5) Applications shall be limited to one submission per subject property with exception of Tax-Exempt Bond-Financed Developments applying noncompetitively for Housing Credits.

(6) If any Applicant, an Affiliate of an Applicant, or a partner of a limited investment partnership is determined by the Corporation to have engaged in fraudulent actions or to have deliberately misrepresented information within the current Application or in any previous Applications for financing or Housing Credits administered by the Corporation, the Applicant and any of Applicant's Affiliates will be ineligible to participate in any program administered by the Corporation for a period of up to two fiscal years, which will begin from the date the Board approves the disqualification of the Applicant's Application.

(7) The Corporation shall reject an Application if:

(a) The Application has not been submitted in accordance with the Application Package and as specified in this Rule Chapter and accompanying instructions provided by the Corporation;

(b) The Development is inconsistent with the purposes of the SAIL, HOME and/or HC Program(s) or does not conform to the Application requirements specified in this Rule Chapter;

(c) The Applicant fails to achieve the threshold requirements as detailed in the Application Package;

(d) The Applicant fails to file its Application by the Application Deadline;

(e) The Applicant fails to file the entire Application which was provided by the Corporation and adopted under this Rule Chapter;

(f) The Application is not accompanied by the correct Application fee as specified in this Rule Chapter;

(g) The Application is scanned or submitted on altered or retyped forms; or

(h) The Application fails to score within the funding range for HC if applying for SAIL and HC or HOME and HC. Further, if the Applicant's SAIL or HOME score is not sufficient for SAIL or HOME funding, HC will not be awarded.

(8) A Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if at any time:

(a) The Board determines that the Applicant deliberately misrepresented information in its Application in order to obtain points on its Application, or

(b) The Board determines that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or to the market to be served by the Development.

(9) If an Applicant or any Principal or Affiliate of an Applicant or a Developer has failed to place-in-service a Development which received a HC allocation or has any existing Developments participating in any Corporation programs that remain in non-compliance with the Code or this Rule Chapter at the time of ~~credit underwriting submission of the Application~~ and the cure period granted for correcting such non-compliance has ended, the requested allocation will be denied and the Applicant and the Affiliates of the Applicant or Developer ~~will be~~ ~~are~~ prohibited from new participation in any of the Programs for a period of one year and until such time as all of their existing Developments participating in any Corporation programs are in compliance.

(10) The Review Committee shall review all Applications that are received by the Application Deadline. For the purpose of this subsection "received" means delivery by hand, U. S. Postal Service or other courier service, in the office of the Corporation no later than 5:00 p.m., Tallahassee time, on the Application Deadline as specified in the Notice of Funding or Credit Availability.

(11) The Application Package shall be evaluated and preliminarily ranked using the factors specified in the Application Package.

(12) Preliminary scores and rankings shall be transmitted to all Applicants, along with notice of appeal rights. Following completion of appeals, final award of points shall be submitted to the Board for approval.

(13) The Review Committee may use other Corporation staff, Department staff or professional consultants to assist in reviewing certain portions of the Application.

(14) With respect to the HOME and HC Program Applications, when two or more Applications receive the same numerical score, the Application which has the higher total score on Forms 3, 4, and 7 shall be ranked higher. With respect to the SAIL Program, when two or more Applications receive the same numerical score, the Corporation shall give priority to the Application which conforms to the geographic distribution detailed in section 420.5087(1), Florida Statutes. With respect to the SAIL, ~~and HOME and HC~~ Program Applications, if two or more Applications remain tied, the Corporation shall give priority to the Application with the lowest percentage based on

the following Form 10 calculation: SAIL or HOME loan amount divided by the lower of Actual Total Development Cost or Threshold Total Development Cost. With respect to the HC Program Applications, if two or more Applications remain tied, the Corporation shall give priority to the Application with the lowest amount of HC requested per set-aside unit, as calculated on Form 10. Finally with respect to the SAIL, HOME and HC Applications, if two or more Applications continue to remain tied, priority will be given to the Application which was received earlier by the Corporation the following calculation will be performed and the Application which receives the lower number ranks higher: Square footage of constructed/rehabilitated buildings as shown on Form 1 times the percentage of residential units the Applicant is committing to set aside. The total sum of Corporation funds requested, including equity received from syndication of housing Credits, is then divided by the number resulting from the calculation in the previous sentence.

(15) At no time during the Application, scoring and appeal process may Applicants or their representatives contact Board members concerning their own Development or any other Applicant's Development.

(16) The name of the Development provided in the Application may not be changed or altered after submission of the Application during the history of the Development with the Corporation unless the change is mandated by local, state or federal governmental authorities, or otherwise approved by the Corporation. Evidence of such mandate must be submitted to the Corporation within 30 calendar days of notification by the local, state or federal authorities.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, 4-6-98, Formerly 9F-48.004, Amended 11-9-98.

#### 67-48.005 Applicant Administrative Appeal Procedures.

(1) Following the Review Committee's determination of preliminary scores and ranking, notice of intended funding or denial of funding will be provided to each Applicant with a statement that:

(a) Applicants who wish to contest the decision relative to their own Application must petition for review of the decision in writing within 21 ~~40~~ calendar days of the date of receipt of the notice. The request must specify in detail the forms and the scores sought to be appealed. In its petition for review, the Applicant shall have the opportunity to cure transpositional or scrivener's errors that do not otherwise materially affect the Application and correct exhibits to the Application, provided that the original of such exhibit was properly recorded in the public records of its county of origin or was on file with the Secretary of State's Office for the State of Florida at the time the Application was submitted. Notwithstanding the ability to cure, a single five-point penalty will be applied in accordance with the Application Instructions. Unless the appeal involves disputed issues of material fact, the appeal will be conducted

on an informal basis. The Review Committee will review the appeal and will provide to the Applicant a written position paper which recommends either no change in score or an increase or decrease in a score which it deems to be in error. If the Applicant disagrees with the Review Committee's recommendation, the Applicant will be given an opportunity to participate in the informal administrative appeal hearings scheduled by the Review Committee. If the appeal raises issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), Florida Statutes. Failure to timely file a petition shall constitute a waiver of the right of the Applicant to such an appeal.

(b) Applicants who wish to notify the Corporation of possible scoring errors relative to another Applicant's Application must file with the Corporation, within 21 ~~40~~ calendar days of the date of receipt of the notice, a written request for a review of the other Applicant's score. Each request must specify in detail the assigned Application number, the forms and the scores in question. Each request is limited to the review of only one Application's score. Requests which seek the review of more than one Application's score will be considered improperly filed and ineligible for review. There is no limit to the number of requests which may be submitted. The Review Committee will review each written request timely received and will prepare a written position paper, which will be provided to each Applicant who timely filed a notification and to the Applicant whose score has been questioned, which recommends either no change in score or an increase or decrease in a score which it deems to be in error. Failure to timely and properly file a request shall constitute a waiver of the right of the Applicant to such a review.

(2) Notice will be provided to all Applicants whose score is reduced or whose Application is deemed ineligible pursuant to 67-48.005(1)(b) that they may contest the decision relative to their own Application by petitioning for review of the decision in writing within 21 ~~40~~ calendar days of the date of receipt of the notice. The request must specify in detail the forms and the scores sought to be appealed. In its petition for review, the Applicant shall have the opportunity to cure transpositional or scrivener's errors that do not otherwise materially affect the Application and correct exhibits to the Application, provided that the original of such exhibit is properly recorded in the public records of its county of origin or is on file with the Secretary of State's Office for the State of Florida. Notwithstanding the ability to cure, a single five-point penalty will be applied in accordance with the Application Instructions. Unless the appeal involves disputed issues of material fact, the appeal will be conducted on an informal basis. The Review Committee will review the appeal and will provide to the Applicant a written position paper which recommends either no change in score or an increase or decrease in a score which it deems to be in error. If the Applicant disagrees with the Review Committee's recommendation, the Applicant will be given an opportunity to

participate in the informal administrative appeal hearings scheduled by the Review Committee. No Applicant or other person or entity will be allowed to intervene in the appeal of another Applicant. If the appeal raises issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), Florida Statutes. Failure to timely file a petition shall constitute a waiver of the right of the Applicant to such an appeal.

(3) For purposes of 67-48.005(1)-(2) above, the written notification, petition, or request for review is deemed timely filed when it is received by the Executive Director, prior to 5:00 p.m. Tallahassee time of the last day of the designated time period, at the following address: Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, Attention: Corporation Clerk. For the purpose of this subsection, "received" means delivery by hand, U.S. Postal Service, other courier service, or by telefax. Petitions or requests for review that are not timely filed shall constitute a waiver of the right of the Applicant to such a review.

Specific Authority 420.507 FS. Law Implemented 120.57, 420.5087, 420.5089(1), 420.5099 FS. History--New 7-22-96, Amended 12-23-96, 1-6-98, 4-6-98, Formerly 9I-48.005, Amended 11-9-98, \_\_\_\_\_.

#### 67-48.006 Compliance and Reporting Requirements.

(1) Any duly authorized representative of the Corporation or the Treasury shall be permitted at any reasonable time to inspect and monitor Development and tenant records and facilities. All tenant records shall be maintained by the owner of the Development within 50 miles of the Development site.

(2) The Corporation or its representative shall conduct on-site Development inspections at least annually. The on-site inspections for RD (formerly FmHA) Developments participating in the HC Program are performed by RD periodically in conjunction with RD regulations.

(3) The Corporation must approve the selection or replacement of a management company prior to such company assuming responsibility for the Development, using the following criteria:

(a) Review of company information including key management personnel, management experience and procedures;

(b) Review of company forms such as application for apartment residence, income verification forms, lease, etc.;

(c) Key management company representative's attendance at a Corporation compliance workshop; and

(d) A meeting between Corporation compliance staff and the key management company representative after the compliance workshop;

(4) The Corporation will document approval of the management company to the owner of the Development after successful completion of items (3)(a)-(d).

(5) The owner of the Development shall maintain complete and accurate income records pertaining to each tenant occupying a Low-Income or Very Low-Income unit. Records for each occupied Low-Income or Very Low-Income unit shall contain the following documentation:

(a) The tenant's rental application containing the name or names of each household member, employment and income information for each household member, and other information required by the owner of the Development;

(b) An executed lease agreement listing the term of the tenancy and all of the tenants residing in the unit;

(c) Verification of the income of each tenant as is acceptable to prove income under Section 8 of the U. S. Housing Act of 1937, as in effect on the date of this Rule Chapter;

(d) Information as to the assets owned by each tenant; and

(e) Income Certification Form TIC-1 for each tenant. A sample Form TIC-1 can be obtained from the Corporation. For Developments participating in Section 8 and RD Programs, the HUD Forms 50058 or 50059 or RD (or FmHA) Form 1944-8 may be used in lieu of Form TIC-1 as long as proper documentation is maintained in the tenant files.

(6) The Applicant shall submit Program Reports pursuant to the following:

(a) The initial HC Program Report shall be submitted within 10 days following the end of the calendar quarter during which the issuance of the Final Housing Credit Allocation was made. Subsequent Program Reports shall be submitted each year of the Housing Credit Compliance Period and shall be due no later than on one of the following dates assigned by the Corporation: January 10, April 10, July 10 or October 10. The Program Reports shall be accompanied by:

1. Recap of Tenant Income Certification Information Form AR-1;

2. Copies of Tenant Income Certifications executed since the last Program Report for at least 10% of the Housing Credit Set-Aside units in the Development (to be sent to the monitoring agent only); and

3. With respect to the HC Program, the Annual Owner Compliance Certification Form to be signed by the owner of the Development certifying that for the preceding 12 month period the Development met its Housing Credit Set-Aside requirements (to be sent to the Corporation only). Forms PR-1, AOC-1 and AR-1 shall be provided by the Corporation and shall be submitted for all Developments receiving Housing Credit Allocations since January 1, 1987.

(b) The initial HOME Program Report shall be submitted prior to the time of loan closing, if occupied, or within 10 days following the end of the calendar quarter during which leasing of any HOME-Assisted Units occurred. Subsequent Program Reports shall be submitted annually on one of the following

due dates assigned by the Corporation: January 10, April 10, July 10 or October 10. The Program Reports shall be accompanied by:

1. Recap of Tenant Income Certification Information Form AR-1; and

2. Copies of Tenant Income Certification executed since the last Program Report for at least 10% of the HOME-Assisted Units in the Development (to be sent to the monitoring agent only).

(c) The initial SAIL Program Report shall be submitted prior to the time of loan closing, if the Development is occupied, or by the 25th of the month following rental of the initial unit in the Development. Subsequent Program Reports shall be submitted each month and are due no later than the 25th of each month thereafter. The Program Reports shall be accompanied by copies of all Tenant Income Certifications executed since the last Program Report (to be sent to the Corporation and the monitoring agent).

(7) HC Developments will submit copies of each building's completed IRS Form 8609 and Schedule A (Form 8609) for the first year housing credits are claimed to the Compliance Section of Florida Housing Finance Corporation. These forms are due at the same time they are filed with the Internal Revenue Service. Additionally, correspondence shall indicate what the first month of the first taxable year is.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089, 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 91-48.006, Amended 11-9-98, Repromulgated.

#### 67-48.007 Fees.

The Corporation shall collect the following fees and charges in conjunction with the SAIL, HOME and/or HC Program:

(1) Application Package Fee: Each Applicant must obtain an Application Package from the Corporation. A fee of \$60 shall be payable to the Corporation by any person requesting a copy of the Application Package, and said fee must be received by the Corporation prior to the issuance of an Application Package. Application Packages without tabs may be obtained for a fee of \$40.

(2) Application Tab Kit Fee: Each person requesting additional tabs for the Application shall remit a fee of \$20 per Application Tab Kit, payable to the Corporation prior to the issuance of the Application Tab Kit.

(3) Application Fee: SAIL and HC Applicants shall submit a non-refundable Application fee of \$250 per Application per Program to the Corporation if Applicant or Applicant's General Partner qualifies as a Non-Profit entity pursuant to HUD Regulations, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the Code and organized under Chapter 617, Florida Statutes, if a Florida Corporation, or organized under similar state law if organized in a jurisdiction other than Florida and \$500 per Application per Program for all others at the time of submission of each Application. HOME Applicants shall submit a non-refundable fee of \$50 to the Corporation if

Applicant qualifies or Applicant's General Partner qualifies as a Non-Profit entity pursuant to HUD Regulations, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the Code and organized under Chapter 617, Florida Statutes, if a Florida Corporation, or organized under similar state law if organized in jurisdiction other than Florida and \$100 for all others shall be charged per Application at the time of submission of each HOME Application.

(4) Credit Underwriting Fees: With respect to the SAIL and the HC Programs, the Applicant shall submit the required underwriting fee for each Development to the Credit Underwriter designated by the Corporation within 7 calendar days of the date of the invitation by the Corporation to enter credit underwriting. The credit underwriting fee shall be determined pursuant to the contract between the Corporation and the Credit Underwriter and shall be set forth in the Application Package. If a Housing Credit Development involves scattered sites of units within a single market area, a single credit underwriting fee shall be charged. Any Housing Credit Development requiring further analysis by the Credit Underwriter pursuant to Section 42(m)(2) of the Code, as well as any SAIL Development requiring further analysis by the Credit Underwriter pursuant to this Rule Chapter, will be subject to a fee based on an hourly rate determined pursuant to contract between the Corporation and the Credit Underwriter. All Credit Underwriting fees which are listed in the Application Package shall be paid by the Applicant prior to the performance of the analysis by the Credit Underwriter.

(5) Administrative Fees: With respect to the HC Program, each Applicant to whom a Preliminary Allocation, a Binding Commitment or Preliminary Determination is granted shall submit to the Corporation a non-refundable administrative fee in the amount of 8% of the first annual Housing Credit Allocation amount to be received, except that such fee shall be 5% for Applicants that qualify or whose General Partner qualifies as a Non-Profit entity pursuant to Rule 67-48.002(71)(73), F.A.C., HUD Regulations, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the Code and organized under Chapter 617, Florida Statutes, if a Florida Corporation, or organized under similar state law if organized in a jurisdiction other than Florida. Notwithstanding the foregoing, the fee for a Development of 4 units or less shall not exceed \$250 per unit. The administrative fee must be received by the Corporation within 7 calendar days of the date of the Preliminary Housing Credit Allocation, the Binding Commitment or the Preliminary Determination, whichever is applicable.

(6) Commitment Fees: With respect to the SAIL Program, each Applicant to whom a firm commitment is granted shall submit to the Corporation a non-refundable commitment fee of 1% of the SAIL loan amount upon acceptance of the firm commitment. An extension fee of .05% of the SAIL loan amount will be charged if the Corporation is asked to extend

the SAIL loan commitment beyond the period outlined in this Rule Chapter. All requests for extension must be submitted in writing to the program administrator and contain the specific reasons for the extension and the date needed by which to close the loan.

(a) Non-Profit sponsors who provide a certification indicating that funds will not be available prior to closing shall be permitted to pay the commitment fee at closing.

(b) All Sponsors shall remit the commitment fee payable to the Florida Housing Finance Corporation.

(7) Compliance Monitoring Fees: With respect to the HC Program, the total monitoring fee to be paid by the Applicant for the Housing Credit Compliance Period must be submitted to the Corporation prior to the issuance of a Final Housing Credit Allocation. The total monitoring fee is based upon a quarterly payment stream which shall be discounted at 2.75% for the full Housing Credit Extended Use Period to provide a present value to be paid by the Applicant and shall be listed in the Application Package. With respect to the SAIL Program, the annual monitoring fee to be paid by the Applicant shall be determined by contract between the Corporation and the monitoring agent and shall be listed in the Application Package.

(8) Loan Servicing Fees: With respect to the SAIL Program, the servicing fee to be paid by the Applicant shall be determined by contract between the Corporation and the monitoring agent and shall be listed in the Application Package.

(9) Financial Monitoring Fees: With respect to the SAIL Program, the annual financial monitoring fee to be paid by the Applicant shall be determined by contract between the Corporation and the monitoring agent and shall be listed in the Application Package.

(10) Housing Credit Development List: The Corporation shall prepare a Housing Credit Development list which shall include Housing Credit data for all Applicants and Developments from January 1, 1987, to the present. A fee of \$5 per yearly list shall be payable to the Corporation by any person requesting a copy of any portion or all of the Development list prior to issuance of a Development list by the Corporation.

(11) Tax-exempt Mortgage Financing: If Corporation tax-exempt mortgage financing is used for the first mortgage loan, the same fee schedule as described above shall be applied to both the first mortgage loan and the SAIL loan. Additional legal, cost of issuance, bond underwriting, credit enhancement, liquidity facility and servicing fees associated with the financing shall also be paid by the Applicant.

(12) Development Cost Pro Forma: All of the fees set forth above with respect to the SAIL Program are part of Development cost and may be included in the Development cost pro forma and paid with SAIL loan proceeds, if approved

by the Credit Underwriter. Failure to pay any fee shall cause the firm loan commitment under any Program to be terminated or shall constitute a default on the respective loan documents.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.007, Amended 11-9-98,\_\_\_\_\_.

#### 67-48.008 No Discrimination.

The Corporation, its staff or agents, Applicants, or participants in any Program shall not discriminate under that Program against any person or family, on the basis of race, creed, color, national origin, age, sex, religion, marital or familial status, or handicap, or against persons or families on the basis of their having minor children.

Specific Authority 420.507(12) FS. Law Implemented 420.501, 420.5089(10) FS. History—New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 9I-48.008, Repromulgated 11-9-98,\_\_\_\_\_.

## PART II – STATE APARTMENT INCENTIVE LOAN PROGRAM

### 67-48.009 SAIL General Program Procedures and Restrictions.

In order for a Development to qualify for SAIL funds, it shall, at a minimum, meet or comply with the following:

(1) In the Application, each Applicant must select the category in which to apply and must specify the SAIL Minimum Set-Aside Requirement with which the Development will comply.

(2) Loans shall be in an amount not to exceed 25% of the total Development cost or the minimum amount required to make the Development economically feasible, whichever is less, as determined by the Credit Underwriter.

(3) The following types of Sponsors are eligible to apply for loans in excess of 25% of total Development cost pursuant to 420.507(22), Florida Statutes:

(a) Non-Profit and public Sponsors which are able to secure grants, donations of land, or contributions from other sources collectively totaling at least 10% of total Development cost; or

(b) Sponsors that maintain an occupancy of a minimum of 80% of qualified Commercial Fishing Workers or Farmworkers.

(4) At a minimum, the percentage of set-aside units committed to in the Application must be held for Very Low-Income persons or households for a period of time equal to the greater of the following:

(a) The term of the SAIL loan; or

(b) 12 years; or

(c) Such longer term agreed to by the Applicant in the Application Package.

(5) The Corporation may set aside a portion of the SAIL funds in order to capitalize a loan loss reserve fund to be used in the event of a default, deed in lieu of foreclosure or foreclosure on a funded Development, to safeguard the Corporation's security interest in the Development.

(6) Applicants cannot request additional funding for the same Development within the SAIL Program with the exception of those Developments which comply with the requirements in Fla. Admin. Code Ann. r. 67-48.002(90)(91)(a)-(c).

(7) Applicants cannot request additional funding for the same Development within the SAIL Program in order to obtain their Developer fee.

(8) Developer fee shall be limited to 16% of Development cost excluding land and building acquisition costs. A Developer fee on the building acquisition cost shall be limited to ~~4~~ 5% of the cost of the building exclusive of land. ~~A total developer fee of 20% of Development cost, excluding land and building acquisition costs, shall be allowed if the proposed Development meets all of the following conditions:~~

~~(a) Development is located in a Difficult Development Area or in a Qualified Census Tract as defined by the Department of Housing & Urban Development;~~

~~(b) Applicant commits to set aside at least 40% of the units for households at or below 50% area median income or, if the Development receives a Housing Credit Allocation, the Applicant of the SAIL and HC Development commits to set aside at least 40% of the units at 50% or less of area median income or 15% of the units at 35% or less of area median income;~~

~~(c) Applicant commits to a 50 year Land Use Restriction Agreement;~~

~~(d) Development must have at least 20% of the total units set aside for special needs population (Elderly, Large Family, Farmworker or Commercial Fishing Worker) throughout the 50 year Land Use Restriction Agreement;~~

~~(e) Neither the Applicant nor any Financial Beneficiary of the Development has received Corporation funding for more than one Application in the current cycle.~~

(9) In no event can the amount of the Developer's fee increase over what Developer fee is shown in the Application.

(10) The General Contractor's fee shall be limited to a maximum of 14% of the total construction cost.

(11) SAIL loans proceeds shall not be used to fund any contingency reserves.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.009, Amended 11-9-98,\_\_\_\_\_.

67-48.0095 Additional SAIL Application Ranking and Selection Procedures.

(1) During the first six months following the publication date of the first Notice of Funding Availability published each fiscal year within the State of Florida, SAIL funds shall be allocated based upon the requirements specified in Sections 420.5087(3), Florida Statutes which specifies the required funding within the three demographic categories of (a) Family, (b) Elderly, and (c) Commercial Fishing Workers and Farmworkers.

(2) 10% of the funds reserved for Applicants designating a SAIL Minimum Set-Aside Requirement in the Elderly category shall be reserved to provide loans to Sponsors of housing for the Elderly for the purpose of making life-safety or security-related repairs or improvements to such housing which are required by federal, state or local regulation, as further specified in Section 420.5087, Florida Statutes.

(3) The Corporation shall, within each demographic category, rank Applications in order of total points assigned, with the highest point total being ranked first.

(4) The Corporation shall then assign, in order of ranking, tentative loan amounts to the Applications in each demographic category, up to the total amount available. However, the Corporation shall make adjustments to ensure that minimum and maximum funding distribution levels by geographic category are met, as required by Section 420.5087(1), Florida Statutes, and further described in the SAIL Notice of Funding Availability. In the event that the 10% of program funds required to be allocated to counties with a population of 100,000 or less remains unallocated at the conclusion of a successive three year cycle, the unallocated funds shall be carried forward and shall be added to the funds reserved for counties with a population of 100,000 or less for the next successive three year period.

(5) After the six-month period has expired, the Corporation may allocate SAIL funds to Applicants meeting threshold requirements, without regard to demographic category.

(6) Based upon fund availability, the Corporation shall notify Applicants of selection for participation in the SAIL Program in rank order within each set-aside category, as clarified in (4) above. When the amount of an Applicant's loan request exceeds the remaining funds available, the Corporation shall offer the Applicant a tentative loan amount equal to the remaining funds. Rejection of such offer will cause the Corporation to make the offer to the next highest ranked Applicant within the category. This process shall be followed until all funds in the category are either committed in this category or combined with available funds from other categories and offered to the next highest scorer in any category.

(7) Selection for SAIL Program participation is contingent upon fund availability after determination of final loan amounts and the appeals process.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History—New 12-23-96, Amended 1-6-98, Formerly 91-48.0095, Amended 11-9-98,

67-48.010 Terms and Conditions of SAIL Loans.

(1) The proceeds of all SAIL loans shall be used for new construction or Substantial Rehabilitation of affordable, safe and sanitary rental housing units.

(2) The SAIL loan must be in a first or second lien position (provided that two prior mortgages which secure the same indebtedness and credit enhancement fees shall be deemed a single prior position) and shall not share priority with any other liens unless approved by the Board.

(3) The loans shall be non-amortizing and shall have interest rates as follows:

(a) 3% interest on loans to Developments that maintain an 80% occupancy of residents qualifying as Commercial Fishing Workers or Farmworkers over the life of the loan;

(b) 9% simple interest per annum for all other loans;

(c) Payment on the ~~3% loans as stated in Fla. Admin. Code Ann. r. 67-48.010(3)(a) above~~ shall be based upon the actual Development Cash Flow. Interest may be deferred as set forth in Fla. Admin. Code Ann. r. 67-48.010(6) ~~this Rule Chapter~~ without constituting a default on the loan.

~~(d) Repayment on the 9% loans shall have a mandatory payment of the 3% base, and repayment of the remaining 6% shall be based upon the actual Development Cash Flow and may be deferred as set forth in this Rule Chapter without constituting a default on the SAIL loan.~~

(4) ~~The 3% loan as stated in Fla. Admin. Code Ann. r. 67-48.010 (3)(a) above as well as payment of the remaining 6% on the 9% SAIL.~~ The loans described in Fla. Admin. Code Ann. r. 67-48.010 (3)(a)(b) and (b)(d) above shall be repaid from all Development Cash Flow, and if the SAIL loan is not a first mortgage loan, each year, subject to the provisions of paragraph (6) below, Development Cash Flow shall be applied to pay the following items in order of priority:

(a) First mortgage fees and debt service;

(b) Development Expenses including the servicing fee on the SAIL loan;

(c) Base interest payment on SAIL loan balance equal to 1% on the 3% loan as stated in (3)(a) above and equal to 3% on the 9% loan as stated in (3)(b) above over the life of the SAIL loan;

(d) Any SAIL loan base interest payment deferred ~~on the 3% loan as stated in (3)(a) above~~ from previous years;

(e) Mandatory payment on subordinate mortgages;

(f) 12% Return on Equity to Sponsor;

(g) Any other unpaid SAIL interest deferred from the current and previous years;

(h) Any unpaid Return on Equity deferred from previous years; and

(i) Remaining monies to be equally divided between the Developer and the Corporation with the Corporation receiving no more than the stated interest rate on the SAIL loan. After the full SAIL loan interest has been paid, the Sponsor shall retain all remaining monies, unless the Sponsor chooses to prepay a portion of the loan balance.

(5) If the SAIL loan is secured by a first mortgage lien, each year, subject to the provisions of paragraph (6) below, Development Cash Flow shall be applied to pay the following items in order of priority:

(a) First mortgage fees and base interest payment on SAIL loan balance equal to 1% on the 3% loan as stated in (3)(a) above and equal to 3% on the 9% loan as stated in 3(b) above over the life of the SAIL loan; ~~SAIL base interest equaling 1% on Developments that maintain an 80% occupancy for residents qualifying as Commercial Fishing Workers or Farmworkers over the life of the SAIL loan, and equal to 3% on all other SAIL loans;~~

(b) Development Expenses including the servicing fee on the SAIL loan;

(c) Any other unpaid payment of SAIL interest deferred from the current and previous years;

(d) Mandatory payment on subordinate mortgages;

(e) 12% Return on Equity to Sponsor;

(f) Any unpaid Return on Equity deferred from previous years; and

(g) Remaining monies to be equally divided between the Developer and the Corporation with the Corporation receiving no more than the stated interest rate on the SAIL loan. After the full SAIL loan interest has been paid, the Sponsor shall retain all remaining monies, unless the Sponsor chooses to prepay a portion of the loan balance.

(6) The determination of Development Cash Flow, determination of payment priorities, and payment of interest on SAIL loans shall occur annually. Any payments of accrued and unpaid interest due annually on SAIL loans shall be deferred to the extent that Development Cash Flow is insufficient to make said payments pursuant to the payment priority schedule established in this Rule Chapter. If Development Cash Flow is under-reported and such report causes a deferral of SAIL interest, such under-reporting shall constitute an event of default on the SAIL loan. A penalty of 5% of any required payment shall be assessed.

(a) By April 15 of each year of the SAIL loan term, the Developer shall provide the Corporation and its servicer with a certification detailing the information needed to determine the annual payment to be made. However, this certification requirement will be waived until April 15 following the calendar year within which the first unit is occupied. The certification shall require submission of audited financial statements, the SAIL annual reporting form, (Form SR-1) and

other documents that may be required by the Corporation or its servicer. The financial statements are to be prepared in accordance with generally accepted accounting principles for the 12 months ended December 31 and shall include:

1. Comparative Balance Sheet with prior year and current year balances;
2. Statement of revenue and expenses which compares budgeted amounts to actual performance;
3. Statement of changes in fund balances or equity;
4. Statement of cash flows; and
5. Notes.

The financial statements referenced above should also be accompanied by a certification of the Developer as to the accuracy of such financial statements. The Developer shall furnish to the Corporation or its servicer, unaudited statements, certified by the Developer's principal financial or accounting officer, covering such financial matters as the Corporation or its servicer may reasonably request, including without limitation, monthly statements with respect to the Development. A late fee of \$500 will be assessed by the Corporation for failure to submit the required financial certification by April 15 of each year of the SAIL loan term. Failure to submit the required financial certification by April 15 of each year of the SAIL loan term shall constitute an event of default on the SAIL loan.

(b) The Corporation servicer shall issue a billing for interest due on the SAIL loan for the immediately preceding calendar year by May 31 of each calendar year of the SAIL loan.

(c) The Developer shall remit the interest due to the Corporation servicer no later than June 30 of each year of the SAIL loan. The first payment of SAIL base interest on 9% loans will be due no later than June 30 following the calendar year within which the first unit is occupied. The first payment of base interest shall include all base interest for the period which begins accruing on the date of the first draw and ends on December 31 of the calendar year during which the first unit is occupied. Any payment not paid when due shall bear interest at the Default Interest Rate (18%) from the due date until paid. Unless the Corporation has accelerated the SAIL loan, the Developer shall pay the Corporation a late charge of 5% of any required payment which is not received by the Corporation within 15 days of the due date.

(7) If, in its Application, the Applicant agrees to a Very Low-Income set-aside for a term longer than that required by law, the deferred SAIL interest due pursuant to this Rule Chapter shall be forgiven in an amount equal to the amount of interest due pursuant to Fla. Admin. Code Ann. r. 67-48.010, multiplied by .05 multiplied by the number of years, not to exceed 15, that such set-aside for Very Low-Income persons or households was extended beyond that required by law.

(a) The amount of interest to be forgiven shall be determined upon maturity of the Note.

(b) Only interest which is in excess of the base interest rates specified in Fla. Admin. Code Ann. r. 67-48.010 shall be eligible for forgiveness.

(8) Any sale, conveyance, assignment, or other transfer of or the grant of a security interest in all or any part of the title to the Development other than a superior mortgage shall be subject to the Corporation's prior written approval.

(9) The final billing for the SAIL loan shall also include a billing for compliance fees to cover monitoring of SAIL Program requirements beyond the maturity date of the Note, as applicable. Such fees shall be computed by determining the present value of the annual compliance monitoring fee and multiplying that by the number of years for which the Development will have a set-aside for Very Low-Income persons or households beyond the repayment date. For Developments with perpetual set-asides, the period for which compliance fees shall be collected shall be limited to 50 years. The present value discount rate shall be 2.75% per annum. Such amount shall be reduced by the amount of any compliance monitoring fees for other programs collected by the Corporation for the Development provided:

(a) The compliance monitoring fee covers some or all of the period following the anticipated SAIL loan repayment date; and

(b) The Development has substantially equivalent set-asides for Very Low-Income persons or households mandated through another Corporation program for which the compliance monitoring fee was collected.

(10) The SAIL loans shall be serviced either directly by the Corporation or by the servicer on behalf of the Corporation.

(11) The Corporation shall monitor compliance of all terms and conditions of the SAIL loan and shall require that certain terms and conditions be embodied in the Land Use Restriction Agreement and recorded in the public records of the county wherein the Development is located. The Land Use Restriction Agreement will be recorded first. Violation of any term or condition of the documents evidencing or securing the SAIL loan shall constitute a default during the term of the SAIL loan. The Corporation shall take legal action to effect compliance if a violation of any term or condition relative to the set-asides of units for Very Low-Income persons or households is discovered during the course of compliance monitoring or by any other means.

(12) The Corporation shall require adequate insurance to be maintained on the Development as determined by the first mortgage lender or the Corporation's servicer, but which shall, in any case, include fire, hazard and other insurance sufficient to meet the standards established in Part V, Section 106 of the Fannie Mae DUS Guide, effective May 27, 1997.

(13) The SAIL loan shall be for a period of not more than 15 years. However, if both a SAIL loan and federal housing credits are to be used to assist a Development, the Corporation may set the SAIL loan term for a period commensurate with



the investment requirements associated with the Housing Credit syndication. The loan term may also exceed 15 years as required by the Federal National Mortgage Association whenever it is participating in the financing of the Development.

(14) Upon maturity of the SAIL loan, the Corporation may renegotiate and extend the loan in order to extend the availability of housing for the target population. Such extensions shall be based upon:

- (a) Performance of the Sponsor during the SAIL loan term;
- (b) Availability of similar housing stock for the target population in the area;
- (c) Documentation and certification by the Sponsor that funds are not available to repay the Note upon maturity;
- (d) A plan for the repayment of the loan at the new maturity date; and
- (e) Assurance that the security interest of the Corporation will not be jeopardized by the extension.

(15) The Developer shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the SAIL mortgage without prior approval of the Corporation's Board of Directors.

(a) The Board shall approve requests for mortgage loan refinancing only if Development Cash Flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation.

(b) The Board shall deny requests to increase the amount of any superior mortgage, unless the criteria outlined in 67-48.010(15)(a) are met, the original combined loan to value ratio for the superior mortgage and the SAIL mortgage is maintained or improved, and a proportionate amount of the increase in the superior mortgage is used to reduce the outstanding SAIL loan balance. To calculate the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the SAIL loan balance, the following calculation shall be used: divide the amount of the original SAIL mortgage by the combined amount of the original SAIL mortgage and the original superior mortgage; then multiply the quotient by the amount of the increase in the superior mortgage after deducting refinancing costs. For example, if the amount of the original SAIL mortgage is \$2,000,000, the original superior mortgage is \$4,000,000, the proposed new superior mortgage is \$5,000,000, and refinancing costs are \$200,000, then the amount of the increase in the superior mortgage after deducting refinancing costs would be \$800,000, and the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the SAIL loan balance would be \$266,667.

(c) The Board shall deny requests for mortgage loan refinancing which require extension of the SAIL loan term or otherwise adversely affect the security interest of the

Corporation unless the criteria outlined in 67-48.010(15)(a) are met, the Credit Underwriter recommends that the approval of such a request is crucial to the economic survival of the Development or unless the Board determines that public policy will be better served by the extension as a result of the Developer agreeing to further extend the Compliance Period or provide additional amenities or tenant programs suitable for the tenant population. Further, the Board shall limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

(16) All SAIL loans shall be in conformance with applicable federal and state statutes, including the Fair Housing Act as implemented by 24 CFR 100, Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR 35. The Corporation shall allow units dedicated to occupancy by the Elderly in a Development designed for occupancy by Elderly Households pursuant to authorization by HUD under the Fair Housing Amendments of 1988 as implemented by 24 CFR 100.

(17) Rent controls shall not be allowed on any Development except as required in conjunction with the issuance of tax-exempt bonds or federal Housing Credits; however, rents must be determined to be reasonable by the Credit Underwriter.

(18) The documents creating, evidencing or securing each SAIL loan must provide that any violation of the terms and conditions described in Fla. Admin. Code Ann. r. 67-48 constitutes a default under the SAIL loan documents allowing the Corporation to accelerate its loan and to seek foreclosure as well as any other remedies legally available to it.

(19) Sponsors shall annually certify that the household gross income, adjusted for family size, of each household occupying a unit set aside for Very Low-Income persons or household meets income requirements specified in Section 142(d)(3)(B) of the Code. Should the annual recertification of such households result in noncompliance with income occupancy requirements, the next available unit must be rented to a household qualifying under the provisions of Section 420.5087(2), Florida Statutes, in order to ensure continuing compliance of the Development.

(20) The Corporation must approve the Developer's selection of a management company prior to such company assuming responsibility for the Development. The Developer or managing agent of the Development must attend a Corporation-sponsored training workshop on certification and compliance procedures prior to the leasing of any units in the Development.

(21) A failure to pay any principal or interest due under the terms of this section shall constitute a default on the SAIL loan.

(22) If, after a four-month rent-up period commencing after issuance of the last certificate of occupancy on the units, a Sponsor is unable to meet the agreed-upon categorical set-aside for Family, Elderly, Farmworker or Commercial Fishing Worker, the Sponsor may request to rent such units to Very Low-Income persons or households without categorical restriction.

(a) The written request must provide documentation of marketing efforts implemented over the past four-month period which demonstrate the inclusion of sources of potential tenants, advertising to be used, other means of encouraging tenants to rent at the Development, and priority to the original targeted group of tenants. If the Corporation determines that prior marketing efforts were insufficient, a revised plan which is satisfactory to the Corporation must be submitted and implemented for a four-month period prior to reconsideration.

(b) The Board will require Sponsors to provide additional amenities or tenant programs suitable for the proposed tenant population.

(c) The Board will require Sponsors of Developments with 3% loans, as described in 67-48.010(3)(a), to modify loan documents to conform to the terms and conditions of 9% loans, as described in 67-48.010(3)(b) or to accelerate payments of SAIL loan principal or interest.

(23) The Developer shall provide to the Corporation and its servicer a certified annual budget of income and expenses for the Development no later than 30 days prior to the beginning of the Project's fiscal year.

(24) Failure to provide the Corporation and its servicer with the SAIL available Cash Flow Statement detailing the information needed to determine the annual payment to be made pursuant to this Rule Chapter shall constitute a default on the SAIL loan.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.010, Amended 11-9-98,\_\_\_\_\_.

67-48.0105 Sale or Transfer of a SAIL Development.

(1) The SAIL loan shall be assumable upon Development sale, transfer or refinancing of the Development if the following conditions are met:

(a) The proposed transferee meets all specific Sponsor identity criteria which were required as conditions of the original loan;

(b) The proposed transferee agrees to maintain all set-asides and other requirements of the SAIL loan for the period originally specified or longer; and

(c) The proposed transferee receives a favorable recommendation from the Credit Underwriter and approval by the Board of Directors of the Corporation.

(2) If the Development is sold and the buyer does not meet the criteria for assumption of the SAIL loan, the SAIL loan (principal and any deferred interest) shall be repaid from Development Cash Flow and from the proceeds of the sale in the following order of priority:

(a) First mortgage debt service, first mortgage fees, SAIL compliance and loan servicing fees;

(b) An amount equal to the present value of the compliance monitoring fee, as computed by the Corporation and its servicer, times the number of payment periods for which the Development will have a set-aside for Very Low-Income persons or households beyond the repayment date. The present value discount rate shall be 2.75% per annum. For Developments with set-asides in perpetuity, the period for which compliance fees shall be collected shall be limited to 50 years. Such amount shall be reduced by the amount of any compliance monitoring fees collected by the Corporation for the Development, provided:

1. The compliance monitoring fee covers some or all of the period following the anticipated SAIL repayment date; and

2. The Development has substantially equivalent set-asides for Very Low-Income persons or households mandated through another program of the Corporation for which the compliance monitoring fee was collected.

(c) Unpaid principal balance of the SAIL loan;

(d) Any current and deferred base interest due on the SAIL loan;

(e) Any other SAIL interest deferred from the current and previous years;

(f) Expenses of the sale;

(g) Any deferred or currently due Return on Equity;

(h) Remaining funds to be equally divided between the Developer and the Corporation, with the Corporation receiving no more than the stated interest on the SAIL loan plus the principal;

(i) If, on its Application, the Developer agreed to a set-aside for Very Low-Income persons or households for a period longer than that required by law, the deferred interest due herewith shall be forgiven in an amount equal to the amount of interest due under the Note multiplied by .05 multiplied by the number of years, not to exceed 15 years, that the set-aside for Very Low-Income persons or households was extended beyond that required by law. Only the amount of interest which is in excess of the base interest rate shall be eligible for forgiveness;

(j) If there will be insufficient funds available from Development Cash Flow and from the proposed sale of the Development, the SAIL loan shall not be satisfied until the Corporation has received:

1. An appraisal prepared by an appraiser selected by the Corporation or the Credit Underwriter indicating that the purchase price for the Development is reasonable and consistent with existing market conditions;

2. A certification from the Developer that the purchase price reported is the actual price paid for the Development and that no other consideration passed between the parties and that the Development Cash Flow reported to the Corporation during the term of the SAIL loan was true and accurate;

3. A certification from the Developer that there are no Development funds available to repay the SAIL loan and the Developer knows of no source from which funds could or would be forthcoming to pay the SAIL loan; and

4. A certification from the Developer detailing the information needed to determine the final billing for SAIL loan interest. Such certification shall require submission of financial statements and other documents that may be required by the Corporation and its servicer.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History—New 12-23-96, Amended 1-6-98, Formerly 9I-48.0105, Amended 11-9-98, Repromulgated.

#### 67-48.012 SAIL Credit Underwriting and Loan Procedures.

(1) Following the appeals process, the Corporation shall issue preliminary commitment letters to those Applicants whose Developments were awarded final scores and rankings which placed them into the funding range in each set-aside category.

(a) The preliminary commitment shall be subject to a positive recommendation by the Corporation's Credit Underwriter and approval by the Corporation's Board of Directors.

(b) The invitation to credit underwriting shall require that the Applicant submit the credit underwriting fee to the Credit Underwriter within seven calendar days of the date of the invitation. The Corporation will, within the specified seven calendar days, submit a copy of the Applicant's Application Package to the Credit Underwriter. Unless a written extension is obtained from the Corporation, failure to submit the fee by the specified deadline shall result in rejection of the Application.

(2) The Credit Underwriter shall verify all information in the Application Package, including information relative to the Applicant, Developer, Syndicator, General Contractor and other members of the Development team.

(a) The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during credit underwriting. If the Board determines at any time that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or the market to be served by the Development or if any discrepancy or misrepresentation is found, the Application will be rejected.

(b) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope the credit underwriter's expertise, the cost of providing such expertise shall be borne by the Applicant.

(c) The Credit Underwriter shall review the interest rate and terms of other proposed financing as provided in the Application Package to determine whether or not such loans are feasible and to determine if a SAIL loan is needed.

(d) Required appraisals and environmental studies shall be completed by professionals approved by the Corporation's Credit Underwriters. Approval of appraisers and contractors to complete environmental studies shall be based upon review of qualifications, professional designations held, references and prior experience with similar types of Developments.

(e) An appraisal shall be required during the credit underwriting process. The Applicant may choose an appraiser from the Credit Underwriter's approved list of appraisers; however, the Credit Underwriter shall order, at the Applicant's expense, the appraisal of the subject property. The Credit Underwriter shall use the same appraiser as the first mortgage lender provided the appraisal has not been ordered. The Credit Underwriter shall review the appraisal to properly evaluate the loan request in relation to the property value.

(f) Except as provided in Section 420.5087(5), Florida Statutes, the amount of any superior mortgages combined with the SAIL mortgage shall be less than the appraised value of the Development. Any debt service reserve requirement associated with a superior mortgage shall be excluded from the amount of the superior mortgage for purposes of this calculation.

(g) The minimum combined debt service coverage shall be 1.10 and the maximum debt service coverage shall be 1.50, including the SAIL mortgage and all other superior mortgages. In extenuating circumstances, such as when the Development has deep or short term subsidy, the debt service coverage may exceed 1.50 if the Credit Underwriter's favorable recommendation is supported by the projected cash flow analysis.

(h) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves when calculating the final net operating income available to service the debt. A minimum amount of \$200 per unit must be used for all Developments. However, the amount may be increased based on a physical needs assessment. An Applicant may choose to fund a portion of the replacement reserves at closing. The amount cannot exceed 50% of the required replacement reserves for 2 years and must be placed in escrow at closing.

(i) The Credit Underwriter shall consider the following when determining the need for construction completion guarantees:

1. Liquidity of the Guarantor.

2. Developer and General Contractor's history in successfully completing Developments of similar nature.

3. Problems encountered previously with Developer or Contractor.

4. Exposure of Corporation funds compared to total Development costs.

At a minimum, the Credit Underwriter shall require a Personal Guarantee for completion of construction from the principal individual or the Corporate General Partner of the borrowing entity. In addition, a letter of credit or Payment and Performance Bond will be required if the Credit Underwriter determines after evaluation of 1.-4. above that additional surety is needed. However, a completion guarantee will not be required if SAIL funds are not drawn until construction is complete, as evidenced by certificates of occupancy.

(j) The Credit Underwriter shall require an operating deficit guarantee, to be released upon achievement of 1.10 debt service coverage for a minimum of six consecutive months for the combined permanent first mortgage and SAIL loan.

(k) Contingency reserves shall not be paid from SAIL funds. However, contingency reserves which total no more than 3% of hard and soft costs may be included within the total Development cost.

(l) The Credit Underwriter shall review and determine if the number of loans and/or construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of each proposed Corporation Development.

(m) The Credit Underwriter shall consider the appraisal of the Development and other market study documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application.

(n) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same. Failure to submit required information by the specified deadline, unless a written extension of time has been approved by the Corporation's Board and the Credit Underwriter, shall result in rejection of the Application. If the Application is rejected, the Corporation will select additional Applicant(s) in order of scoring.

(o) If audited financial statements are unavailable from the Applicant, the Credit Underwriter shall request federal tax returns for the past two years.

(3) Any changes in a firm commitment from any other source of the funding shall be consistent with the underwriting assumptions made in connection with the SAIL loan. All items on the credit underwriting checklist Form (CU-1) with the exception of the appraisal, survey and final plans must be provided to the Credit Underwriter within 35 calendar days of the date of the preliminary SAIL commitment. The appraisal, survey and final plans shall be due to the Credit Underwriter

within 60 calendar days from the date of the preliminary SAIL commitment. The Credit Underwriter shall advise the Corporation in writing of all items not received within 35 calendar days of the date of the preliminary SAIL commitment.

(4) The Credit Underwriter shall complete and make a written draft report and recommendation to the Corporation within 80 calendar days from the date of the preliminary commitment letter. Upon receipt, the Corporation shall provide to the Applicant the section including supporting information and schedules from the written draft report. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter within 48 hours of receipt. After the 48 hour period, the Corporation shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. Then the Credit Underwriter shall review and incorporate the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within 72 hours of receipt of revised report. Then, the Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(5) After approval of the Credit Underwriter's recommendation by the Board of Directors; or a committee appointed by the Board, the Corporation shall issue a firm SAIL loan commitment.

(6) Other mortgage loans related to the Development and the SAIL loan must close within 60 calendar days of the date of the firm SAIL loan commitment. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request will then be submitted to the Corporation's Board of Directors for consideration. The Corporation shall charge an extension fee of .05% of the SAIL loan amount if the Board approves the requested extension to extend the SAIL commitment beyond the period outlined in this Rule Chapter.

(7) If the Development is financed with bonds issued or to be issued on behalf of the Corporation, adjustments to the SAIL loan amounts shall be made by the Credit Underwriter based upon actual terms of the bond issue.

(8) The Corporation's servicer shall conduct at the Applicant's expense a preconstruction analysis and review of all the Project's costs prior to the closing of the SAIL loan.

(9) It is the responsibility of the Applicant to comply with any part of this section and to request in writing and show cause for any waiver. Failure to comply will result in the disqualification of the Applicant and withdrawal of the SAIL commitment. The Corporation shall then offer a preliminary SAIL commitment to the next eligible Applicant or, with approval of the Board, retain available funds for use in the next Application Period.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.012, Amended 11-9-98, \_\_\_\_\_.

#### 67-48.013 SAIL Construction Disbursements and Permanent Loan Servicing.

(1) SAIL loan proceeds shall be disbursed during the construction phase in an amount per draw which does not exceed the ratio of the SAIL loan to the total Development cost, unless approved by the Credit Underwriter.

(2) Ten business days prior to each advance, the Developer shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Developer for an advance.

(a) A copy of the request for advance shall be delivered to the Corporation (Attention: SAIL Program Administrator) simultaneously with the delivery of the request to the Corporation's servicer.

(b) The request shall set forth the amount to be paid and shall be accompanied by documentation specified by the Corporation's servicer including claims for labor and materials to date of the last inspection.

(3) The Corporation and its servicer shall review the request for advance, and the servicer shall provide the Corporation with approval of the request or an alternative recommendation, after the title insurer provides an endorsement to the policy of title insurance updating the policy to the date of the current advance and increasing the insurance coverage to an amount equal to the sum of all prior advances and the current advance, without additional exceptions, except those specifically approved in writing by the Corporation.

(4) The Corporation shall elect to withhold any advance or portion of any advance, notwithstanding any documentation submitted by the Developer in connection with a request for an advance, if

(a) The Corporation or the Corporation's servicer determines at any time that the actual cost budget or progress of construction differs materially from that as shown on the loan documents; or

(b) The percentage of progress of construction of the improvements differs materially from that as shown on the request for an advance.

(5) The servicer may request submission of revised construction budgets.

(6) If the Corporation determines that further analysis by the Credit Underwriter is required prior to the release of the final draw, the Applicant shall pay to the Credit Underwriter a fee based on an hourly rate determined pursuant to the contract between the Corporation and the Credit Underwriter, which shall be listed in the Application Package.

(7) Retainage in the amount of 10% per draw shall be held by the servicer during construction until the Development is 50% complete. At 50% completion, no additional retainage

shall be held from the remaining draws. Release of funds held by the Corporation's servicer as retainage shall occur pursuant to the SAIL loan agreement.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly, 91-48.013, Amended 11-9-98, Repromulgated.

#### PART III – HOME INVESTMENT PARTNERSHIPS PROGRAM

##### 67-48.014 HOME General Program Procedures and Restrictions.

In order for a Development to qualify for HOME funds, it shall, at a minimum, meet or comply with the following:

(1) The maximum per-unit subsidy amount of HOME funds that the Corporation may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established pursuant to the HUD Regulations.

(2) The minimum of HOME funds that must be invested in a Rental Development is \$1,000 times the number of HOME-Assisted Units in the Development.

(3) A Development qualifies as affordable housing and for HOME funds if, with respect to income and occupancy:

(a) 80% of the HOME-Assisted Units are occupied by families whose annual income does not exceed 60% of the median family income for the area, as determined by HUD, and

(b) 20% of the HOME-Assisted Units are occupied by families whose annual income does not exceed 50% of the median family income for the area, as determined by HUD, with adjustments of family size.

(c) When the income of a tenant increases above 80% of the area median income, the next unit that becomes available in the Development must be rented to a HOME income-eligible tenant. If the income of a Very Low-Income household increases above the limits for a Very Low-Income household, then the Developer must rent the next available unit to a Very Low-Income household. The amount of rent the tenant whose income has increased must pay is the lesser of the amount payable by tenant under state or local law or 30% of the adjusted monthly income for rent and utilities.

(d) With respect to rent limits, the HOME Rent Chart at 65% or 50%, or the Fair Market Rent, less the applicable utility allowance, is the maximum rent that can be charged for a HOME Rent-Restricted Unit. HOME-Assisted Units with Section 8 subsidy must compare the Section 8 gross rent (tenant rent, subsidy amount, and utility allowance) to the maximum applicable HOME high or low rent limit minus utilities. However, Developments with project-based rental assistance may utilize the project-based rents as compared to the HOME High and Low rents. Compliance with the HOME rent restrictions will take precedence over the Developer's acceptance of a full Section 8 (tenant-based) subsidy for the HOME-Assisted Units.

(e) The minimum period of affordability for rehabilitation Developments is 15 years.

(f) The minimum period of affordability for newly-constructed rental housing is 20 years. The period of affordability will be extended until the loan is repaid as enumerated in Fla. Admin. Code Ann. r. 67-48.020(1).

(g) The minimum percentage of HOME-Assisted Units within a Development must be at least equal to the percentage (ratio) calculated by dividing the HOME loan amount by the total Development cost. This percentage will be utilized to determine the minimum number of HOME-Assisted Units required within a Development. HOME-Assisted Units must be identified at the time of Application. For purposes of meeting affordable housing requirements for a Development, the HOME-Assisted Units counted may be changed over the Compliance Period, so long as the total number of HOME-Assisted Units remains the same, and the substituted units are, at a minimum, comparable in terms of size, features, and number of bedrooms to the original HOME-Assisted Units.

(h) The Development will remain affordable, pursuant to commitments documented within the executed Land Use Restriction Agreement without regard to the term of the mortgage or to transfer of ownership.

(4) The Development must comply with all provisions of 24 CFR.

(5) Any contract for the development (rehabilitation or new construction) of affordable housing with 12 or more HOME-Assisted Units under the HOME Program must contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the United States Secretary of Labor pursuant to the Davis-Bacon Act, 40 U.S.C. § 276a-265-a-5 (1994), will be paid to all laborers and mechanics employed for the construction or rehabilitation of the Development, and such contracts must also be subject to the overtime provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327-332 (1994) and the Copeland Act (Anti-Kickback Act), 40 U.S.C. § 276c (1994).

(6) All HOME Developments must conform to the following federal requirements:

(a) Equal Opportunity and Fair Housing as enumerated in 24 CFR § 92.202 and 92.250, 42 U.S.C. 2000d et seq., 42 U.S.C. 3601-3620, 42 U.S.C. 6101, and 24 CFR 5.105(a).

(b) Affirmative Marketing as enumerated in 24 CFR § 92.351.

(c) Environmental Review as enumerated in 24 CFR § 92.352, 24 CFR Part 58 and National Environmental Policy Act of 1969.

(d) Displacement, Relocation, and Acquisition as enumerated in 24 CFR § 92.353, 42 U.S.C. 4201-4655, 49 CFR Part 24, 24 CFR Part 42 (Subpart B), and Section 104(d) "Barney Frank Amendments".

(e) Labor Standards as enumerated in 24 CFR § 92.354, 40 U.S.C. 276a-276a-5, 24 CFR Part 70 (volunteers), and 40 U.S.C. 276c.

(f) Lead-based Paint as enumerated in 24 CFR § 92.355, 42 U.S.C. 4821 et seq., 24 CFR Part 35 and 24 CFR § 982.401(j) (except paragraph 982.401(j)(1)(i)).

(g) Conflict of Interest as enumerated in 24 CFR § 92.356, 24 CFR 85.36 and 24 CFR 84.42.

(h) Debarment and Suspension as enumerated in 24 CFR Part 5.

(i) Flood Insurance as enumerated in Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106).

(j) Handicapped Accessibility as enumerated in 24 CFR Part 8 and 24 CFR § 100.205.

(k) Equal Opportunity Employment as enumerated in 41 CFR Part 60.

(l) Economic Opportunity as enumerated in 24 CFR Part 135.

(m) Minority/Women Employment as enumerated in 24 CFR § 85.36(e).

(n) Site and Neighborhood Standards as enumerated in 24 CFR 893.6(b).

Specific Authority 420.507(12) FS. Law Implemented 420.5089(2) FS. History—New 7-22-96, Amended 23-23-96, 1-6-98, Formerly 9I-48.014, Amended 11-9-98, Repromulgated.

67-48.015 Match Contribution Requirement for HOME Allocation.

(1) The Corporation is required by HUD to match non-federal funds to the HOME allocation as specified in the HUD Regulations. One of the criteria for selecting HOME Developments will be its ability to obtain a non-federal local match source pursuant to HUD Regulations.

(2) A Match Credit Fund funded by the State of Florida has been appropriated to the Corporation. The funds are to be used for demonstration Developments and pilot programs selected and approved by the Corporation's Board of Directors. Such pilot programs shall be counted as the Corporation's required match for HUD purposes and may be any eligible activity acceptable to HUD regulations and approved by the Corporation's Board of Directors.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(4) FS. History—New 7-22-96, Amended 23-23-96, 1-6-98, Formerly 9I-48.015 Amended 11-9-98, Repromulgated.

67-48.017 Eligible HOME Activities.

HOME funds may be used for the following activities: acquisition (must include new construction and/or rehabilitation), new construction, reconstruction, or moderate or substantial rehabilitation of non-luxury housing with suitable amenities pursuant to the HUD Regulations. In addition, HOME funds may be used for any activity found to be eligible by HUD in Match Credit and/or Disaster Developments.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(3) FS. History—New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 9I-48.017, Amended 11-9-98, Repromulgated.

67-48.018 Eligible HOME Applicants.

Applicants for HOME loans may include CHDO's, public housing authorities, local governments, Non-Profit organizations, and private for-profit organizations (including partnerships and sole proprietorships). The Applicant must be a legally-formed, existing entity at the time of Application. Documentation evidencing the same shall be required as part of the Application as set forth at Fla. Admin. Code Ann. r. 67-48.004. Pursuant to the HUD Regulations, Applicants may not request additional HOME funding during the period of affordability. However, additional funds may be committed to a Development up to one year after Development completion provided the amount does not exceed the maximum per-unit subsidy and the additional amount is not used to pay for Developer fees.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(3) FS. History—New 7-22-96, Amended 23-23-96, 1-6-98, Formerly 9I-48.018, Amended 11-9-98, Repromulgated.

67-48.019 Eligible and Ineligible HOME Development Costs.

(1) HOME funds may be used to pay for the following eligible costs as enumerated in the HUD Regulations:

(a) Development hard costs as they directly relate to the identified HOME-Assisted Units only for:

1. New construction, the costs necessary to meet local and State of Florida building codes and the Model Energy Code referred to in the HUD Regulations;

2. Rehabilitation, the costs necessary to meet local and State of Florida rehabilitation building codes and at a minimum, the Section 8 Housing Quality Standards under the HUD Regulations;

3. Both new construction and rehabilitation, costs to demolish existing structures, improvements to the Development site and utility connections;

(b) The cost of acquiring improved or unimproved real property. A HOME Development and HOME loan that involves acquisition must include rehabilitation or new construction in order to be an eligible Development. ~~The rehabilitation must be a Moderate Rehabilitation or a Substantial Rehabilitation, as stated in the Application.~~

(c) Soft costs as they relate to the identified HOME-Assisted Units. The costs must be reasonable, as determined by the Corporation and the Credit Underwriter, and associated with the financing, development, or both. These costs may include:

1. Architectural, engineering or related professional services required to prepare plans, drawings, specifications or work write-ups;

2. Costs to process and settle the HOME financing for a Development, such as credit reports, fees for evidence of title, recordation, building permits, attorney fees, cost certifications, and estimates;

3. Developer fee shall be limited to 16% of Development cost excluding land and building acquisition costs. A Developer fee on the building acquisition cost shall be limited to ~~45%~~ of the cost of the building exclusive of land. In no event can the amount of the Developer fee increase over what Developer fee is shown in the Application. A total Developer fee of 20% of Development cost, excluding land and building acquisition costs, shall be allowed if the proposed Development meets all of the following conditions:-

~~a. Development is located in a Difficult Development Area or in a Qualified Census Tract as defined by the Department of Housing & Urban Development;~~

~~b. Applicant commits to set aside at least 40% of the units for households at or below 50% of the area median income or commits to set aside at least 15% of the units for households at or below 35% of area median income;~~

~~e. Applicant commits to a 50 year Land Use Restriction Agreement;~~

~~d. Development must have at least 20% of the total units set aside for special needs population (Elderly, Large Family, Farmworker, Commercial Fishing Worker);~~

~~e. Neither the Applicant nor any Financial Beneficiary of the Development has received Corporation funding for more than one Application in the current cycle.~~

4. Impact fees;

5. Costs of Development audits required by the Corporation;

6. Affirmative marketing and fair housing costs;

7. Temporary relocation costs as required under HUD Regulations;

8. The General Contractor's fee shall be limited to a maximum of 14% of the total construction cost.

(2) HOME funds shall not be used to pay for the following ineligible costs:

(a) Development reserve accounts for replacements, unanticipated increases in operating costs, or operating subsidies, except as described in Fla. Admin. Code Ann. r. 67-48.019(1)(c)8.;

(b) Tenant-based rental assistance except for pilot or demonstration Developments as approved by the Board of Directors;

(c) Public housing;

(d) Administrative costs;

(e) Developer fees unless the HOME funds include rehabilitation or new construction.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(3) FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.019, Amended 11-9-98, \_\_\_\_\_.

67-48.020 Terms and Conditions of Loans for HOME Rental Developments.

All HOME Rental Development loans shall be in compliance with the Act, the HUD Regulations and, at a minimum, contain the following terms and conditions:

(1) The HOME loan must be in a first or second lien position (provided that two prior mortgages which secure the same indebtedness and credit enhancement fees shall be deemed a single prior position) and shall not share priority with any other liens unless approved by the Board. The term of the loan shall be for a period of 15 years for Rehabilitation Developments and 20 years for new construction Developments. The term of the HOME loan may be extended to coterminate with the first mortgage term upon the recommendation of the Credit Underwriter and approval by the Corporation.

(2) The annual interest rate will be determined by the following:

(a) All for-profit Applicants that own 100% of the ownership interest in the Development held by the General Partner entity will receive a 3% per annum interest rate loan.

(b) All qualified non-profit Applicants that own 100% of the ownership interest in the Development held by the General Partner entity will receive a 0% interest rate loan. For purposes of determining the annual HOME interest rate, the definition of Non-Profit found at Rule 67-48.002, F.A.C., shall not apply; instead, qualified non-profit Applicants shall be those entities defined in the HUD Regulations, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the Code and organized under Chapter 617, Florida Statutes, if a Florida corporation, or organized under similar state law if organized in a jurisdiction other than Florida.

(c) All Applicants consisting of a non-profit and for-profit partnership will receive a 0% interest rate loan on the portion of the loan amount equal to the qualified non-profit's ownership interest in the Development held by the General Partner entity. A 3% interest rate shall be charged for loans on the portion of the loan amount equal to the for-profit's interest in the Development held by the General Partner entity. After closing, should the Applicant sell any portion of the Development ownership, the loan interest rate ratio will be adjusted to conform with the new percentage of ownership.

(3) The loans shall be non-amortizing and repayment of principal shall be deferred until maturity, unless otherwise recommended by the Credit Underwriter and approved by the Corporation. Interest payments on the loan shall be paid to the Corporation's servicer annually on the date specified in the Note.

(4) As approved by the Board of Directors, loans which finance demonstration Developments or Developments located in a state or federally declared disaster area may be provided with forgivable terms.

(5) The accumulation of all Development financing, including the HOME loan and all existing debt within a Development, may not exceed the total Development cost, as determined and certified by the Credit Underwriter.

(6) Before disbursing any HOME funds, there must be a written agreement with the Developer ensuring compliance with the requirements of the HOME Program pursuant to this Rule Chapter and the HUD Regulations.

(7) The Developer and managing agent of the Development must attend a Corporation-sponsored training session on income certification and compliance procedures.

(8) If the Development has 12 or more HOME-Assisted Units, the General Contractor and all available subcontractors shall attend a Corporation-sponsored preconstruction conference regarding federal labor standards provisions.

(9) The Corporation shall require adequate insurance to be maintained on the Development as determined by the first mortgage lender or the Corporation's servicer, but which shall, in any case, include fire, hazard and other insurance sufficient to meet the standards established in Section 101.17 of the Federal National Mortgage Association Multifamily Conventional Selling Eligibility Requirements for rental properties.

(10) All loans must provide that any violation of the terms and conditions described in this Rule Chapter or the HUD Regulations constitute a default under the HOME loan documents allowing the Corporation to accelerate its loan and seek foreclosure as well as any other remedies legally available to it.

(11) If a default on a HOME loan occurs and the Corporation determines it necessary, the Corporation will foreclose on any mortgage or security interest or commence any legal action to protect the interest of the Corporation. The Corporation shall acquire real and personal property or any interest in the Development if that acquisition is necessary to protect any HOME loan; sell, transfer, and convey any such property to a buyer without regard to the provisions of Chapters 253 and 270, Florida Statutes; and, if that sale, transfer, or conveyance cannot be consummated within a reasonable time, lease the Development for occupancy by Eligible Persons.

(12) The Corporation or its servicer shall monitor the compliance of each Development with all terms and conditions of the HOME loan and shall require that such terms and conditions be recorded in the public records of the county where the Development is located. Violation of any term or condition shall constitute a default during the term of the HOME loan. The Corporation shall take legal action to effect compliance if a violation of any term or condition concerning the set-aside of units for Low and Very Low-Income households is discovered during the course of compliance monitoring or by any other means.



(13) The Developer shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the HOME mortgage without prior approval of the Corporation's Board of Directors.

(a) The Board shall approve requests for mortgage loan refinancing only if Development Cash Flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation.

(b) The Board shall deny requests to increase the amount of any superior mortgage, unless the criteria outlined in 67-48.020(13)(42)(a) are met, the original combined loan to value ratio for the superior mortgage and the HOME mortgage is maintained or improved, and a proportionate amount of the increase in the superior mortgage is used to reduce the outstanding HOME loan balance. To calculate the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the HOME loan balance, the following calculation shall be used: divide the amount of the original HOME mortgage by the combined amount of the original HOME mortgage and the original superior mortgage; then multiply the quotient by the amount of the increase in the superior mortgage after deducting refinancing costs. For example, if the amount of the original HOME mortgage is \$2,000,000, the original superior mortgage is \$4,000,000, the proposed new superior mortgage is \$5,000,000, and refinancing costs are \$200,000, then the amount of the increase in the superior mortgage after deducting refinancing costs would be \$800,000, and the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the HOME loan balance would be \$266,667.

(c) The Board shall deny requests for mortgage loan refinancing which require extension of the HOME loan term or otherwise adversely affect the security interest of the Corporation unless the criteria outlined in 67-48.020(13)(42)(a) are met, the Credit Underwriter recommends that the approval of such a request is crucial to the economic survival of the Development or unless the Board determines that public policy will be better served by the extension as a result of the Developer agreeing to further extend the Compliance Period or provide additional amenities or tenant programs suitable for the tenant population. Further, the Board shall limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(7), (8), (9) FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.020, Amended 11-9-98, \_\_\_\_\_.

67-48.0205 Sale or Transfer of a HOME Development.

(1) The HOME loan shall be assumable upon Development sale, transfer or refinancing if the following conditions are met:

(a) The proposed transferee meets all specific Sponsor identity criteria which were required as conditions of the original loan;

(b) The proposed transferee agrees to maintain all set-asides and other requirements of the HOME loan for the period originally specified; and

(c) The proposed transferee and Application receives a favorable recommendation from the Credit Underwriter and approval by the Corporation's Board of Directors.

(2) If the Development is sold and the proposed transferee does not meet the criteria for assumption of the loan, the HOME loan shall be repaid from the proceeds of the sale. If there will be insufficient funds available from the proposed sale of the Development, the HOME loan shall not be satisfied until the Corporation has received:

(a) An appraisal prepared by an appraiser selected by the Corporation indicating that the purchase price for the Development is reasonable and consistent with existing market conditions;

(b) A certification from the Developer that the purchase price reported is the actual price paid for the Development and that no other consideration passed between the parties and that the income reported to the Corporation during the term of the loan was true and accurate; and

(c) A certification from the Developer that there are no Development funds available to repay the loan and the Developer knows of no source from which funds could or would be forthcoming to pay the loan.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(7), (8), (9) FS. History—New 12-23-96, Amended 1-6-98, Formerly 91-48.0205, Amended 11-9-98, Repromulgated.

67-48.021 HOME Credit Underwriting and Loan Procedures.

(1) After the administrative appeal procedures have been completed, the Corporation shall assign a tentative loan amount to the Applicants in each set-aside category with the highest point totals on their applications for funding, up to the amount available in the category.

(2) Based upon availability of funds, the Corporation shall issue a preliminary commitment notifying each Applicant of selection for participation in the HOME Program in the order of each Applicant's ranking within each set-aside category. When an Applicant's tentative loan amount exceeds the remaining fund availability, the Corporation shall offer the Applicant a tentative loan amount equal to the remaining funds. Rejection of such an offer will cause the Corporation to make the offer to the next highest-ranked Applicant within the category. This process shall be followed until all funds for the set-aside category are committed.

(a) The preliminary commitment letter shall be subject to a positive recommendation by the Corporation's Credit Underwriter, approval by the Corporation's Board of Directors, and a certification by the Corporation of the HUD Environmental Review pursuant to 24 CFR § 92.352 (1994).

(b) The preliminary commitment letter shall require that the Applicant submit the information required from the Credit Underwriter's checklist Form (CU-1) to the Credit Underwriter within 35 days of notification. The appraisal, survey and final plans shall be submitted within 60 days of the preliminary commitment. Unless a written extension is obtained from the Board, failure to submit the required information by the specified deadline shall result in rejection of the Application. The Corporation shall select the Credit Underwriter for each Development.

(c) The Credit Underwriter shall verify all information in the Application Package, including information relative to the Applicant, Developer, Syndicator, General Contractor and other members of the Development team. The Credit Underwriter shall complete its analysis and submit a written draft report to the Corporation within 80 calendar days from the date of the preliminary commitment letter. Upon receipt, the Corporation shall provide to the Applicant the section including supporting information and schedules from the written draft report. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter within 48 hours after receipt. After the 48-hour period, the Corporation shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. Then the Credit Underwriter shall review and incorporate the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within 72 hours of receipt of revised report. Then, the Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(d) The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during credit underwriting. If the Board determines at any time that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or the market to be served by the Development or if any discrepancy or misrepresentation is found, the Application will be rejected. The Corporation shall bear the cost of the underwriting review under contract with the Credit Underwriter. However, if the HOME commitment is canceled for failure to adhere to rule deadlines or for reasons within the Applicant's control, the Development will be responsible for reimbursing the Corporation for fees incurred for credit underwriting and environmental review processing.

(e) The Credit Underwriter shall use the following procedures during the underwriting evaluation:

1. Minimum debt service coverage of 1.10 and maximum debt service coverage of 1.50 for the HOME loan and all other superior mortgages. In extenuating circumstances such as when the Development has deep or short term subsidy, the debt service coverage may exceed 1.50 if the Credit Underwriter's favorable recommendation is supported by the projected cash flow analysis.

2. Minimum replacement reserve of \$200 per unit for all Developments. However, the amount may be increased based on a physical needs analysis. An Applicant may choose to fund a portion of the replacement reserves at closing. The amount cannot exceed 50% of the required replacement reserves for 2 years and must be placed in escrow at closing.

3. Require audited financial statements and, if unavailable from the Applicant or Affiliates, the Credit Underwriter shall request federal tax returns for the past two years.

4. Review and determine if the number of loans and construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of each proposed Corporation Development.

5. The Credit Underwriter shall consider the following when determining the need for construction completion guarantees:

a. Liquidity of the Guarantor.

b. Developer and General Contractor's history in successfully completing Developments of similar nature.

c. Problems encountered previously with Developer and/or Contractor.

d. Exposure of Corporation funds compared to total Development costs. At a minimum, the Credit Underwriter shall require a Personal Guarantee for completion of construction from the principal individual or the Corporate General Partner of the borrowing entity. In addition, a letter of credit and/or Payment and Performance Bond will be required if the Credit Underwriter determines after evaluation of a.-d. above that additional surety is needed.

6. Require an operating deficit guarantee, to be released upon achievement of 1.10 debt service coverage for a minimum of six consecutive months for the combined permanent first mortgage and HOME loan.

7. Any contingency reserves shall not be paid from HOME funds.

8. Review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application.

(f) An appraisal shall be required during the credit underwriting process. The Applicant may choose an appraiser from the Credit Underwriter's approved list of appraisers; however, the Credit Underwriter shall order the appraisal for the subject property. The Credit Underwriter shall use the same

appraiser as the first mortgage lender provided the appraisal has not been ordered. The Credit Underwriter shall review the appraisal to properly evaluate the loan request in relation to the property value.

(g) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same. Failure to submit required information by the specified deadline, unless a written extension of time has been approved by the Corporation, shall result in the Application being rejected and the Corporation selecting additional Applicants in order of scoring.

(h) A preconstruction analysis and review of the Development's costs shall be required prior to the closing of the HOME loan.

(i) The Applicant will bear the cost of all documentation submitted to the Credit Underwriter for review (i.e., appraisal, credit report, environmental study, etc.). The Applicant may reimburse itself for these costs with HOME funds from the first Draw.

~~(j) After approval of the Credit Underwriter's recommendation by the Board of Directors, or a committee appointed by the Board, the Corporation shall issue a firm HOME loan commitment. The Board of Directors shall act upon the Credit Underwriter's recommendation and, if a HOME loan is recommended, the Corporation shall issue a firm commitment to the Applicant after Board approval.~~

(k) The HOME loan shall close within 60 calendar days from the date of the firm commitment letter.

(l) The Applicant must submit a written request for any extensions needed or any changes to the Development or its financing from the original Application. All requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request must be submitted to the Corporation Board of Directors for consideration.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(2) FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.021, Amended 11-9-98,\_\_\_\_\_.

67-48.022 HOME Disbursements Procedures and Loan Servicing.

(1) HOME loan proceeds shall be disbursed during the construction/rehabilitation phase in an amount per Draw on a pro-rata basis with the other financing unless otherwise approved by the Corporation or the Credit Underwriter.

(2) Ten business days prior to each Draw, the borrower shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the borrower for a Draw in a form and substance acceptable to the Corporation's servicer.

(3) A copy of the request for a Draw shall be delivered to the Corporation (Attention: HOME Rental Program Administrator) simultaneously with the delivery of the request to the Corporation's servicer and its inspector.

(4) The request shall set forth the amount to be paid and shall be accompanied by documentation as specified by the Corporation's servicer. Such documentation shall include invoices for labor and materials to date of the last inspection.

(5) The Corporation's servicer and the Corporation shall review the request for Draw and the Corporation's servicer shall provide the Corporation with approval of the request or an alternative recommendation of an amount to be paid after the title insurer provides an endorsement to the policy of title insurance updating the policy to the date of the current draw and increasing the insurance coverage to an amount equal to the sum of all prior Draws and the current Draw, without additional exceptions, except those specifically approved in writing by the Corporation. For all Developments consisting of 12 or more HOME Assisted-Units, the borrower shall submit weekly payrolls of the General Contractor and subcontractors in accordance with Federal Labor Standards as enumerated in 24 CFR 92.354.

(6) Retainage in the amount of 10% per draw shall be held by the servicer during construction until the Development is 50% complete. At 50% completion, no additional retainage shall be held from the remaining draws. Release of funds held as retainage shall occur in accordance with the HOME loan documents.

(7) The Corporation or its servicer shall elect to withhold any Draw or portion of any Draw, in addition to the retainage, notwithstanding any documentation submitted by the borrower in connection with a request for a Draw, if:

(a) The Corporation or the servicer determines at any time that the actual cost budget or progress of construction differs materially from that shown on the loan documents.

(b) The percentage of progress of construction of improvements differs materially from that shown on the request for a Draw.

(c) Developments subject to and not in compliance with Federal Labor Standards.

(8) To the extent excess HOME funds in the budget remain unused, the Corporation has the right to reduce the HOME loan by that amount.

(9) If 100% of the loan proceeds have not been expended within six months prior to the HUD deadline pursuant to 24 CFR § 92.500 (1994), the funds shall be recaptured and reallocated to any eligible Development on any Corporation waiting list or eligible HOME Developments, as selected by the Board.

(10) The request for final disbursement of HOME funds, excluding retainage, shall be submitted within 60 days of completion of construction as evidenced by certificates of occupancy.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(1) FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.022, Amended 11-9-98, Repromulgated.

**PART IV – HOUSING CREDIT PROGRAM**

67-48.023 Housing Credits General Program Procedures and Requirements.

In order for a Development to qualify for Housing Credits it shall, at a minimum, meet or comply with the following:

(1) Each Applicant shall comply with this Rule Chapter and with Section 42 of the Code and federal regulations issued pursuant thereto and in effect at the time of the Funding Cycle. Noncompliance by an Applicant in a Funding Cycle shall result in HC Program ineligibility for the Applicant in that Funding Cycle.

(2) Each Housing Credit Development shall comply with the minimum Housing Credit Set-Aside provisions, as specified in Section 42(g)(1) of the Code, with respect to the reservation of 20% of the units for occupancy by persons or families whose income does not exceed 50% of the area median income, or the reservation of 40% of the units for occupancy by persons or families whose income does not exceed 60% of the area median income. Further, each Housing Credit Development shall comply with any additional Housing Credit Set-Aside chosen by the Applicant in the Application.

(3) The gross monthly rents for the Housing Credit Set-Aside units shall not exceed 30% of the imputed income limitation applicable to such unit. The monthly rents used must correspond to the Housing Credit Set-Aside (Low-Income or Very Low-Income) chosen by the Applicant in the Application as shown on the rent charts included in the Application Package.

(4) The Development shall provide safe, sanitary and decent residential rental housing and shall be developed, constructed and operated in accordance with the commitments made and the facilities and services described in the Application at the time of submission to the Corporation. Applications will not be considered approved to receive an allocation of Housing Credits until Florida Housing issues a Preliminary Allocation/Preliminary Determination to the Applicant and all contingencies of such documents are satisfied. Allocations are further contingent on the Applicant complying with its Application commitments, Chapter 67-48, F.A.C., and Section 42, IRC.

(5) Applicants are prohibited from requesting an additional or increased Housing Credit Allocation for the sole purpose of obtaining Developer's fees.

(6) All of the dwelling units within a Development shall be rented or available for rent on a continuous basis to members of the general public. The owner of the Development shall not give preference to any particular class or group in renting the dwelling units in the Development, except to the extent that dwelling units are required to be rented to Eligible Persons. All Developments must comply with the Fair Housing

Act as implemented by 24 CFR 100, Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR 35.

(7) Each Housing Credit Development shall complete the Final Cost Certification Form FCCA-~~200099~~ by the earlier of the following two dates:

(a) the date that is 60 calendar days after all the buildings in the Development have been placed in service or,

(b) the date that is 30 calendar days before the end of the calendar year for which the Final Housing Credit Allocation is requested.

(8) The completed Final Cost Certification Form FCCA-~~200099~~ shall include an audit report prepared by an independent certified public accountant. In addition, the Corporation may require further review and verification of final costs, at the Applicant's expense. The Corporation will issue only one complete set of Forms 8609 per Development which will be no earlier than total Development completion and the Corporation's acceptance and approval of the Development's Final Cost Certification.

(9) After the final evaluation and determination of the Housing Credit Allocation amount has been made by the Corporation Executive Director, and the recorded Extended Use Agreement has been received in accordance with 67-48.029, the IRS 8609's are issued to the Applicant of the Housing Credit Development.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.023, Amended 11-9-98, \_\_\_\_\_.

**67-48.025 Qualified Allocation Plan.**

(1) Pursuant to Section 420.507(12), Florida Statutes, the Corporation is responsible for the allocation and distribution of housing credits in this state. As the allocating agency for the state, distribution of Housing Credits to Applicants shall be in accordance with the Corporation's Qualified Allocation Plan.

(2) The specific criteria of the Qualified Allocation Plan as mandated by Congress and addressed at Section 42(m)(1)(B) of the Internal Revenue Code, as amended, are hereby approved by the Governor on \_\_\_\_\_ ~~September 25, 1998~~, and adopted by reference herein.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History—New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 91-48.025, Amended 11-9-98, \_\_\_\_\_.

**67-48.026 Housing Credit Underwriting Procedures.**

(1) After the administrative appeal procedures have been completed, the Corporation shall offer all Applicants within the funding range the opportunity to enter credit underwriting.

(2) A response to the invitation to enter credit underwriting must be received by the Corporation and the Credit Underwriter not later than seven calendar days after the date of the letter of invitation.

(3) If the credit underwriting invitation is accepted:

(a) The Applicant shall submit the credit underwriting fee in accordance with 67-48.007(4) to the Credit Underwriter within seven calendar days of the date of invitation, and

(b) The Applicant shall submit the information required from the Credit Underwriter's checklist Form (CU-1) to the Credit Underwriter within 35 calendar days of the date of the invitation to enter credit underwriting. The Credit Underwriter shall complete its report within 56 calendar days from the date of the credit underwriting invitation. The appraisal, survey and final plans are acceptable contingency items to the credit underwriting report.

(4) Unless a written extension is obtained from the Board, failure to submit the required credit underwriting information or fees by the specified deadline shall result in rejection of the Application.

(5) The Corporation shall select the Credit Underwriter for each Development.

(6) The Credit Underwriter shall verify all information in the Application Package, including information relative to the Applicant, Developer, Syndicator, General Contractor and other members of the Development team.

(7) The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during credit underwriting. If the Board determines at any time that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or the market to be served by the Development or if any discrepancy or misrepresentation is found, the Application will be rejected.

(8) The Credit Underwriter shall use the following procedures during the underwriting evaluation:

(a) Minimum debt service coverage of 1.10 and maximum debt service coverage of 1.50 on all mortgages except in extenuating circumstances, such as when the Development has deep or short term subsidy, the debt service coverage may exceed 1.50 if the Credit Underwriter's favorable recommendation is supported by the projected cash flow analysis.

(b) The Credit Underwriter, in determining the amount of housing credits a Development is eligible for when using the Qualified Basis Calculation, shall use a housing credit percentage of:

1. Thirty (30) basis points over the percentage as of the date of Invitation to Credit Underwriting up to nine percent (9%) for nine percent (9%) credits for new construction and rehabilitation Developments;

2. Fifteen (15) basis points over the percentage as of the date of Invitation to Credit Underwriting up to four percent (4%) for four percent (4%) credits for acquisition and federally subsidized Developments. A percentage of fifteen (15) basis

points over the percentage as of the date of Invitation to Final Credit Underwriting will be used for Developments receiving FHFC tax-exempt bonds in calendar year 2000 or later.

(c)(b) Review and determine if the number of loans and construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of the proposed Corporation Development.

(d)(e) Developer fee shall be limited to 16% of Development cost excluding land and building acquisition cost. A Developer fee on the building acquisition cost shall be limited to 45% of the cost of the building exclusive of land. A total Developer fee of 1820% of Development cost, excluding land and building acquisition costs, shall be allowed if the proposed Development is qualified for Housing Credits pursuant to Rule 67-48.027 pertaining to Tax-Exempt Bond Financed Developments, meets all of the following conditions:

1. Development is located in a Difficult Development Area or in a Qualified Census Tract as defined by the Department of Housing & Urban Development;

2. Applicant commits to set aside at least 40% of the units for households at or below 50% or less of area median income or commits to set aside at least 15% of the units for households at or below 35% of area median income;

3. Applicant commits to a 50 year Extended Use Period with no option to convert after year 14;

4. Development must have at least 20% of the units targeted for special needs population (Elderly, Large Family, Farmworker or Commercial Fishing Worker) throughout the Extended Use Period; and

5. Neither the Applicant nor any Financial Beneficiary of the Development has received Corporation funding for more than one Application in the current cycle.

(e) In no event can the amount of the Developer fee increase over what Developer fee is shown in the Application.

(f)(d) The General Contractor's fee shall be limited to a maximum of 14% of the total construction cost.

(g)(e) Costs such as syndication fees and brokerage fees cannot be included in Eligible Basis. All consulting fees must be paid out of the Developer fee. Consulting fees cannot cause the Developer fee to exceed the maximum allowable fee as set forth in (d)(e) above.

(h)(f) No "lump-sum" or "turn key" contracts are acceptable for hard or soft Development costs. All contracts for Development costs must be itemized for all costs components.

(i)(g) An appraisal shall be required during the credit underwriting process. The Applicant may choose an appraiser from the Credit Underwriter's approved list of appraisers; however, the Credit Underwriter shall order the appraisal for the subject property. The Credit Underwriter shall use the same appraiser as the first mortgage lender provided the appraisal has not been ordered.

~~(j)(h)~~ The Credit Underwriter shall review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application.

~~(k)(f)~~ A separate market study shall be required if the appraisal does not adequately address the market for the proposed Development.

~~(l)(g)~~ If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same.

(9) After the completion of its analysis, the Credit Underwriter shall submit its draft recommendation including a detailed report of the Project's credit worthiness, feasibility, ability to proceed and viability to the Corporation. Upon receipt, the Corporation shall provide to the Applicant the section including supporting information and schedules from the written draft report. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter within 48 hours. After the 48 hour period, the Corporation shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. Then the Credit Underwriter shall review and incorporate the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within 72 hours of receipt of revised report. Then, the Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(10) If the Credit Underwriter recommends that Housing Credits be allocated to the Development, the ~~Corporation Executive Director~~ shall determine the Credit amount, if any, necessary to make the Development financially feasible and viable throughout the Housing Credit Extended Use Period and shall issue a Preliminary Allocation Certificate or a Preliminary Determination of Housing Credits in the case of Tax-Exempt Bond-Financed Developments. If the Credit Underwriter recommends that no Credits be allocated to the Development and the ~~Corporation Executive Director~~ accepts the recommendation, the Applicant shall be notified that no Housing Credits will be allocated to the Development for the current cycle. No Preliminary Allocation Certificate shall be issued on a RD (formerly FmHA) Development which has not received an Obligation of Funding (RD or FmHA Form 1944-51). All contingencies required in the Preliminary Allocation shall be met or satisfied by the Applicant within 45 days from the date of issuance or as otherwise indicated on the Certificate unless an extension of this deadline is requested in writing by the Applicant and is granted by the Corporation in writing for good cause.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History—New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 91-48.026, Amended 11-9-98,\_\_\_\_\_.

67-48.027 Tax-Exempt Bond-Financed Developments.

(1) Tax-Exempt Bond-Financed Developments, as defined in Section 42(h)(4)(B) of the Code, seeking to obtain Housing Credits from the Treasury, receiving the bonds from Florida Housing in calendar year 2000 or later and not competing for Housing Credits under the State of Florida Allocation Authority shall:

(a) Have 50% or more of the aggregate basis of any building and the land on which the building is located financed by tax-exempt bonds;

(b) Make Application for Housing Credits using Florida Housing's Form MFMRB;

(c) Be subject to the Form MFMRB, monitoring and credit underwriting fees as stated in Rule 67-21, F.A.C.;

(d) Be deemed to have met all threshold requirements upon the closing of the bonds with Florida Housing;

(e) Receive a Preliminary Determination from the Corporation upon Florida Housing's issuance of a loan commitment in reference to the tax-exempt bonds;

(f) Be subject to the administrative fee specified in this Rule Chapter which is payable prior to or simultaneous with the closing of Florida Housing's tax-exempt bonds;

(g) Be subject to the Developer fee limitations as set forth in this Rule Chapter;

(h) Be subject to the provisions in this Rule Chapter, pertaining to the required Extended Use Agreement; and

(i) Receive Building Identification Numbers from the Corporation upon satisfying the requirements of this section and the Final Cost Certification requirements of Rule 67-48.023.

~~(2) All~~ Tax-Exempt Bond-Finance Developments, as defined in Section 42(h)(4)(B) of the Code, seeking to obtain Housing Credits from the Treasury, receiving the bonds from Florida Housing prior to calendar year 2000 or receiving bonds from another source other than Florida Housing, and not competing for Housing Credits under the State of Florida Allocation Authority shall:

~~(a)(1)~~ Have 50% or more of the aggregate basis of any building and the land on which the building is located financed by tax-exempt bonds;

~~(b)(2)~~ After bonds are issued to the Development, make Application to the Corporation as required in Fla. Admin. Code Ann. r. 67-48.004 and Fla. Admin. Code Ann. r. 67-48.026. Applications for these Developments shall be received by the Corporation no later than July 1 of the year the Development is placed in service.

~~(c)(3)~~ Be subject to the Application fee specified in this Rule Chapter;

~~(d)(4)~~ Meet the threshold requirements pursuant to the Qualified Allocation Plan and shall have completed loan closings on all required financing;

~~(e)(5)~~ Participate in the credit underwriting process pursuant to this Rule Chapter, unless such Development has received its tax-exempt bond financing through the Corporation, in which case the Development must be underwritten to the extent necessary to determine Development feasibility and housing credit need;

~~(f)(6)~~ Be subject to the credit underwriting fees as set forth in this Rule Chapter;

~~(g)(7)~~ Receive a Preliminary Determination from the Corporation upon satisfying the requirements of sections ~~(a)(1)~~ through ~~(f)(6)~~ above;

~~(h)(8)~~ Be subject to the administrative fee specified in this Rule Chapter;

~~(i)(9)~~ Be subject to a Developer fee limitation as specified in this Rule Chapter;

~~(j)(10)~~ Be subject to the provisions in this Rule Chapter, pertaining to the required Extended Use Agreement;

~~(k)(11)~~ Be subject to the monitoring fee specified in this Rule Chapter, unless such Development has received tax-exempt bond financing through the Corporation; and

~~(l)(12)~~ Receive Building Identification Numbers from the Corporation upon satisfying the requirements of this section and the Final Cost Certification requirements of Rule 67-48.023.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History—New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 9I-48.027, Amended 11-9-98, \_\_\_\_\_.

#### 67-48.028 Carryover Allocation Provisions.

(1) If an Applicant cannot complete its Development by the end of the year in which the Preliminary Allocation is issued, the Applicant must enter into a Carryover Allocation Agreement with the Corporation pursuant to the Code. The Carryover Allocation allows the Applicant up to the end of the second year following the Carryover Allocation to have the Development placed in service.

(2) In order to qualify for Carryover, an Applicant shall have tax basis in the Housing Credit Development which is greater than 10% of the reasonably expected basis in the Housing Credit Development by the close of the calendar year in which the Preliminary Allocation is made pursuant to section 42(h)(1)(E) of the Code. Certification that the Applicant has met the greater than 10% basis requirement shall be signed by the Applicant's attorney or certified public accountant.

(3) All Carryover documentation and the signed certification evidencing the required basis, must be submitted to the Corporation no later than the close of business on the first business day in November of the applicable calendar year.

(4) The Applicant for each Development qualifying for Carryover shall submit quarterly progress reports to the Corporation using Progress Report (Form Q/M Report) which will be provided by the Corporation. If the Form Q/M Report does not demonstrate continuous and adequate development

and construction progress, the Corporation will require monthly submission of Form Q/M Report until satisfactory progress is achieved, until the Development is placed in service, or until a determination is made by the Corporation that the Development cannot be placed in service by the Carryover deadline and the Housing Credits are returned to the Corporation in accordance with the terms of the Carryover Allocation Agreement. Form Q/M Report shall include a written statement describing the current status of the Development; the financing, construction and syndication activity since the last report; the reasons for any changes to the anticipated placed-in-service date; and any other information relating to the status of the Development which the Corporation may request. The first report shall be due to the Corporation by the first Monday in April of the calendar year following Carryover qualification.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History—New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 9I-48.028, Amended 11-9-98, Repromulgated.

#### 67-48.029 Extended Use Agreement.

(1) Pursuant to Section 42(h)(6) of the Code, the Applicant and the Corporation shall enter into an Extended Use Agreement. The purpose of the Extended Use Agreement is to set forth the Housing Credit extended use period, the Compliance Period, and to evidence commitments made by the Applicant in the Application. Such commitments, for example, include the Housing Credit Set-Aside commitment, tenant programs, and Development amenities.

(2) The following provisions shall be included, without limitation, in the Extended Use Agreement:

(a) The Applicable Fraction for Housing Credit Set-Aside Units for each taxable year in the extended use period shall not be less than the Applicable Fraction;

(b) Eligible Persons occupying Set-Aside Units shall have the right to enforce in any State of Florida court the extended use requirement for Set-Aside Units;

(c) The Extended Use Agreement shall be binding on all successors and assigns of the Applicant; and

(d) The Extended Use Agreement shall be executed and recorded pursuant to Florida law as a restrictive covenant prior to the issuance of a Final Housing Credit Allocation to an Applicant.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History—New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 9I-48.029, Amended 11-9-98, Repromulgated.

#### 67-48.030 Sale or Transfer of a Housing Credit Development.

An owner of a Housing Credit Development, its successor or assigns which have been granted a Final Housing Credit Allocation shall not sell the Housing Credit Development without having first notified the Treasury of the impending sale and complying with the Treasury's procedure or procedures for completing the transfer of ownership and utilizing the Housing

Credit Allocation. The owner of a Housing Credit Development shall notify the Corporation in writing of an impending sale and of compliance with any requirements by the Treasury for the transfer of the Housing Credit Development. The owner of a Housing Credit Development shall notify the Corporation in writing of the name and address of the party or parties to whom the Housing Credit Development was sold within 14 days of the transfer of the Housing Credit Development.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History—New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 9I-48.030, Amended 11-9-98, Repromulgated.

#### 67-48.031 Termination of Extended Use Agreement and Disposition of Housing Credit Developments.

The Housing Credit extended use period for any building shall terminate upon the date a building is acquired through foreclosure (or instrument in lieu of foreclosure) or if no buyer can be found who is willing to maintain the Housing Credit Set-Aside of the Development. In the event the Applicant is unable to locate a buyer willing to maintain the Set-Aside provisions of the Extended Use Agreement, the following steps shall be taken, as set forth in Section 42(h)(6) of the Code, before a building is converted to market-rate use:

(1) After the fourteenth year of the Compliance Period, unless otherwise obligated under the Extended Use Agreement, an Applicant may submit a written request to the Corporation to find a buyer to acquire the Applicant's interest in the Housing Credit Set-Aside portion of the building.

(2) The Corporation shall have one year from the receipt of the request to obtain a qualified buyer for the Development.

(3) The Corporation shall actively seek to obtain a qualified buyer for acquisition of the Housing Credit Set-Aside portion of the building for an amount not less than the Applicable Fraction as specified in the Extended Use Agreement of:

(a) The sum of the outstanding indebtedness secured by the building;

(b) The adjusted investor equity in the building; and

(c) Other capital contributions not reflected in the amounts above, and reduced by cash distributions from the Development.

(4) In the event no buyer is found to acquire the Housing Credit Set-Aside portion of the building within one year, the Housing Credit Extended Use Period shall be terminated, and the units converted to market-rate.

(5) Pursuant to Section 42(h)(6)(E)(ii) of the Code, the termination of an Extended Use Agreement shall not be construed to permit the termination of a tenancy, the eviction of any existing tenant of any Set-Aside Unit, or any increase in the gross rent with respect to any Set-Aside Unit before the close of the three-year period following such termination. In no

case shall any portion of a Housing Credit Development be disposed of prior to the expiration of the Extended Use Agreement.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History—New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 9I-48.031, Amended 11-9-98, Repromulgated.

#### 67-48.032 Minimum Set-Aside for Non-Profit Organizations Under Housing Credits Program.

(1) For each calendar year, not less than 10% of the Corporation's total yearly Allocation Authority shall be set aside by the Corporation for issuance to qualified Non-Profit organizations.

(2) To ensure that the minimum 10% is set aside, the Corporation has determined that an initial allocation of 12% to qualified Non-Profits will be met. In order to achieve the initial 12% set-aside, Applications from Applicants that qualify or whose General Partner qualifies as a Non-Profit entity pursuant to Rule 67-48.002(71)(73), F.A.C., HUD Regulations, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the Code and organized under Chapter 617, Florida Statutes, or organized under similar state law if organized in a jurisdiction other than Florida and meet scoring threshold requirements shall be moved into the funding range, in order of their comparative scores, with Applicants whose Non-Profit entity is organized under Florida law receiving priority over Non-Profit entities of other jurisdictions, until the 12% set-aside is achieved. The last Non-Profit Development that is moved into the funding range in order to achieve the 12% initial set-aside shall be fully funded even though that may result in a higher Non-Profit set-aside. This will be accomplished by removing the lowest scored Application of a for-profit Applicant from the funding range and replacing it with the highest scored Non-Profit Application below the funding range within the applicable Geographic Set-Aside pursuant to the QAP. This procedure will be used again on or after October 1, if necessary, to ensure that the Agency allocates at least 10% of its Allocation Authority to qualified Non-Profit Applicants. Any for-profit Applicant so removed from the funding range will NOT be entitled to any consideration of priority for the receipt of current or future Housing Credits other than placement on the current ranking and scoring list in accordance with its score. Binding Commitments for Housing Credits from a future year will not be issued for Applicants so displaced.

(3) After the full Non-Profit set-aside amount has been allocated, remaining Applications from Non-Profit organizations shall compete with all other Applications in the HC Program for remaining Allocation Authority.

(4) Qualification as a Non-Profit entity must be evidenced to the Corporation by the receipt from the Applicant, upon Application to the HC Program, of a written opinion from legal counsel. The total cost of securing this written legal opinion will be borne entirely by the Applicant. A Non-Profit entity shall own an interest in the Development, either directly or



indirectly; shall not be affiliated with or controlled by a for-profit corporation; and shall materially participate in the development and operation of the Development throughout the Extended Use Period. If an Applicant submits Application to the HC Program as a Non-Profit entity but does not qualify as such, the Applicant will be disqualified from participation in the HC Program for the current Cycle.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History--New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 91-48.032, Amended 11-9-98, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Gayle White, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850)488-4197

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Sue W. Early, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850)488-4197

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 20, 1999, Corporation Board Meeting

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 25, No. 12, March 26, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Freshwater Fish and Wildlife**

RULE TITLE: Hunting Dogs; Molesting Game in Closed Season; Training; Field Trials; Prohibited for Certain Hunting

RULE NO.: 68A-12.007

PURPOSE AND EFFECT: The purpose of the proposed rule is to expand imposition of the Hunter Responsibility Rule from the present eight Northwest Florida counties to the entire state. This rule requires greater responsibility from hunters who use dogs for hunting to resolve conflicts between hunters and landowners. The effect is to provide the Commission with an additional enforcement tool to control illegal use of dogs for hunting.

SUMMARY: The proposed rule will require that, in all counties, all dogs used for hunting shall wear a collar or tag which identifies the owner. The proposed rule will also require that all hunters who use dogs for hunting have written permission of the property owner.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The costs for administrative preparation and advertising for the proposed rule are estimated at \$1000 and \$55, respectively. Other costs associated with implementing the proposed rule, a dog collar or tag and written permission from the landowner are expected to be negligible since the majority of dog hunters routinely collar their dogs and the landowner permission information is a no cost item.

Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower cost regulatory alternative, must do so within 21 days of this notice.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.

LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const.

IF REQUESTED, A HEARING ON THE PROPOSED RULE WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATES: 9:00 a.m., October 5-9, 1999

PLACE: St. Petersburg Hilton, 333 First Street, South, St. Petersburg, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND STATEMENT OF ESTIMATED REGULATORY COST IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-12.007 Hunting Dogs; Molesting Game in Closed Season; Training; Field Trials; Prohibited for Certain Hunting.

(1) All dogs used in ~~Calhoun, Escambia, Holmes, Jackson, Okaloosa, Santa Rosa, Walton and Washington counties~~ for taking or attempting to take, trailing, pursuing, or molesting wildlife shall wear a collar or tag which shall legibly display the name and address of the owner of the dog. No person shall use any dog to take or attempt to take, trail, pursue or molest wildlife unless such dog is wearing a collar or tag displaying the information required above.

(2) ~~No In Calhoun, Escambia, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, and Washington counties, no~~ person owning, having the care of, or using any dog shall permit such dog to trail, pursue or molest wildlife on the lands of another person without written permission from the landowner or lessee of said lands. Written permission shall be in the possession of each person using such dog on the lands of another person, and shall be presented for inspection upon request of any Commission wildlife officer or other law enforcement officer as referred to in subsection 68A-3.002(3), F.A.C.

(4) Bird dogs may be trained during the closed season for taking quail with the aid of a pistol firing a blank or solid ball or as provided by ~~Rule 68A-12.008~~, F.S.

Specific Authority Art. IV, Sec. 9, Fla. Const., Law Implemented Art. IV, Sec. 9, Fla. Const., History--New 8-1-79, Amended 6-22-80, 6-21-82, 7-27-83, 7-1-84, 7-1-85, Formerly 39-12.07, Amended 4-11-90, 3-1-94, 7-1-94, 9-7-97, Formerly 39-12.007, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Preston T. Robertson

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Allan L. Egbert

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 1999  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 27, 1998

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Freshwater Fish and Wildlife**

RULE TITLE: Establishment Orders  
RULE NO.: 68A-14.001

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to incorporate reference to Commission establishment orders that (1) establish land as Type I or Type II wildlife management areas, wildlife and environmental areas, refuges, bird sanctuaries, restricted hunting areas, critical wildlife areas, fish management areas, miscellaneous areas, or wild hog areas; (2) adjust acreage of said lands; and (3) make technical changes to Establishment Orders.

SUMMARY: The proposed rule incorporates reference to Commission establishment orders that: (1) re-establish the Kissimmee River WMA to withdraw the Hickory Hammock Unit and establish it as the Hickory Hammock WMA; (2) re-establish the Big Bend WMA with additions; (3) dis-establish the Escambia River WMA due to withdrawal of property by the landowner; (4) re-establish Tate's Hell WMA with additions; (5) establish the Okaloacoochee Slough WMA (new WMA); and re-establish the Apalachicola River WEA with additions.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: It is estimated that the proposed action will cost the agency approximately \$75 for administrative preparation and \$30 for advertising. No other significant economic impacts are expected.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.  
LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const., 372.121 FS.

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

TIME AND DATE: 9:00 a.m., October 6, 1999  
PLACE: St. Petersburg Hilton, 333 First Street, South, St. Petersburg, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND STATEMENT OF ESTIMATED REGULATORY COST IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-14.001 Establishment Orders.

(1) Whenever the Commission establishes an area to be a Type I or Type II wildlife management area; a wildlife and environmental area; a refuge; a bird sanctuary; a restricted hunting area; a critical wildlife area; a fish management area; or a miscellaneous area, it shall do so by an establishment order.

(a) The establishment order shall recite at least the following:

- 1. The legal description of the area to be established.
- 2. Any terms and conditions under which the area is established.

(b) The establishment orders shall be kept by the Commission in its headquarters office and lists of all orders establishing an area as a Type I or Type II wildlife management area; a wildlife and environmental area; a wildlife refuge; a bird sanctuary; a restricted hunting area; a critical wildlife area; a fish management area; a wild hog area or a miscellaneous area are hereby incorporated by reference.

(2) The Commission does hereby adopt and incorporate by reference into these rules and regulations the establishment orders found in the document "Establishment Orders, Revised October 8, 1999." The document is available to the public pursuant to the provisions of chapters 119 and 120, F.S.

Specific Authority Art. IV, Sec. 9, Fla. Const.Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 8-1-79, 6-21-82, Formerly 39-14.01, Amended 10-29-97, 6-30-99, Formerly 39-14.001, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Timothy A. Breault

NAME OF SUPERVISOR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Allan L. Egbert

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 7, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Freshwater Fish and Wildlife**

RULE TITLE: Quota Permits; Antlerless Deer Permits;  
RULE NO.: 68A-15.005

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to establish, revise, or delete quotas for regular quota hunts, special quota hunts, and special-opportunity hunts on wildlife management areas (WMAs) and wildlife and environmental areas (WEAs).

SUMMARY: The proposed rule would establish spring turkey quota hunts for the following WMAs: Croom (10 permits each hunt); Arbuckle (10 permits each hunt); Hickory Hammock (5 permits each hunt); Walk-in-the-Water (5 permits each hunt); Hilochee (5 permits each hunt); Lake Marion Creek (10

permits each hunt); Holton Creek (10 permits each hunt); Okaloacoochee Slough (50 permits each hunt), Citrus (5 permits each hunt), Hopkins Prairie Unit of Ocala (30 permits each hunt); Pipeline Unit of Ocala (220 permits each hunt); Church Lake Unit of Ocala (15 permits each hunt); Rima Ridge Unit of Tiger Bay (20 permits each hunt); and Buck Lake (20 permits each hunt). The proposed rule would delete Escambia River WMA quota hunts due to withdrawal of property by the landowner, and the proposed rule would reflect reestablishment of Hickory Hammock Unit of Kissimmee River WMA to Hickory Hammock WMA.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** It is estimated that the proposed action will cost the agency approximately \$75 for administrative preparation and \$52 for advertising. No other significant economic impacts are expected.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** Art. IV, Sec. 9, Fla. Const.

**LAW IMPLEMENTED:** Art. IV, Sec. 9, Fla. Const.

**A HEARING ON THE PROPOSED RULE WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:**

**TIME AND DATE:** 9:00 a.m., October 6, 1999

**PLACE:** St. Petersburg Hilton, 333 First Street, South, St. Petersburg, Florida

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND STATEMENT OF ESTIMATED REGULATORY COST IS:** James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

**THE FULL TEXT OF THE PROPOSED RULE IS:**

68A-15.005 Quota Permits; Antlerless Deer Permits; Special-Opportunity Permits.

(a) South Region

3. Croom, spring turkey (each hunt) – 10 by spring turkey application (no exemptions).

3. through 20. renumbered 4. through 21. No change.

22. Arbuckle, spring turkey (each hunt) – 10 by spring turkey application (no exemptions).

21. through 27. renumbered 23. through 29. No change.

30.28. Kissimmee River Hickory Hammock Unit, special-opportunity wild hog hunt (each hunt) – 10 by special-opportunity hunt application (no exemptions).

31. Hickory Hammock, spring turkey (each hunt) – 5 by spring turkey application (no exemptions).

29. through 32. renumbered 32. through 35. No change.

36. Walk-in-the-Water, spring turkey – 5 by spring turkey application (no exemptions).

37.33. Hilochee, special-opportunity dove hunt (each hunt) – 30 (no exemptions).

38. Hilochee, spring turkey (each hunt) – 5 by spring turkey application (no exemptions).

34. through 41. renumbered 39. through 46. No change.

47. Lake Marion Creek, spring turkey (each hunt) – 10 by spring turkey application (no exemptions).

(b) Northeast Region

51. Holton Creek, spring turkey (each hunt) – 10 by spring turkey application (no exemptions).

51. through 58. renumbered 52. through 59. No change.

(c) Northwest Region

29. Escambia River, general gun still hunt (first nine days) 330 by regular quota application.

30. Escambia River, general gun dog hunt (first nine days) 330 by regular quota application.

31. through 37. renumbered 29. through 35. No change.

(d) Everglades Region

27. Okaloacoochee Slough, spring turkey (each hunt) – 50 by spring turkey application (no exemptions).

(e) Central Region

9. Citrus, spring turkey (each hunt) – 5 by spring turkey application (no exemptions).

9. through 18. renumbered 10. through 19. No change.

20. Ocala, Hopkins Prairie Unit, spring turkey (each hunt) – 30 by spring turkey application (no exemptions).

21. Ocala, Pipeline Unit, spring turkey (each hunt) – 220 by spring turkey application (no exemptions).

22. Ocala, Church Lake Unit, spring turkey (each hunt) – 15 by spring turkey application (no exemptions).

19. through 40. renumbered 23. through 44. No change.

45. Tiger Bay, Rima Ridge Unit, spring turkey (each hunt) – 20 by spring turkey application (no exemptions).

41. through 118. renumbered 46. through 123. No change.

124. Buck Lake, spring turkey (each hunt) – 20 by spring turkey application.

Specific Authority Art. IV, Sec. 9, Fla. Const., Law Implemented Art. IV, Sec. 9, Fla. Const., History–New 8-1-79, Amended 5-19-80, 6-22-80, 12-29-80, 6-4-81, 8-4-81, 6-21-82, 7-29-82, 7-1-83, 7-5-84, 7-1-85, 9-19-85, Formerly 39-15.05, Amended 5-7-86, 6-10-86, 5-10-87, 6-8-87, 10-8-87, 4-13-88, 6-7-88, 7-1-89, 7-1-90, 9-1-90, 7-1-91, 7-2-91, 7-1-92, 8-23-92, 7-1-93, 7-1-94, 3-30-95, 6-20-95, 8-15-95, 4-1-96, 6-27-96, 9-15-96, 10-20-96, 6-1-97, 8-7-97, 11-23-97, 7-1-98, 7-2-98, 8-11-98, 12-28-98, 5-13-99, Formerly 39-15.005, Amended \_\_\_\_\_.

**NAME OF PERSON ORIGINATING PROPOSED RULE:** Timothy A. Breault

**NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE:** Dr. Allan L. Egbert

**DATE PROPOSED RULE APPROVED BY AGENCY HEAD:** July 8, 1999

**DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:** August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Freshwater Fish and Wildlife**

RULE TITLE: Regulations Relating to Miscellaneous Areas  
RULE NO.: 68A-15.006

PURPOSE AND EFFECT: The purpose of the proposed rule change is to establish specific public use and hunting regulations for wild hog and miscellaneous areas established under Commission Rule 68A-14.001, FAC. The effect of the proposed rule would be to better facilitate and regulate public use and hunting on these areas and provide for necessary resource management and protection.

SUMMARY: The proposed rule changes would provide the regulatory framework for establishing and regulating specific public uses on wild hog and miscellaneous areas established under Commission Rule 68A-14.001, FAC.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: It is estimated that the proposed action will cost the agency approximately \$75 for administrative preparation and \$42 for advertising. No other significant economic impacts are expected.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.

LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const.

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

TIME AND DATE: 9:00 a.m., October 6, 1999

PLACE: St. Petersburg Hilton, 333 First Street, South, St. Petersburg, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND STATEMENT OF ESTIMATED REGULATORY COST IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-15.006 Regulations Relating to Miscellaneous Areas. The Commission may establish specific regulations for wild hog areas and miscellaneous areas to regulate and manage the lands or waters therein in the best interest of the state.

Specific Authority Art. IV, Sec. 9, Fla. Const., Law Implemented Art IV, Sec. 9, Fla. Const., History--New

NAME OF PERSON ORIGINATING PROPOSED RULE: Timothy A. Breault

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Allan L. Egbert

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Freshwater Fish and Wildlife**

RULE TITLE: Specific Regulations for Type I Wildlife  
RULE NO.: 68A-15.061

Management Areas – South Region  
PURPOSE AND EFFECT: The purposes of the proposed rule changes are to make needed changes in regulations to allow the agency to more efficiently manage wildlife resources and public use on WMAs and provide public hunting opportunities.

SUMMARY: Proposed rule changes would establish or revise specific area regulations on WMAs as follows:

Croom WMA – open season for spring turkey (March 21-23, April 4-6, and April 18-20); during spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit; turkeys shall be checked at the check station; and turkeys shall not be dismembered until checked at the check station.

Arbuckle WMA – open season for spring turkey (March 24-26, April 7-9, and April 21-23); turkeys legal to take during spring turkey season only; during spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit; and turkeys shall not be dismembered until checked at the check station.

Hickory Hammock WMA – revised to reflect proposed reestablishment of the Hickory Hammock Unit of Kissimmee River WMA as the Hickory Hammock WMA; open season for spring turkey (March 23-25 and April 13-15); during spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit; vehicles may be operated only on named and numbered roads during spring turkey hunts; restrictions on entering the area earlier than one-half hour before sunrise and exiting the area no later than one-half hour after sunset deleted; hunters required to check in and out at a check station and check all game taken during special-opportunity hog and spring turkey seasons; and turkeys shall not be dismembered until checked at the check station.

Walk-in-the-Water WMA – open season for spring turkey (April 14-16); turkeys legal to take during spring turkey season only; during spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit; and turkeys shall not be dismembered until checked at the check station.

Hilochee WMA – open season for spring turkey (March 24-26 and April 7-9); turkeys legal to take; during spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit; camping prohibited; all users shall enter and exit the area through designated entrances; hunters shall check in and out at the check station when entering and exiting the area and check all game taken; parking permitted only at designated parking areas or within 25 feet of named or

numbered roads; use of tracked vehicles, motorcycles, all-terrain vehicles, and horses prohibited; public access permitted by foot or bicycle only during periods when the area is closed to hunting except that motorized vehicles permitted one day prior to spring turkey hunts for scouting; and turkeys shall not be dismembered until checked at the check station. .

Lake Marion Creek WMA – open season for spring turkey (March 18-20, March 31 through April 2, and April 14-16); open seasons for fishing and frogging (throughout the year); turkeys, fish, and frogs legal to take; during spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit; camping prohibited; use of tracked vehicles, motorcycles, or all-terrain vehicles prohibited; hunters shall check in and out at the check station when entering and exiting the area and shall check all game taken; vehicle operation permitted only on named or numbered roads; parking permitted at designated parking areas or within 25 feet of a named or numbered roads; and turkeys shall not be dismembered until checked at the check station.

IMC WMA – all specific area regulations deleted due to landowner request to withdraw WMA.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: It is estimated that the proposed action will cost the agency approximately \$275 for administrative preparation and \$209 for advertising. No other significant economic impacts are expected.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.

LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const., 375.313 FS.

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

TIME AND DATE: 9:00 a.m., October 6, 1999

PLACE: St. Petersburg Hilton, 333 First Street South, St. Petersburg, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND STATEMENT OF ESTIMATED REGULATORY COST IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-15.061 Specific Regulations for Type I Wildlife Management Areas – South Region.

(1) Croom Wildlife Management Area

(a) Open season:

5. Spring turkey – March 21-23, April 4-6, and April 18-20.

6.5. Fishing and frogging – Throughout year.

(b) Legal to take: All legal game, fish, frogs and furbearers. No size or bag limit on wild hogs. During spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit.

(d) General regulations:

6. During the general gun, spring turkey, and muzzleloading gun seasons, all game taken shall be checked at the check station, and no turkey shall be dismembered until checked at the check station.

~~(7) IMC Wildlife Management Area~~

~~(a) Open season:~~

~~1. General gun – Tuesdays, Thursdays and Saturdays of the duck and coot season established pursuant to Rule 68A-13.003, F.A.C.~~

~~2. Fishing – Prohibited except with written permission of landowner IMC.~~

~~(b) Legal to take: Ducks and coots only. Legal shooting hours: From the beginning of shooting hours established pursuant to Rule 68A-13.003, F.A.C., until noon.~~

~~(c) Camping: Prohibited.~~

~~(d) General regulations:~~

~~1. A maximum of 20 hunting parties (one to three participants sharing a boat) will be allowed on each hunt. An entry permit is required of each hunting party entering the area.~~

~~2. Hunters may enter the area on days open to hunting beginning one and one-half hours before sunrise and shall exit the area by 1 p.m. No hunter will be permitted to enter the area after one hour before sunrise.~~

~~3. Hunters shall check in and out at a check station when entering and exiting the area and shall check all game taken.~~

~~4. Vehicles may be operated only at the launch site and parking areas.~~

~~5. Only electric outboard motors may be used.~~

~~6. The possession of rifles or pistols is prohibited.~~

~~7. Wading or the use of tube boats is prohibited.~~

~~8. Discharge of firearms from dike roads is prohibited.~~

~~(7)(8) Arbuckle Wildlife Management Area~~

~~(a) Open season:~~

~~4. Spring turkey – March 24-26, April 7-9, and April 21-23.~~

~~5.4. Fishing – Permitted year-round. Frogging – Prohibited.~~

(b) Legal to take: All legal game (except turkeys shall be legal to take only during spring turkey season), furbearers and fish. Deer bag limit – one per day. Wild hog bag limit – no bag or size limits. During the general gun hog season, only wild hog may be taken. During the spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit.

(d) General regulations:

2. No deer or turkey shall be dismembered until checked at the check station.

(9) through (11) renumbered (8) through (10) No change.

~~(11)(12)~~ Hickory Hammock Kissimmee River Wildlife Management Area – Hickory Hammock Unit

(a) Open season:

6. Spring turkey – March 23-25 and April 13-15.

~~7.6.~~ Fishing and frogging – Permitted throughout the year.

(b) Legal to take: All legal small game, fish, frogs and furbearers. Wild hogs may be taken only during the special-opportunity wild hog hunts. No size or bag limits on wild hogs. During spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit.

(d) General regulations:

3. All vehicles shall be parked in the designated parking area during the small game season. Vehicles may be operated only on named or numbered roads during the special-opportunity wild hog hunts and spring turkey hunts.

4. The use of tracked vehicles, motorcycles or three or four wheelers (ATVs) is prohibited.

~~5. Persons may enter the area no earlier than one-half hour before sunrise and shall exit no later than one-half hour after sunset.~~

~~5.6.~~ Hunters shall check in at a designated check station when entering and exiting the area, and check record all game taken during special-opportunity wild hog and spring turkey seasons.

~~6.7.~~ A special-opportunity permit is required of any person participating in the special-opportunity wild hog hunts.

7. No turkey shall be dismembered until checked at the check station.

~~(12)(13)~~ Kissimmee River Wildlife Management Area – Pool A East Unit.

~~(13)(14)~~ Walk-in-the-Water Wildlife Management Area

(a) Open Season:

5. Spring turkey – April 14-16.

~~6.5.~~ Fishing – Permitted throughout the year. Frogging is prohibited.

(b) Legal to take: All legal game (except turkeys shall be legal to take during spring turkey season only) and fish. Deer bag limit – one per day. Wild hog bag limit – no size or bag limits. During the general gun hog season only wild hogs may be taken. During the spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit.

(d) General regulations:

9. No deer or turkey shall be dismembered until checked at the check station.

~~(14)(15)~~ Hilochee Wildlife Management Area

(a) Open Season:

2. Spring turkey – March 24-26 and April 7-9.

~~(b)~~ Shooting hours: Noon until sunset for special-opportunity dove hunts.

~~(b)(e)~~ Legal to take: Mourning doves, ~~and~~ white-winged doves, and turkeys. During the spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit.

(c) Camping: Prohibited.

(d) General Regulations:

2. All users shall enter and exit the area through designated entrances. Hunters shall check in and out at a check station when entering and exiting the area and shall check all game taken. All hunters shall check in and out at a designated hunt headquarters when entering or exiting the area. Special-opportunity dove hH~~Hunters may enter the area one hour before shooting time and shall exit the area by one hour after sunset.~~

3. The possession of firearms other than shotguns is prohibited during special-opportunity dove hunts.

5. Motorized vehicles may be operated only on named or numbered roads and shall be parked in designated parking areas or within 25 feet of a named or numbered road.

7. Shooting hours for special-opportunity dove hunts shall be from noon until sunset.

8. The use of tracked vehicles, motorcycles, all-terrain vehicles, or horses is prohibited.

9. During periods when the area is closed to hunting, public access other than by foot or bicycle is prohibited, except that motorized vehicles shall be permitted one day prior to the spring turkey hunts.

10. No turkey shall be dismembered until checked at a check station.

(15) Lake Marion Creek Wildlife Management Area

(a) Open Season:

1. Spring turkey - March 18-20, March 31 through April 2, and April 14-16.

2. Fishing and frogging – Permitted throughout the year.

(b) Legal to take: Turkeys, fish and frogs. During the spring turkey season, the bag limit for turkey shall be one gobbler (or bearded turkey) per quota hunt permit.

(c) Camping: Prohibited.

(d) General regulations:

1. The use of tracked vehicles, motorcycles, or all-terrain vehicles is prohibited.

2. Hunters shall check in and out at a designated check station when entering and exiting the area and shall check all game taken.

3. Vehicles may be operated only on named or numbered roads and shall be parked in designated parking areas or within 25 feet of a named or numbered road.

4. No turkey shall be dismembered until checked at a check station.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., 375.313, FS. History—New 6-21-82, Amended 7-1-83, 11-17-83, 7-5-84, 10-1-84, 7-1-85, 9-19-85, 5-7-86, 5-10-87, 6-8-87, 10-8-87, 5-1-88, 7-1-89, 7-1-90, 7-1-91, 7-2-91, 7-1-92, 8-23-92, 7-1-93, 7-1-94, 7-1-95, 8-15-95, 7-1-96, 9-16-96, 6-1-97, 8-7-97, 7-1-98, 10-20-98, 12-28-98, 7-1-99, Formerly 39-15.061, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Timothy A. Breault

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Allan L. Egbert

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Freshwater Fish and Wildlife**

RULE TITLE: Specific Regulations for Type I Wildlife Management Areas – Northeast Region

RULE NO.: 68A-15.062

PURPOSE AND EFFECT: The purposes of the proposed rule changes are to make needed changes in regulations to allow the agency to more efficiently manage wildlife resources and public use on WMAs and provide public hunting opportunities.

SUMMARY: Proposed rule changes would establish or revise specific area regulations on WMAs as follows:  
Camp Blanding WMA – only shotguns permitted during spring turkey season.  
Holton Creek WMA – open season for spring turkey (March 24-26, and April 14-16); use of all-terrain vehicles by certified mobility-impaired hunters permitted during all hunts; vehicles may be operated from one and one-half hours before sunrise until one and one-half hours after sunset; and attendance at a pre-hunt orientation meeting shall not be required for turkey hunters.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: It is estimated that the proposed action will cost the agency approximately \$125 for administrative preparation and \$61 for advertising. No other significant economic impacts are expected.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.  
LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const., 375.313 FS.

A HEARING ON THE PROPOSED RULE WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:  
TIME AND DATE: 9:00 a.m., October 6, 1999  
PLACE: St. Petersburg Hilton, 333 First Street, South, St. Petersburg, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND STATEMENT OF ESTIMATED REGULATORY COST IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-15.062 Specific Regulations for Type I Wildlife Management Areas – Northeast Region.

(1) Camp Blanding Wildlife Management Area

(a) Open season:

10. Only shotguns are permitted during the supervised youth and spring turkey seasons ~~hunt~~.

(22) Holton Creek Wildlife Management Areas

(a) Open season:

2. Spring turkey – March 24-26 and April 14-16.

~~3.2. Fishing – Throughout the year.~~

(d) General regulations:

5. Vehicles may be operated from one and one-half hours before sunrise until one and one-half hours after sunset ~~only during daylight hours~~ and only on designated portions of named or numbered roads.

6. The use of tracked vehicles, airboats, motorcycles or all-terrain vehicles is prohibited except all-terrain vehicles may be used by certified mobility-impaired hunters during all hunts ~~during the mobility-impaired general gun hunt~~.

9. General gun mobility-impaired hunt participants ~~All mobility-impaired hunters~~ are required to attend a pre-hunt orientation meeting.

Specific Authority Art. IV, Sec. 9, Fla. Const., Law Implemented Art. IV, Sec. 9, Fla. Const., 375.313 FS., History—New 6-21-82, Amended 7-1-83, 11-17-83, 7-5-84, 7-1-85, 2-16-86, 5-7-86, 6-10-86, 11-27-86, 5-10-87, 5-1-88, 6-7-88, 7-1-89, 8-17-89, 7-1-90, 9-1-90, 7-1-91, 7-2-91, 7-1-92, 7-2-92, 8-23-92, 10-22-92, 7-1-93, 7-1-94, 2-9-95, 7-1-95, 7-1-96, 9-15-96, 6-1-97, 7-1-98, 7-2-98, 7-1-99, Formerly 39-15.062, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Timothy A. Breault

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Allan L. Egbert

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Freshwater Fish and Wildlife**

RULE TITLE:

RULE NO.:

Specific Regulations for Type I Wildlife

Management Areas – Northwest Region 68A-15.063

PURPOSE AND EFFECT: The purposes of the proposed rule changes are to make needed changes in regulations to allow the agency to more efficiently manage wildlife resources and public use on WMAs and provide public hunting opportunities.

SUMMARY: The proposed rule change would establish an open season for spring turkey hunting on Tate’s Hell WMA (March 18 – April 23). The proposed rule would delete all specific area regulations for Escambia River WMA due to withdrawal of property by the landowner.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: It is estimated that the proposed action will cost the agency approximately \$125 for administrative preparation and \$72 for advertising. No other significant economic impacts are expected.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.

LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const., 375.313 FS.

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

TIME AND DATE: 9:00 a.m., October 6, 1999

PLACE: St. Petersburg Hilton, 333 First Street, South, St. Petersburg, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND STATEMENT OF ESTIMATED REGULATORY COST IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-15.063 Specific Regulations for Type I Wildlife Management Areas – Northwest Region.

~~(14) Escambia River Wildlife Management Area~~

~~(a) Open season:~~

~~1. General gun – December 11 through January 5.~~

~~2. Small game – November 13 through December 10 and January 6 through March 5.~~

~~3. Spring turkey – March 18 through April 23.~~

~~4. Archery – October 16 through November 14.~~

~~5. Muzzleloading gun – November 19-21.~~

~~6. Muzzleloading gun and archery – February 17-27.~~

~~7. Trapping – December 1 through March 1 in the still hunt area only.~~

~~8. Early duck – In the September season as established by Rule 68A-13.003, F.A.C.~~

~~9. Duck and coot – As established by Rule 68A-13.003, F.A.C.~~

~~10. Dove – As established by Rule 68A-13.008, F.A.C.~~

~~11. Fishing and frogging – Throughout the year.~~

~~(b) Legal to take: All legal game, fish, frogs and furbearers. Antlerless deer (except spotted fawns) may be taken during the archery season.~~

~~(c) Camping – Permitted at designated sites throughout the year, but limited to 7 consecutive days.~~

~~(d) General regulations:~~

~~1. Vehicles may not be operated on roads posted as closed.~~

~~2. Vehicles may be operated only on named or numbered roads.~~

~~3. The use of all terrain vehicles (ATVs) is prohibited.~~

~~4. Hunting with dogs, other than bird dogs is prohibited.~~

~~5. Permanent camping structures are prohibited.~~

~~6. Center fire rifles are prohibited except during the December 11 through January 5 and March 18 through April 23 periods.~~

~~7. Taking wildlife by use of a gun on, upon or from the rights of way of S.R.184, S.R.197, S.R.292, S.R. 297, C.R. 182, Mineral Springs Road and all other paved roads located within the area is prohibited as provided by Rule 68A-4.008, F.A.C.~~

~~(14)(15) Tate's Hell Wildlife Management Area~~

~~(a) Open Season:~~

~~9. Spring turkey – March 18 through April 23.~~

~~10. 9. Trapping – February 1 through March 1.~~

~~11.10. Fishing and frogging – Throughout the year.~~

~~(15)(16) Tate's Hell Wildlife Management Area – Womack Creek Unit.~~

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 6-21-82, Amended 7-1-83, 7-1-84, 7-1-85, 5-7-86, 5-10-87, Amended 6-8-87, 5-1-88, 7-1-89, 7-1-90, 9-1-90, 9-1-91, 9-2-91, 7-2-92, 7-1-93, 3-1-94, 7-1-94, 7-1-95, 7-2-95, 8-15-95, 7-1-96, 7-2-96, 6-1-97, 12-3-97, 7-1-98, 7-2-98, 8-11-98, 7-1-99, Formerly 39-15.063, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Timothy A. Breault

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Allan L. Egbert

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999



**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Freshwater Fish and Wildlife**

RULE TITLE: Specific Regulations for Type I Wildlife Management Areas – Everglades Region

RULE NO.: 68A-15.064

PURPOSE AND EFFECT: The purposes of the proposed rule changes are to make needed changes in regulations to allow the agency to more efficiently manage wildlife resources and public use on WMAs and provide public hunting opportunities.

SUMMARY: The proposed rule change would establish or revise specific area regulations on WMAs as follows:

Okaloacoochee Slough WMA – open seasons for spring turkey (March 4-7 and March 8-12); turkeys legal to take; during spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit; camping permitted only at designated campsites using tents, trailers, or self-propelled camping vehicles only; use of tracked vehicles, airboats, motorcycles or all-terrain vehicles prohibited; vehicle operation permitted only on named and numbered roads and trails; hunters shall check in and out at a designated check station and check all game taken; turkeys shall be checked at a check station prior to being dismembered; and fires other than campfires prohibited.

Everglades and Francis S. Taylor WMA – restrict deer harvest to antlered deer with at least one forked antler and having one or more antlers at least 5 inches in length visible above the hairline, and require that the forked antler shall have at least two points one inch or greater in length.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: It is estimated that the proposed action will cost the agency approximately \$125 for administrative preparation and \$79 for advertising. No other significant economic impacts are expected.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.

LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const., 375.313 FS.

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

TIME AND DATE: 9:00 a.m., October 6, 1999

PLACE: St. Petersburg Hilton, 333 First Street, South, St. Petersburg, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND STATEMENT OF ESTIMATED REGULATORY COST IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-15.064 Specific Regulations for Type I Wildlife Management Areas – Everglades Region.

(3) Everglades and Francis S. Taylor Wildlife Management Area

(b) Legal to take: All legal game (except turkeys), fish, alligators as specified in Rule 68A-25.047, F.A.C., frogs and furbearers. Taking of antlered deer not having at least one forked antler and having one or more antlers at least 5 inches in length visible above the hairline is prohibited. The forked antler shall have at least two points one inch or greater in length. During the archery season only antlered deer may be taken. The bag limit of hogs shall be one per day and two annually. During the general gun-vehicle season, a bag limit of one hog per day per vehicle shall apply. The bag limit of deer shall be one per season during archery, muzzleloading gun and general gun-walk seasons and one per tag during the general gun-vehicle season.

(8) Okaloacoochee Slough Wildlife Management Area

(a) Open Season:

1. Spring turkey – March 4-7 and 8-12.

(b) Legal to take: Turkeys. During the spring turkey season, the bag limit for turkey shall be one gobbler (or bearded turkey) per quota permit.

(c) Camping: Camping is permitted only at designated campsites. Only tents, trailers, or self-propelled camping vehicles may be used for camping.

(d) General regulations:

1. The use of tracked vehicles, airboats, motorcycles or all-terrain vehicles is prohibited.

2. Vehicles may be operated only on named or numbered roads and trails by individuals possessing a quota hunt permit. During the remainder of the year, vehicles may be operated only on named or numbered roads.

3. Hunters shall check in and out at a designated check station when entering and exiting the area and shall check all game taken.

4. No turkey shall be dismembered until checked at a check station.

5. Fires other than campfires are prohibited.

Specific Authority Art. IV, Sec. 9, Fla. Const., 375.313 FS. Law Implemented Art. IV, Sec. 9, Fla. Const., 375.313 FS. History—New 6-21-82, Amended 7-1-83, 7-27-83, 9-27-83, 7-5-84, 7-1-85, 5-7-86, 8-5-86, 5-10-87, 8-24-87, 5-1-88, 6-7-88, 7-1-89, 7-1-90, 9-1-90, 7-1-91, 7-1-92, 7-1-93, 7-1-94, 7-1-95, 8-15-95, 7-1-96, 9-15-96, 10-20-96, 6-1-97, 8-7-97, 7-1-98, 7-2-98, 7-1-99, Formerly 39-15.064, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:

Timothy A. Breault

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Allan L. Egbert

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Freshwater Fish and Wildlife**

RULE TITLE:

RULE NO.:

Specific Regulations for Type I Wildlife

Management Areas – Central Region 68A-15.065

PURPOSE AND EFFECT: The purposes of the proposed rule changes are to make needed changes in regulations to allow the agency to more efficiently manage wildlife resources and public use on WMAs and provide public hunting opportunities.

SUMMARY: The proposed rule change would establish or revise specific area regulations on WMAs as follows:

Citrus WMA – open seasons for spring turkey (March 24-26, March 31 – April 2, and April 7-9); turkeys legal to take; during spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit; turkeys shall not be dismembered until checked at the check station; and during spring turkey season, hunters shall check in and out the check station.

Ocala WMA – open seasons for spring turkey (March 23-26, March 30 – April 2, April 6-9, and April 13-16) on all management units except that portion of the Pipeline Management Unit south of S.R. 40 and west of S.R. 19; turkeys shall not be dismembered until checked at check station; and center-fire rifles prohibited during the spring turkey season; furbearers legal to take in the Church Lake Management Unit.

Richloam WMA – extend the open season for taking hogs throughout general gun season.

Tiger Bay WMA, Rima Ridge Unit – open seasons for spring turkey (March 18-20, March 31 – April 2, and April 14-16); turkeys legal to take; during spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit.

Buck Lake WMA – open seasons for spring turkey (March 18-21 and 22-26) and fishing and frogging (throughout the year); turkeys, fish and frogs legal to take; during spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit; camping prohibited in hunting areas during periods open to hunting; camping regulated by St. Johns River Water Management District public use regulations during periods closed to hunting; hunting with dogs prohibited; airboats, tracked vehicles, motorcycles, all-terrain vehicles, and horses prohibited except that horses are permitted during periods closed to hunting on named or numbered roads or designated trails; hunters shall enter and exit the area at a designated entrance; vehicles permitted only on named or numbered roads and may be parked only on designated parking areas or within 25 feet of named or numbered roads; turkeys shall not be dismembered until checked at a check station; during periods when the area is closed to hunting, public access other than by foot, horseback, or bicycle is prohibited.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: It is estimated that the proposed action will cost the agency approximately \$200 for administrative preparation and \$122 for advertising. No other significant economic impacts are expected.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.

LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const., 375.313 FS.

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

TIME AND DATE: 9:00 a.m., October 6, 1999

PLACE: St. Petersburg Hilton, 333 First Street, South, St. Petersburg, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND STATEMENT OF ESTIMATED REGULATORY COST IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-15.065 Specific Regulations for Type I Wildlife Management Areas – Central Region.

(2) Citrus Wildlife Management Area

(a) Open season:

5. Spring turkey – March 24-26, March 31 through April 2, and April 7-9.

6.5. Fishing and frogging – Throughout year.

(b) Legal to take: All legal game(~~except turkeys~~), fish, frogs and furbearers. During the muzzleloading gun and modern gun seasons, antlerless deer may be taken by permit only. Antlerless deer may be taken during the first 9 days of the archery season, but only one antlerless deer may be harvested per quota permit or per person exempted from license and stamp requirements by s. 372.57(1) and (6), F.S. During the spring turkey season, the bag limit for turkey shall be one gobbler (or bearded turkey) per quota hunt permit.

(d) General regulations:

4. No deer or turkey shall be dismembered or removed until checked at the check station.

14. During the spring turkey season, all hunters shall check in and out at the check station when entering or exiting the area.

(6) Ocala Wildlife Management Area

(a) Open season:

7. Spring turkey – March 23-26 25-26, March 30 through April 2 April 1-2, April 6-9 8-9 and 13-16 15-16, except that portion of the Pipeline Unit south of S.R. 40 and west of S.R. 19 on the Lake Delaney Management Unit only.

(b) Legal to take:

2. Furbearing animals – During the November 13 through March 1 period, hunting as specified in Rule 68A-24.002(2)(b), F.A.C., is permitted only in the Pipeline and Church Lake Management Units. Raccoons may also be hunted, with dogs only, from March 7 through April 16 only in that portion of the Pipeline Management Unit south of S.R. 40, east of C.R. 183 AV, and west of S.R. 19. The hunting of fox and bobcat by the use of dogs only shall be permitted from January 10 through April 16, only in that portion of the Pipeline Management Unit south of S.R. 40, east of County Road 183 AV, and west of SR 19.

(d) General regulations:

2. No deer or turkey shall be dismembered or transported out of the hunt area until checked at a check station.

9. The possession of center-fire rifles is prohibited during the spring turkey season.

(7) Richloam Wildlife Management Area

(b) Legal to take: All legal game (except antlerless deer), fish, frogs and furbearers. ~~Taking of hogs is prohibited after the first 16 days of general gun season.~~ No size or bag limit on wild hogs.

(12) Tiger Bay Wildlife Management Area – Rima Ridge Unit

(a) Open Season:

2. Spring turkey – March 18-20, March 31 through April 2, and April 14-16.

~~3. Fishing and frogging – Permitted throughout the year.~~

~~4. Trapping – Trapping is prohibited.~~

(b) Legal to take: All legal small game, turkeys, fish, frogs and furbearers. During the spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit.

(32) Buck Lake Wildlife Management Area

(a) Open season:

1. Spring turkey – March 18-21 and 22-26.

(b) Legal to take: Turkeys, fish, and frogs. During the spring turkey season, the bag limit shall be one gobbler (or bearded turkey) per quota hunt permit.

(c) Camping: Prohibited during periods open for hunting. During periods closed to hunting, camping is subject to St. Johns River Water Management District public use regulations.

(d) General regulations:

1. Hunting with dogs is prohibited.

2. Airboats, tracked vehicles, motorcycles, all-terrain vehicles, and horses are prohibited except that horses are permitted on named and numbered roads or designated trails during periods closed to hunting.

3. Hunters shall enter and exit the area at a designated entrance.

4. Vehicles may be operated only on named or numbered roads and may be parked only in designated parking areas or within 25 feet of a named or numbered road.

5. No turkey shall be dismembered until checked at a check station.

6. During periods when the area is closed to hunting, public access other than by foot, horseback or bicycle is prohibited.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. 375.313 FS. History—New 6-21-82, Amended 6-29-82, 7-1-83, 7-5-84, 10-1-84, 7-1-85, 5-7-86, 5-10-87, 5-1-88, 7-1-89, 12-19-89, 7-1-90, 7-1-91, 7-2-91, 7-2-92, 7-1-93, 7-1-94, 7-1-95, 7-1-96, 9-15-96, 6-1-97, 7-1-98, 7-2-98, 8-11-98, 12-28-98, 7-1-99, Formerly 39-15.065, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Timothy A. Breault

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Allan L. Egbert

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Freshwater Fish and Wildlife**

RULE TITLE: Possession Exhibition and Caging

RULE NO.: 68A-25.006

PURPOSE AND EFFECT: The purpose of this rule proposal is to clarify that possession of all sea snakes, no matter how they are scientifically classified, is prohibited, except under the parameters set forth in F.S. 370.081.

SUMMARY: When F.S. 370.081 was promulgated, all sea snakes were classified in one family. Today, there are several different classifications which has created confusion, and has the potential to allow the importation and possession of certain species of venomous sea snakes, allowing a person to circumvent the intent of the statute. This proposal would correct this problem by stating that import or possession of all sea snakes, no matter how they are classified, is prohibited except as provided under F.S. 370.081.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.

LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const.

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

TIME AND DATE: 9:00 a.m., October 6, 1999

PLACE: St. Petersburg Hilton, 333 First Street, South, St. Petersburg, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND STATEMENT OF ESTIMATED REGULATORY COST IS: James Antista, General Counsel, Florida Game and Fresh Water Fish Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-25.006 ~~Possession, Exhibition~~ ~~Exhibiting~~ and Caging ~~Poisonous or Venomous Reptiles; Prohibited Species.~~

(1) Any person who keeps, possesses or exhibits poisonous or venomous reptiles shall comply with ss. 372.86, 372.87, 372.88, 372.89, 372.90 and 372.91, F.S.

(2) ~~Venomous~~ ~~Poisonous~~ reptiles shall be kept enclosed in cages, cases, pits, or enclosures of the following specifications:

(3) All species of snakes commonly known as sea snakes or sea kraits, belonging to the families Elapidae, Hydrophiidae or Laticaudidae are prohibited from being imported or possessed, except under the provisions of F.S. 370.081(4).

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented 372.86, 372.87, 372.88, 372.89, 372.90, 372.91, 372.92 FS. History—New 8-1-79, Amended 6-21-82, Formerly 39-25.06, Amended 5-10-87, 4-1-96, 9-15-96, Formerly 39-25.006, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Lt. Thomas G. Quinn

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Allan L. Egbert

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Marine Fisheries**

RULE CHAPTER TITLE: Gear Specifications and Prohibited Gear

RULE TITLES:	RULE NOS.:
Gear Definitions	68B-4.002
Statewide Net Gear Specifications; Soaking Requirements; Definition; Cast Net Specifications	68B-4.0081

PURPOSE AND EFFECT: The purpose of these proposed rule amendments is to convert the current specification for the maximum allowable size for a cast net from a radius measurement – 12 feet, 7 inches – to a circumference maximum of 79 feet, 3 inches. In line with the conversion and both specifications, the definition of the term “cast net” is amended to more accurately describe the gear as “circular” in shape. The effect should be to give Division of Law Enforcement personnel a more certain way to measure cast

nets aboard a vessel. These amendments are in conjunction with identical rule amendments regarding cast net specifications for allowable gear used to harvest shrimp and mullet, and in the Florida Keys National Marine Sanctuary.

SUMMARY: Subsection (1) of Rule 68B-4.002, F.A.C., is amended to delete the word “cone-shaped” from the definition of the term “cast net” and insert in its place the word “circular.” Subsection (3) of Rule 68B-4.0081, F.A.C., is amended to replace the current 12 feet, 7 inches radius specification for the maximum allowable size of a cast net with a 79 feet, 3 inches circumference maximum.

A STATEMENT OF ESTIMATED REGULATORY COST HAS NOT BEEN PREPARED REGARDING THESE PROPOSED RULES.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Article IV, Section 9, and Article X, Section 16, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, and Article X, Section 16, Florida Constitution.

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES IN CONJUNCTION WITH THE COMMISSION’S PUBLIC MEETING AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATES: Beginning at 9:00 a.m., each day, October 7-8, 1999

PLACE: St. Petersburg Hilton Hotel, 333 First Street, South, St. Petersburg, 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 calendar days before the workshop/meeting by contacting Andrena Knicely at (850)487-1406. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

All written material received by the Commission within 21 days of the date of publication of this notice shall be made a part of the official record.

SECTION 286.0105, FLORIDA STATUTES, PROVIDES THAT, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS HEARING, HE WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSES, HE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULES IS:

68B-4.002 Gear Definitions.

As used in Title 68B, F.A.C., unless otherwise defined:

(1) "Cast net" means a circular ~~cone-shaped~~ net thrown by hand and designed to spread out and capture fish as the weighted circumference sinks to the bottom and comes together when pulled by a line.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 1-1-89, Amended 11-26-92, 1-1-97, 4-28-98, Formerly 46-4.002, Amended.

68B-4.0081 Statewide Net Gear Specifications; Soaking Requirements; Definition; Cast Net Specifications.

(3) Cast Nets – No person shall fish with, set, or place in nearshore and inshore Florida waters any cast net with a circumference ~~radius~~ greater than 79 ~~42~~ feet 3 ~~7~~ inches in ~~length~~. No more than two cast nets shall be fished in such waters from a single vessel at any time.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9 and Art. X, Sec. 16, Fla. Const. History--New 11-26-92, Amended 4-12-93, 1-1-97, 4-27-98, Formerly 46-4.0081, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Allan L. Egbert, Ph.D., Executive Director, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 9, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Marine Fisheries**

RULE CHAPTER TITLE: Miscellaneous

RULE TITLE:

RULE NO.:

Possession of Fish Legally Harvested in the Bahamas Allowed Under Certain Circumstances

68B-5.004

PURPOSE AND EFFECT: The purpose of this proposed new rule is to make special allowance for persons who travel by vessel to the Bahamas to fish recreationally, to enable them to bring back their legally-harvested catch even if in violation of Florida size, bag, possession, or season restrictions, while assuring that harvest in Florida waters is in accordance with those restrictions. The effect should be to continue vital

protection of Florida species and populations, while allowing angling trips to the Bahamas, an increasingly-popular activity for Florida citizens. This effort is being undertaken in conjunction with a proposed amendment of rules relating to queen conch.

SUMMARY: New Rule 68B-5.004 allows a person returning by vessel from the Bahamas to possess marine species harvested there if the person also possesses valid Bahamas sportfishing and cruising permits, all such species are within the harvest and possession limits of Bahamian law, and no person aboard the vessel engages in fishing as it transits state waters on a direct and continuous course.

A STATEMENT OF ESTIMATED REGULATORY COST HAS NOT BEEN PREPARED REGARDING THESE PROPOSED RULES.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution.

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

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES IN CONJUNCTION WITH THE COMMISSION'S PUBLIC MEETING AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATES: Beginning at 9:00 a.m., each day, October 7-8, 1999

PLACE: St. Petersburg Hilton Hotel, 333 First Street, South, St. Petersburg, 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 calendar days before the workshop/meeting by contacting Andrena Knicely at (850)487-1406. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

All written material received by the Commission within 21 days of the date of publication of this notice shall be made a part of the official record.

SECTION 286.0105, FLORIDA STATUTES, PROVIDES THAT, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS HEARING, HE WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSES, HE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68B-5.004 Possession of Fish Legally Harvested in the Bahamas Allowed Under Certain Circumstances.

A person returning from the Bahamas and transiting state waters in possession of marine species shall not be deemed to have violated recreational size (including requirements that a fish be landed in a whole condition), bag, possession, landing, or season provisions of Title 68B, F.A.C., if each of the following conditions are met:

(1) Such person also possesses and produces a valid original Permit to Engage in Foreign Fishing Conducted for Sporting Purposes and a valid cruising permit, issued by the Bahamian Government.

(2) All marine species in possession are within the harvest and possession requirements of Bahamian law.

(3) A vessel shall be considered in transit through state waters when it is on a direct and continuous course through such waters and no person aboard the vessel engages in fishing or deploys fishing gear from the vessel while in state waters.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History-New

NAME OF PERSON ORIGINATING PROPOSED RULE: Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Allan L. Egbert, Ph.D., Executive Director, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Marine Fisheries**

RULE CHAPTER TITLE: Florida Keys National Marine Sanctuary

RULE TITLE: Florida Keys National Marine Sanctuary: RULE NO.:

Prohibited Activities in Specified State Waters 68B-6.003

PURPOSE AND EFFECT: In conjunction with amendment of the Commission's general gear rules, the purpose of this proposed rule amendment is to convert the current specification for the maximum allowable size for a cast net used in certain areas of the Florida Keys National Marine

Sanctuary, from a radius measurement – 12 feet, 7 inches – to a circumference maximum of 79 feet, 3 inches. The effect should be to give Division of Law Enforcement personnel a more certain way to measure cast nets aboard a vessel within the Sanctuary's most sensitive areas.

SUMMARY: Paragraph (1)(b) of Rule 68B-6.003, F.A.C., is amended to replace the current 12 feet, 7 inches radius specification for the maximum allowable size of a cast net used to take baitfish species in the Newfound Harbor Key Sanctuary Protection Area with a 79 feet, 3 inches circumference maximum.

A STATEMENT OF ESTIMATED REGULATORY COST HAS NOT BEEN PREPARED REGARDING THESE PROPOSED RULES.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution.

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

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES IN CONJUNCTION WITH THE COMMISSION'S PUBLIC MEETING AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATES: Beginning at 9:00 a.m., each day, October 7-8, 1999

PLACE: St. Petersburg Hilton Hotel, 333 First Street, South, St. Petersburg, Florida

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All written material received by the Commission within 21 days of the date of publication of this notice shall be made a part of the official record.

SECTION 286.0105, FLORIDA STATUTES, PROVIDES THAT, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS HEARING, HE WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSES, HE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68B-6.003 Florida Keys National Marine Sanctuary: Prohibited Activities in Specified State Waters.

(1) ECOLOGICAL RESERVE AND SANCTUARY PRESERVATION AREAS – The following activities are prohibited within the Western Sambos Ecological Reserve and the Cheeca Rocks, Eastern Dry Rocks, Hens and Chickens, Newfound Harbor Key, Rock Key, and Sand Key Sanctuary Preservation Areas, described in Rule 68B-6.002:

(b) Except as provided in subparagraphs 1. And 2. below, fishing by any means. However, gear capable of harvesting fish may be aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area (other than Sand Key), provided such gear is not available for immediate use when entering and during transit through such Ecological Reserve or Sanctuary Preservation Area. The following fishing activities are allowed as indicated:

1. Catch and release fishing by trolling is allowed in the Sand Key Sanctuary Preservation Area.

2. The harvest of baitfish species (ballyhoo, balao, halfbeaks, or herring only) is allowed in the Sanctuary Preservation Areas specified in Rule 68B-6.002(2), subject to the following conditions:

a. No person shall engage in such harvest except pursuant to a valid permit issued for such purpose by the National Marine Sanctuary Division of the National Ocean Service on behalf of the Florida Keys National Marine Sanctuary.

b. In the Newfound Harbor Key Sanctuary Preservation Area, harvest pursuant to this subparagraph shall only be by means of a cast net with a circumference radius no greater than 79 42 feet, 3 7 inches in length. In the Cheeca Rocks, Eastern Dry Rocks, Hens and Chickens, Rock Key, and Sand Key Sanctuary Preservation Areas, harvest pursuant to this subparagraph shall only be by means of a cast net or modified lampara net.

c. All bycatch (species other than ballyhoo, balao, halfbeaks, or herring) shall be returned to the water alive.

d. Contact with or disturbance of the seabed is prohibited.

e. Harvest of baitfish in the Sanctuary Preservation Areas specified herein by the use of any gear other than those specifically allowed in this subparagraph is prohibited.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 7-1-97, Amended 11-16-98, Formerly 46-6.003, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Allan L. Egbert, Ph.D., Executive Director, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 9, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Marine Fisheries**

RULE CHAPTER TITLE: Reef Fish

RULE TITLES:

RULE NOS.:

Purpose and Intent, Repeal of Section 370.11(2)(a)8., F.S., Designation as Protected Species, Designation as Restricted Species 68B-14.001

Definitions 68B-14.002

Size Limits: Amberjacks, Black Sea Bass, Gray Triggerfish, Grouper, Hogfish, Red Porgy, Snapper 68B-14.0035

Recreational Bag Limits: Snapper, Grouper, Hogfish, Black Sea Bass, Red Porgy, Amberjacks, Exception, Wholesale/Retail Purchase Exemption 68B-14.0036

Commercial Harvest Requirements; Licenses, Closures, Special Restrictions 68B-14.0045

PURPOSE AND EFFECT: Last year the Marine Fisheries Commission (MFC) conducted a major reorganization of then Rule Chapter 46-14, F.A.C. (present Rule Chapter 68B-14, F.A.C.), governing the harvest of various reef fish species. Since that time it became apparent that a handful of minor glitches in the rule chapter needed to be addressed. Accordingly, the Fish and Wildlife Conservation Commission (FWCC), the successor agency to the MFC, is now proposing the following rule amendments. An unintended provision that currently allows a five day lag to close state waters after adjacent federal waters close is corrected to enable state waters to close simultaneous with a federal closure; language is restored requiring a paperwork trail for a species otherwise legally obtained during a closure period; the grouper aggregate bag limit is corrected to include speckled hind and warsaw grouper, and the word “warsaw” is changed throughout the rule to properly correspond with standard scientific nomenclature which does not capitalize this word.

Additional proposed rule amendments merge Rule Chapter 68B-40, F.A.C., regulating amberjacks, into the reef fish chapter. Both the South Atlantic and the Gulf of Mexico Fishery Management Councils regulate amberjacks as reef fish, and most of the definitions, commercial harvest requirements, and prohibitions for these species are similar if not identical. In combining these chapters language is added to

clarify amberjack commercial licensing requirements, and to increase the upper end of the slot limit for banded rudderfish and lesser amberjack to 22 inches in order to conform to the same change adopted by the Gulf Council.

The purpose of these proposed amendments is to correct minor errors remaining from a previous rulemaking, and to allow Florida's amberjack regulations to more closely mirror those of the federal councils. The effect will be to add greater clarity to the Commission's regulations, thus easing the regulatory burden on Florida's citizens.

SUMMARY: Subsection (4) of Rule 68B-14.001, F.A.C., is amended to include amberjacks as restricted species regulated within this chapter. Rule 68B-14.002, F.A.C., is amended to include a definition of the word "trip". Rules 68B-14.0035, F.A.C., and 68B-14.0036, F.A.C. are amended to include size and bag limits, respectively, for amberjack species. Throughout the body of the rule chapter the word "warsaw" is changed to properly correspond with standard scientific nomenclature which does not capitalize this word. In Rule 68B-14.0035, F.A.C., an additional amendment increases the upper end of the slot limit for banded rudderfish and lesser amberjack from 20 to 22 inches, and in Rule 68B-14.0036, F.A.C., paragraph (c) of subsection (2) is amended to indicate that speckled hind and warsaw grouper are to be included within the grouper aggregate bag limit, along with clarifying language added to subsection (8) of the same rule. In Rule 68B-14.0045, F.A.C., the following changes are made: language is deleted from paragraph (a) of subsection (1) of the rule for purposes of clarification, and paragraph (b) of subsection (1) is amended to include the phrase "or any part of the indicated species" within the language of the text to state that the necessary licenses and permits are required in order to sell any reef fish species or any portion of reef fish species; additional clarifying language is added to paragraphs (1)(b) and (2)(c), new language is added to paragraph (e) of the rule to restore a paperwork trail for species possessed during a closure of state waters; a new paragraph (g) is added to subsection (2) to include the March, April, and May, prohibition against purchase, sale, and harvest or possession in excess of the recreational bag limit of any amberjack species; and finally, a new paragraph (c) is added to subsection (3) to include a minimum size limit of 36 inches for the commercial harvest and sale of amberjack, along with a prohibition against simultaneously harvesting amberjack species for commercial and recreational purposes during the same trip.

A STATEMENT OF ESTIMATED REGULATORY COST HAS NOT BEEN PREPARED REGARDING THESE PROPOSED RULES: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution.

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

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES IN CONJUNCTION WITH THE COMMISSION'S PUBLIC MEETING AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATES: Beginning at 9:00 a.m., each day, October 7-8, 1999

PLACE: St. Petersburg Hilton Hotel, 333 First Street, South, St. Petersburg, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this meeting, is asked to advise the agency at least 5 calendar days before the meeting by contacting Andrena Knicely at (850)487-1406. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

All written material received by the Commission within 21 days of the date of publication of this notice shall be made a part of the official record.

SECTION 286.0105, FLORIDA STATUTES, PROVIDES THAT, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS HEARING, THEY WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSES, THEY MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULES IS:

68B-14.001 Purpose and Intent, Repeal of Section 370.11(2)(a)8., F.S., Designation as Protected Species, Designation as Restricted Species.

(4) Designation as restricted species. The following species are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

(a) Amberjacks – Genus *Seriola*:

1. Almaco jack – *Seriola rivoliana*.

2. Banded rudderfish – *Seriola zonata*.

3. Greater amberjack – *Seriola dumerili*.

4. Lesser amberjack – *Seriola fasciata*.

(b) ~~(a)~~ Groupers and Sea Basses – Family Serranidae:

1. Bank sea bass – *Centropristis ocyurus*.



2. Black grouper – *Mycteroperca bonaci*.
3. Black sea bass – *Centropristis striata*.
4. Coney – *Epinephelus fulvus*.
5. Gag – *Mycteroperca microlepis*.
6. Graysby – *Epinephelus cruentatus*.
7. Misty grouper – *Epinephelus mystacinus*.
8. Red grouper – *Epinephelus morio*.
9. Red hind – *Epinephelus guttatus*.
10. Rock hind – *Epinephelus adscensionis*.
11. Rock sea bass – *Centropristis philadelphica*.
12. Scamp – *Mycteroperca phenax*.
13. Speckled hind – *Epinephelus drummondhayi*.
14. Snowy grouper – *Epinephelus niveatus*.
15. Tiger grouper – *Mycteroperca tigris*.
16. Warsaw grouper – *Epinephelus nigritus*.
17. Yellowedge grouper – *Epinephelus flavolimbatus*.
18. Yellowfin grouper – *Mycteroperca venenosa*.
19. Yellowmouth grouper – *Mycteroperca interstitialis*.
- (c)(b) Snappers – Family Lutjanidae:
  1. Black snapper – *Apsilus dentatus*.
  2. Blackfin snapper – *Lutjanus buccanella*.
  3. Cubera snapper – *Lutjanus cyanopterus*.
  4. Dog snapper – *Lutjanus jocu*.
  5. Gray (mangrove) snapper – *Lutjanus griseus*.
  6. Lane snapper – *Lutjanus synagris*.
  7. Mahogany snapper – *Lutjanus mahogoni*.
  8. Mutton snapper – *Lutjanus analis*.
  9. Queen snapper – *Etelis oculatus*.
  10. Red snapper – *Lutjanus campechanus*.
  11. Schoolmaster – *Lutjanus apodus*.
  12. Silk snapper – *Lutjanus vivanus*.
  13. Vermilion snapper – *Rhomboplites aurorubens*.
  14. Wenchman – *Pristipomoides aquilonaris*.
  15. Yellowtail snapper – *Ocyurus chrysurus*.
- (d)(e) Gray triggerfish – *Balistes capriscus*.
- (e)(d) Hogfish – *Lachnolaimus maximus*.
- (f)(e) Red porgy – *Pagrus pagrus*.

Specific Authority Art. IV, Sec. 9, Fla. Const., sections 7 & 9 of chapter 83-134, Laws of Florida, as amended by chapter 84-121, Laws of Florida. Law Implemented Art. IV, Sec. 9, Fla. Const., sections 7 & 9 of chapter 83-134, Laws of Florida, as amended by chapter 84-121, Laws of Florida. History—New 7-29-85, Amended 12-11-86, 2-1-90, 3-1-94, 12-31-98, Formerly, 46-14.001, Amended \_\_\_\_\_.

68B-14.002 Definitions.

For purposes of this chapter, except where the context clearly requires otherwise:

(15) “Trip” means a fishing trip of whatever duration which begins with departure of the fishing vessel from a dock, berth, beach, seawall, or ramp and which terminates with return to a dock, berth, beach, seawall, or ramp.

Specific Authority Art. IV, Sec. 9, Fla. Const., Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 7-29-85, Amended 12-11-86, 2-1-90, 12-31-92, 3-1-94, 1-1-98, 12-31-98, Formerly 46-14.002, Amended \_\_\_\_\_.

68B-14.0035 Size Limits: Amberjacks, Black Sea Bass, Gray Triggerfish, Grouper, Hogfish, Red Porgy, Snapper.

No person shall harvest in or from state waters at any time, land, possess, unnecessarily destroy, or sell or offer for sale (except as provided in Rule 68B-14.0045), any of the following species, of a length less than set forth as follows:

- (1) Amberjacks (measured in terms of fork length)
  - (a) Banded rudderfish no less than 14 inches, no greater than 22 inches
  - (b) Greater amberjack 28 inches
  - (c) Lesser amberjack no less than 14 inches, no greater than 22 inches
- (2)(1) Black sea bass 10 inches total length.
- (3)(2) Gray triggerfish 12 inches total length.
- (4)(3) Grouper (measured in terms of total length)
  - (a) Black grouper harvested from the Atlantic Ocean and all waters of Monroe County 24 inches.
  - (b) Black grouper harvested from the Gulf of Mexico except from all waters of Monroe County 20 inches.
  - (c) Gag (gray) grouper harvested from the Atlantic Ocean and all waters of Monroe County 24 inches.
  - (d) Gag (gray) grouper harvested from the Gulf of Mexico except from all waters of Monroe County 20 inches.
  - (e) Red grouper 20 inches.
  - (f) Scamp 20 inches.
  - (g) Yellowfin grouper 20 inches.
  - (h) Yellowmouth grouper 20 inches.
- (5)(4) Hogfish 12 inches fork length.
- (6)(5) Red porgy harvested in waters of the Atlantic Ocean 14 inches total length.
- (7)(6) Snapper (measured in terms of total length)
  - (a) Blackfin snapper 12 inches.
  - (b) Cubera snapper 12 inches.
  - (c) Dog snapper 12 inches.
  - (d) Gray (mangrove) snapper 10 inches.
  - (e) Lane snapper 8 inches.
  - (f) Mahogany snapper 12 inches.

- (g) Mutton snapper 16 inches.
- (h) Queen snapper 12 inches.
- (i) Red snapper harvested from the Atlantic Ocean 20 inches.
- (j) Red snapper harvested from the Gulf of Mexico 16 inches.
- (k) Silk snapper 12 inches.
- (l) Schoolmaster snapper 10 inches.
- (m) Vermilion snapper 10 inches.
- (n) Yellowtail snapper 12 inches.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 12-31-98, Formerly, 46-14.0035, Amended 3-1-99,\_\_\_\_\_.

68B-14.0036 Recreational Bag Limits: Snapper, Grouper, Hogfish, Black Sea Bass, Red Porgy, Amberjacks. Exception, Wholesale/Retail Purchase Exemption.

(2) Grouper.

(a) Aggregate bag limit. Except as provided elsewhere in this rule, no recreational harvester shall harvest in or from state waters, nor possess while in or on state waters, more than a total of 5 grouper per day, in any combination of species.

(b) Gag and black grouper. Except as provided elsewhere in this rule, in all state waters of the Atlantic Ocean and all state waters of Monroe County, within the aggregate bag and possession limit established in paragraph (a), no more than 2 fish may be gag or black grouper, either individually or in combination. No recreational harvester may harvest in or from state waters of the Atlantic Ocean or in or from state waters of Monroe County, nor possess while in or on the waters of the Atlantic Ocean or in or on state waters of Monroe County, more than 2 such fish.

(c) Speckled hind and ~~warsaw~~ Warsaw grouper. No recreational harvester shall harvest in or from state waters, nor possess while in or on state waters, more than one speckled hind or more than one ~~warsaw~~ Warsaw grouper per day, and no more than one of each species shall be possessed aboard any vessel in or on state waters, at any time. Such fish shall ~~not~~ be counted for purposes of included in the aggregate grouper bag and possession limit prescribed in paragraph (a).

(d) Nassau grouper and jewfish. No person shall harvest in or from state waters, nor possess while in or on the waters of the state, or land, any Nassau grouper or jewfish. The purchase, sale, or exchange of any Nassau grouper or jewfish is prohibited.

(6) Amberjacks. Except as allowed for those persons harvesting for commercial purposes pursuant to Rule 68B-14.0045:

(a) Greater amberjack. No person shall harvest from state waters, more than 1 greater amberjack per day, nor possess more than 1 such fish while in, on, or above the waters of the state or on any dock, pier, bridge, beach, or any fishing site adjacent to such waters.

(b) Banded rudderfish and lesser amberjack. No person shall harvest from state waters, more than an aggregate bag limit of 5 banded rudderfish and lesser amberjack per day either individually or in combination, nor possess more than 5 such fish while in, on, or above the waters of the state or on any dock, pier, bridge, beach or any fishing site adjacent to such waters.

(7)(6) Exception.

(a) Any person harvesting pursuant to the bag limits established in paragraphs (a), (b), (c), (d), and (f)1., of subsection (1), paragraphs (a) and (b) of subsection (2), and subsections (3), (4), ~~and~~ (5), and (6) (a) and (b) of this rule, who has fished for more than one day, may possess double the bag limit once such person has landed the fish, departed the fishing site and is no longer within 100 yards of any state waters, docks, fishing piers, or other fishing sites.

(b) Any person harvesting pursuant to the bag limits established in paragraphs (a), (b), (c), (d), and (f)1., of subsection (1), paragraphs (a) and (b) of subsection (2), and subsections (3), (4), ~~and~~ (5), and (6) (a) and (b) of this rule, who has fished aboard a charter vessel or headboat on a trip that spans more than 24 hours may possess and land double the bag limit if the vessel has a sleeping berth for each passenger aboard the vessel and each such passenger possesses a receipt issued on behalf of the vessel that verifies the length of the trip.

(8)(7) Wholesale / retail purchase exemption. Except as provided in paragraph (2)(c), the possession limits of this rule do not apply to any licensed seafood dealer, or to any fish purchased from a licensed wholesale or retail seafood dealer. The burden shall be upon the person claiming the benefit of this exemption to show, by receipts, bills of sale, or other appropriate documentation, that such fish were purchased from a licensed wholesale or retail seafood dealer. Failure to maintain such receipts, bills of sale, or other appropriate documentation shall constitute a violation of this rule.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 12-31-98, Formerly, 46-14.0036, Amended 3-1-99,\_\_\_\_\_.

68B-14.0045 Commercial Harvest Requirements; Licenses, Season Closures, Special Restrictions.

(1) Licenses.

(a) Each person harvesting any of the species listed in Rule 68B-14.001(4) for commercial purposes in state waters shall possess a valid saltwater products license with a restricted species endorsement and

1. If fishing in state waters of the Atlantic Ocean, either a valid transferable commercial permit or a trip-limited commercial permit for South Atlantic snapper-grouper ~~which is required for such harvest in immediately adjacent federal Exclusive Economic Zone (EEZ) waters of the Atlantic Ocean;~~

2. If fishing in state waters of the Gulf of Mexico, a valid commercial vessel permit for Gulf reef fish, and if fishing for red snapper, a Class 1 or Class 2 Gulf red snapper license;

which is required for such harvest in the immediately adjacent federal Exclusive Economic Zone (EEZ) waters of the Gulf of Mexico.

(b) No person harvesting for commercial purposes pursuant to this subsection shall sell or attempt to sell any of the indicated species, or any part of the indicated species, without possessing and presenting to the purchaser the appropriate state and federal licenses and permits specified in paragraph (a) those paragraphs. No wholesale dealer, as defined in Section 370.07(1), Florida Statutes, shall purchase any of these species, or any part thereof, without confirming that the seller thereof possesses the appropriate state and federal licenses and permits specified in this rule.

(2) Season closures.

(a) Persons harvesting any of the species listed in Rule 68B-14.001(4) for commercial purposes shall have a season that begins on January 1 and continues through December 31 each year.

(b) If at any time, adjacent federal Exclusive Economic Zone (EEZ) waters are closed to commercial harvest of any of the species listed in Rule 68B-14.001(4), corresponding state waters shall also be closed to commercial harvest of the species affected by the federal closure, beginning from five (5) days after the date of such closure until federal waters are reopened to the commercial harvest of such species.

(c) During the period of any closure pursuant to paragraph (b) this subsection, the harvest, possession, or landing in quantities greater than the bag limits specified in Rule 68B-14.0036, and the purchase, sale or exchange, of any species to which the closure applies, is prohibited.

(d) Notice of any closure for state waters required by paragraph (b), and notice of any resulting prohibition as required by paragraph (c), shall be given by the Executive Director of the Fish and Wildlife Conservation Commission in the manner provided in s. 120.81(5), Florida Statutes.

(e) The closure specified in paragraph (b), and the prohibitions specified in paragraph (c), shall not apply when the species to which the closure applies is legally harvested outside the waters of the closed area. Any person possessing such species during the time period of a closure shall establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, to show that such species originated from a point outside the closed area. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute a violation of this subsection.

~~(f)~~ During the months of March and April each year, the harvest, possession, or landing in quantities greater than the recreational bag limits specified in Rule 68B-14.0036, and the purchase, sale, or exchange, of red porgy harvested from state

waters of the Atlantic Ocean, or gag grouper, or black grouper, harvested from state waters of the Atlantic Ocean and from all state waters of Monroe County, is prohibited.

(g) During the months of March, April and May of each year, the harvest and possession in quantities greater than the recreational bag limits specified in Rule 68B-14.0036, and the purchase, sale and exchange of any species of amberjack harvested from state waters, is prohibited.

(3) Special restrictions.

(a) Snapper.

1. Cubera snapper. No person harvesting for commercial purposes shall harvest in or from state waters more than 2 cubera snapper 30 inches in total length or larger per day and no more than 2 such cubera snapper shall be possessed aboard any vessel in or on state waters, at any time.

2. Gray (mangrove) snapper. No person shall buy, sell, or exchange any gray (mangrove) snapper of a total length less than 12 inches.

3. Mutton snapper. No person harvesting for commercial purposes shall harvest in or from state waters more than 10 mutton snapper per day during the months of May or June each year. During this period each year, no such person shall possess more than 10 mutton snapper while in or on state waters.

4. Red snapper. No person harvesting for commercial purposes shall harvest in or from state waters of the Atlantic Ocean, more than 2 red snapper per day. No person harvesting for commercial purposes shall harvest in or from state waters of the Gulf of Mexico, more than 4 red snapper per day.

5. Vermilion snapper. No person shall buy, sell, or exchange any vermilion snapper harvested from state waters of the Atlantic Ocean of a total length less than 12 inches.

(b) Grouper.

1. Nassau grouper and jewfish. No person harvesting for commercial purposes shall harvest in or from state waters, nor possess while in or on the waters of the state, or land, any Nassau grouper, or jewfish. The purchase, sale, or exchange of any Nassau grouper or jewfish is prohibited.

2. Speckled hind and ~~warsaw~~ Warsaw grouper. No person shall harvest in or from state waters any speckled hind or ~~warsaw~~ Warsaw grouper for commercial purposes and the purchase, sale, or exchange of such fish is prohibited.

(c) Amberjack.

1. No person harvesting for commercial purposes shall harvest or land any amberjack with a fork length less than 36 inches. No person shall purchase, sell, or exchange any amberjack with a fork length less than 36 inches.

2. No person harvesting for commercial purposes shall, on the same trip, harvest or possess greater amberjack pursuant to the bag limit specified in Rule 68B-40.004.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 2-1-90, Formerly, 46-14.0045, Amended 12-31-92, 10-18-93, 3-1-94, 6-15-95, 1-1-96, 11-27-96, 12-31-98, 3-1-99,

NAME OF PERSON ORIGINATING PROPOSED RULE: Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Allan L. Egbert, Ph.D., Executive Director, Fish and Wildlife Conservation Commission, 620 Meridian Street, Tallahassee, Florida 32399-1600

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW.: August 13, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Marine Fisheries**

RULE CHAPTER TITLE: Queen Conch

RULE TITLE: Queen Conch, Regulation RULE NO.: 68B-16.003

PURPOSE AND EFFECT: The purpose of this rule amendment is to conform provisions of the rule governing the harvest of queen conch in Florida waters to another proposed new rule to allow persons lawfully harvesting marine species in the Bahamas to return by vessel through state waters while in possession of such species. The effect should be to continue vital protection of Florida species and populations, including conch, while allowing fishing trips to the Bahamas, an increasingly-popular activity for Florida citizens.

SUMMARY: Subsection (3) of Rule 68B-16.003, F.A.C., is amended to exempt persons returning from the Bahamas with queen conch pursuant to Rule 68B-5.004 from the prohibitions of Rule Chapter 68B-16, F.A.C.

A STATEMENT OF ESTIMATED REGULATORY COST HAS NOT BEEN PREPARED REGARDING THESE PROPOSED RULES.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution.

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

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES IN CONJUNCTION WITH THE COMMISSION'S PUBLIC MEETING AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATES: Beginning at 9:00 a.m., each day, October 7-8, 1999

PLACE: St. Petersburg Hilton Hotel, 333 First Street, South, St. Petersburg, 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 calendar days before the workshop/meeting by contacting Andrena Knicely at (850)487-1406. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

All written material received by the Commission within 21 days of the date of publication of this notice shall be made a part of the official record.

SECTION 286.0105, FLORIDA STATUTES, PROVIDES THAT, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS HEARING, HE WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSES, HE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68B-16.003 Queen Conch, Regulation.

(3) The provisions of this chapter shall not be applicable to queen conch imported from another country pursuant to Rule 68B-5.004 or by a; provided, however, that any wholesale or retail dealer in queen conch meat, queen conch shells or products made from queen conch shells, provided that such dealer shall maintain invoices, receipts, bills of sale, bills of lading, or other documentation affirmatively showing that all queen conch meat, queen conch shells or parts of queen conch shells in the such dealer's inventory were imported from a foreign country.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 6-17-85, Amended 6-21-90, 7-15-96, Formerly 46-16.003, Amended

NAME OF PERSON ORIGINATING PROPOSED RULE: Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Allan L. Egbert, Ph.D., Executive Director, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 1999  
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Marine Fisheries**

RULE CHAPTER TITLE: Shrimp

RULE TITLES: RULE NOS.:

Purpose and Intent; Repeal of Certain General and Special Acts; Designation of Shrimp as Restricted Species	68B-31.005
Definitions	68B-31.006
Statewide Recreational Shrimping Restrictions	68B-31.007
Statewide Live Bait Shrimp Production Restrictions	68B-31.008
Statewide Food Shrimp Production Restrictions Southeast Region: Biscayne Bay (Dade County) Food Shrimp Production Season and Weekly Closures	68B-31.009 68B-31.0135

**PURPOSE AND EFFECT:** The Fish and Wildlife Conservation Commission is in the process of developing a management plan for shrimping in Biscayne Bay. As for other regions and certain bay systems, the goal of these management plans is to eliminate hard-to-enforce minimum size regulation, but replace it with closures or effort limitations that protect nursery areas and juvenile shrimp and boost escapement of adult shrimp for spawning purposes. The primary purpose of these proposed rule amendments and new rule is to implement a management plan for shrimping in Biscayne Bay that will accomplish this goal. Additionally, the Commission proposes to establish shrimp as a restricted species statewide. The purpose of such designation, as in other fisheries where the technique has been employed, is to assure that, as much as possible, persons harvesting shrimp commercially, either as a food shrimp producer or as a live bait shrimp producer, are full-time, professional commercial fishers. The effect of the measures being developed for Biscayne Bay and the statewide designation of shrimp as a restricted species should be the protection of the health and abundance of shrimp populations as a renewable resource for the benefit of Florida citizens.

**SUMMARY:** A new subsection (5) is added to Rule 68B-31.005, F.A.C., to designate shrimp as a restricted species statewide. The definitions of the terms “food shrimp producer” and “live bait shrimp producer” in subsections (7) and (12) of Rule 68B-31.006, F.A.C., are amended to conform them with the designation of shrimp as a restricted species. Subsection (2) of Rule 68B-31.007, F.A.C., is amended to incorporate a new specification of maximum allowable size for cast nets used to harvest shrimp recreationally (also proposed in another parallel rulemaking proceeding) and to except Dade County from the allowance for frame nets as recreational shrimp harvest gear. A

new subsection (6) is added to Rule 68B-31.008, F.A.C., to specify the licensing requirements for live bait shrimp producers in conformance with designation of shrimp as a restricted species. Paragraph (1)(b) of Rule 68B-31.009, F.A.C., is amended to exempt Dade County waters in the Southeast Region from minimum size regulation (count law) of food shrimp production. A new subsection (5) is added to the rule to specify the licensing requirements for food shrimp producers in conformance with the designation of shrimp as a restricted species. New Rule 68B-31.0135 specifies a food shrimp production season for Dade county of October 15 through May 15 of each year and prohibits food shrimp production from 6 a.m. Saturday to 6 a.m. Sunday each week during that open season.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** The rule proposal amends the existing shrimp rule and includes one statewide measure and three measures limited to Biscayne Bay and the Southeast Region. The urban character of Biscayne Bay places tremendous pressure on natural resources, and shrimp fishing provides a valued commodity and food item to the community. Repeal of the count law in the Bay is consistent with earlier rule development but normally occurs in conjunction with other effort reduction measures. A Saturday closure is proposed. The industry opposes closed periods during the season since effort is directed based on moon phase. Failure to regulate commercial effort will result in the landing of small shrimp. Fifty individuals report food shrimp landings from Biscayne Bay, however workshop testimony indicates greater participation. The proposal would also eliminate frame nets as allowable recreational gear in the Region. This would restrict the most efficient recreational gear in the Region.

The designation of shrimp as a restricted species (RS) statewide, means that persons landing shrimp for commercial purposes or in commercial quantities must first qualify for a RS Endorsement to their commercial license. RS qualification is based on documenting that \$5,000 or 25 percent of annual income is derived from the sale of saltwater products. This legislative tool would distinguish between recreational and commercial participants and encourage better commercial reporting of landings. During the 1997/98 SFY 1,563 individuals and corporations reported commercial shrimp landings valued at \$70 million. Based on reported landings 269 persons may not be able to document RS. This represents an average income loss of \$1,300 or a reallocation of \$400,000.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** Article IV, Section 9, Florida Constitution.

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

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES IN CONJUNCTION WITH THE COMMISSION'S PUBLIC MEETING AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: Beginning at 9:00 a.m., each day, October 7-8, 1999

PLACE: St. Petersburg Hilton Hotel, 333 First Street, South, St. Petersburg, 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 calendar days before the workshop/meeting by contacting Andrena Knicely at (850)487-1406. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

All written material received by the Commission within 21 days of the date of publication of this notice shall be made a part of the official record.

SECTION 286.0105, FLORIDA STATUTES, PROVIDES THAT, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS HEARING, HE WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSES, HE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULES IS:

68B-31.005 Purpose and Intent; Repeal of Certain General and Special Acts; Designation of Shrimp as Restricted Species.

(5) Shrimp are hereby designated as a restricted species pursuant to Section 370.01(20), Florida Statutes.

Specific Authority Art. IV, Sec. 9, Fla. Const., Chapter 83-134, Laws of Fla., as amended by Chapter 84-121, Laws of Fla. Law Implemented Art. IV, Sec. 9, Fla. Const., Chapter 83-134, Laws of Fla., as amended by Chapter 84-121, Laws of Fla. History--New 1-1-92, Amended 9-30-96, Formerly 46-31.005, Amended \_\_\_\_\_.

68B-31.006 Definitions.

As used in Rules 68B-31.005 through the remainder of the chapter:

(7) "Food shrimp producer" means a person who is not a live bait shrimp producer, but is harvesting shrimp in quantities greater than the bag limit specified in Rule 68B-31.007 or with a gear authorized for the specific region in Rules 68B-31.010 through 68B-31.014.

(12) "Live bait shrimp producer" means any person harvesting shrimp pursuant to a valid license issued as provided in Section 370.15(8) or Section 370.153(3)(a), Florida Statutes, in addition to a valid saltwater products license with a restricted species endorsement.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 1-1-92, Amended 3-16-93, 11-29-93, 10-3-94, 6-3-96, 6-1-99, Formerly 46-31.006, Amended \_\_\_\_\_.

68B-31.007 Statewide Recreational Shrimping Restrictions.

Except for persons harvesting shrimp commercially as either a food shrimp producer or a live bait shrimp producer, each person harvesting shrimp in or on the waters of the state shall comply with the requirements specified in this rule.

(2) Allowable Gear – No person subject to the requirements of this rule shall use any type of gear to harvest shrimp other than those types of gear specified herein:

(a) Landing or dip net with an opening no larger than 96 inches around the perimeter.

(b) Cast net with a circumference radius no greater than 79 1/2 feet, 3 inches.

(c) Push net.

(d) 1. Except as provided in subparagraph 2., one frame net with an opening no larger than 16 feet around the perimeter, if deployed from a vessel or from a structure other than an operational bridge or causeway or catwalk attached to such bridge or causeway.

2. Frame nets shall not be considered an allowable gear for persons harvesting shrimp pursuant to this rule in any waters of the Southeast Region in Dade County.

(e) Shrimp traps meeting the requirements of Section 370.15(5), Florida Statutes.

(f) Beach or haul seine with a mesh area no larger than 500 square feet.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 1-1-92, Amended 1-1-96, 6-3-96, Formerly 46-31.007, Amended \_\_\_\_\_.

68B-31.008 Statewide Live Bait Shrimp Production Restrictions.

Each person harvesting shrimp in or on the waters of the state as a live bait shrimp producer shall comply with the requirements specified in this rule.

(6) Each person harvesting shrimp in or on the waters of the state as a live bait shrimp producer shall possess a valid license issued as provided in Section 370.15(8) or Section 370.153(3)(a), Florida Statutes, and a valid saltwater products license with a restricted species endorsement.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 1-1-92, Amended 10-3-94, 1-1-96, Formerly 46-31.008, Amended \_\_\_\_\_.

68B-31.009 Statewide Food Shrimp Production Restrictions.

The following requirements shall apply to each person harvesting shrimp in or on the waters of the state as a food shrimp producer. Each such person shall also comply with the regional food shrimp production requirements of Rules 68B-31.010 through 68B-31.015 and the area or seasonal closures in the remainder of the chapter.

(1) Size Limit –

(a) Each person harvesting shrimp in or on state waters as a food shrimp producer shall possess shrimp that are of legal size. Shrimp shall be considered of legal size if all the shrimp in possession of the harvester are determined to have an average count not exceeding 47 shrimp per pound with the heads on or 70 shrimp per pound with the heads off. An average count shall be determined separately for the two portions of the catch consisting of heads-on and heads-off shrimp. The average count shall be determined by sampling the catch at five different locations selected randomly to be as widely separated within the catch or portion of the catch as practicable. Each sample shall consist of at least one pound of shrimp. The counts of each of these five samples shall be averaged to determine the average count for the catch or portion of the catch. This subsection shall not apply to any seabob (*Xiphopenaeus kroyeri*) in possession of the harvester.

(b) ~~Beginning January 1, 1994, The size limit provisions of paragraph (a) shall not apply in:~~

1. The Big Bend Region.

~~2.(c) Beginning July 1, 1996, the size limit provisions of paragraph (a) shall not apply in The Northeast Region.~~

~~3.(d) The size limit provisions of paragraph (a) shall not apply in Any of the waters of the Northwest Region east of the line formed by 85°13.50' West Longitude.~~

4. Any waters of the Southeast Region in Dade County.

(5) Each person harvesting shrimp in or on the waters of the state as a food shrimp producer shall possess a valid saltwater products license with a restricted species endorsement.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 1-1-92, Amended 11-29-93, 1-1-96, 6-3-96, 7-16-96, Formerly 46-31.009, Amended \_\_\_\_\_.

68B-31.0135 Southeast Region: Biscayne Bay (Dade County) Food Shrimp Production Season and Weekly Closures.

(1) No person shall engage in food shrimp production in any waters of the Southeast Region in Dade County, except during the open season for such production. The open season shall begin on October 15 each year and continue through May 15 of the following year, subject to the weekly closures specified in subsection (2).

(2) During the open season specified in subsection (1), no person shall engage in food shrimp production in any waters of the Southeast Region in Dade County during the period each week beginning at 6:00 a.m. on Saturday and ending at 6:00 a.m. on Sunday.

Specific Authority Art. IV, Sec 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Allan L. Egbert, Ph.D., Executive Director, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Marine Fisheries**

RULE CHAPTER TITLE: Shrimp

RULE TITLE: STATE RECREATIONAL SHRIMPING RESTRICTIONS

RULE NO.: 68B-31.007

PURPOSE AND EFFECT: In conjunction with amendment of the Commission’s general gear rules, the purpose of this proposed rule amendment is to convert the current specification for the maximum allowable size for a cast net used to harvest shrimp recreationally from a radius measurement – 12 1/2 feet – to a circumference maximum of 79 feet, 3 inches. The effect should be to give Division of Law Enforcement personnel a more certain way to measure cast nets aboard a vessel.

SUMMARY: Paragraph (2)(b) of Rule 68B-31.007, F.A.C., is amended to replace the current 12 1/2 feet radius specification for the maximum allowable size of a cast net used to recreationally harvest shrimp with a 79 feet, 3 inches circumference maximum.

A STATEMENT OF ESTIMATED REGULATORY COST HAS NOT BEEN PREPARED REGARDING THESE PROPOSED RULES.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution.

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

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES IN CONJUNCTION WITH THE COMMISSION'S PUBLIC MEETING AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATES: Beginning at 9:00 a.m., each day, October 7-8, 1999

PLACE: St. Petersburg Hilton Hotel, 333 First Street, South, St. Petersburg, 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 calendar days before the workshop/meeting by contacting Andrena Knicely at (850)487-1406. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

All written material received by the Commission within 21 days of the date of publication of this notice shall be made a part of the official record.

SECTION 286.0105, FLORIDA STATUTES, PROVIDES THAT, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS HEARING, HE WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSES, HE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68B-31.007 Statewide Recreational Shrimping Restrictions.

Except for persons harvesting shrimp commercially as either a food shrimp producer or a live bait shrimp producer, each person harvesting shrimp in or on the waters of the state shall comply with the requirements specified in this rule.

(2) Allowable Gear – No person subject to the requirements of this rule shall use any type of gear to harvest shrimp other than those types of gear specified herein:

(a) Landing or dip net with an opening no larger than 96 inches around the perimeter.

(b) Cast net with a circumference radius no greater than 79 1/2 feet, 3 inches.

(c) Push net.

(d) One frame net with an opening no larger than 16 feet around the perimeter, if deployed from a vessel or from a structure other than an operational bridge or causeway or catwalk attached to such bridge or causeway.

(e) Shrimp traps meeting the requirements of Section 370.15(5), Florida Statutes.

(f) Beach or haul seine with a mesh area no larger than 500 square feet.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 1-1-92, Amended 1-1-96, 6-3-96, Formerly 46-31.007, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Allan L. Egbert, Ph.D., Executive Director, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 9, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Marine Fisheries**

RULE CHAPTER TITLE: Mullet

RULE TITLE: Allowable Harvesting Gear

RULE NO.: 68B-39.0047

PURPOSE AND EFFECT: In conjunction with amendment of the Commission's general gear rules, the purpose of this proposed rule amendment is to convert the current specification for the maximum allowable size for a cast net used to harvest mullet from a radius measurement – 12 feet, 7 inches – to a circumference maximum of 79 feet, 3 inches. The effect should be to give Division of Law Enforcement personnel a more certain way to measure cast nets aboard a vessel in a fishery that is increasingly reliant on cast nets for commercial harvest.

SUMMARY: Paragraph (1)(a) of Rule 68B-39.0047, F.A.C., is amended to replace the current 12 feet, 7 inches radius specification for the maximum allowable size of a cast net used to harvest mullet with a 79 feet, 3 inches circumference maximum.

A STATEMENT OF ESTIMATED REGULATORY COST HAS NOT BEEN PREPARED REGARDING THESE PROPOSED RULES. None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for lower cost regulatory alternative must do so in writing within 21 days of this notice.



SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution.

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

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES IN CONJUNCTION WITH THE COMMISSION'S PUBLIC MEETING AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATES: Beginning at 9:00 a.m., each day, October 7-8, 1999

PLACE: St. Petersburg Hilton Hotel, 333 First Street, South, St. Petersburg, 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 calendar days before the workshop/meeting by contacting Andrena Knicely at (850)487-1406. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

All written material received by the Commission within 21 days of the date of publication of this notice shall be made a part of the official record.

SECTION 286.0105, FLORIDA STATUTES, PROVIDES THAT, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS HEARING, HE WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSES, HE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68B-39.0047 Allowable Harvesting Gear.

(1) The harvest or attempted harvest of any mullet by or with the use of any gear or method other than the following is prohibited.

(a) Cast net with a circumference radius no greater than 79 ~~12~~ feet 3 ~~7~~ inches, provided that no more than two such nets shall be fished from any vessel at any time.

(b) Beach or haul seine with a total area (mesh area plus the area of any other attached material that adds to the fishing surface of the net) no larger than 500 square feet, provided that no more than two such nets unconnected shall be fished from any vessel at any time.

(c) Until January 1, 2000, skimmer net meeting the following specifications:

1. No skimmer net shall have an opening larger than 28 feet around the perimeter.

2. No more than two skimmer nets shall be attached to or fished from a single vessel.

3. No skimmer net shall have a total area (mesh area plus the area of any other attached material that adds to the fishing surface of the net) larger than 500 square feet. No skimmer net shall be longer than 30 feet long in a stretched condition.

4. The bag of any skimmer net shall be constructed of no smaller than #12 dipped nylon mesh. The use of monofilament netting material in any part of the net is prohibited. The mesh size in the final 8 feet of the net shall not exceed 3 1/2 inches stretched mesh and the mesh size in the remainder of the net shall not exceed 4 1/2 inches stretched mesh.

5. No skimmer net shall come in contact with the sea bottom while being deployed from a vessel under power.

(d) Hook and line gear.

(e) Spearing.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History-New 3-3-97. Amended-1-1-98, 11-16-98, 12-31-98, Formerly 46-39.0047, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Allan L. Egbert, Ph.D., Executive Director, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 9, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN F.A.W.: August 6, 1999

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Division of Marine Fisheries**

RULE CHAPTER TITLE: Amberjack

RULE TITLES:	RULE NOS.:
Purpose and Intent; Designation as Restricted Species	68B-40.001
Definitions	68B-40.002
Size Limits; Prohibition of Sale of Undersize Fish	68B-40.003
Bag Limits	68B-40.004
Harvest for Commercial Purposes, Seasonal Prohibition From Sale	68B-40.005

PURPOSE AND EFFECT: The purpose of this rulemaking is to merge the regulations contained within this rule chapter with those of Chapter 68B-14., F.A.C., which regulates the harvest of reef fish species in Florida state waters. Both the South

Atlantic and the Gulf of Mexico Fishery Management Councils regulate amberjacks as reef fish, and most of the definitions, commercial harvest requirements, and prohibitions for these species are similar if not identical. The effect will be to allow Florida's amberjack regulations to more closely mirror those of the federal councils, thus easing the regulatory burden on Florida's citizens.

SUMMARY: The regulations contained within Rule Chapter 68B-40, F.A.C., are being repealed, and all provisions are being merged with Rule Chapter 68B-14, F.A.C.

A STATEMENT OF ESTIMATED REGULATORY COST HAS NOT BEEN PREPARED REGARDING THESE PROPOSED RULES.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution.

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

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES IN CONJUNCTION WITH THE COMMISSION'S PUBLIC MEETING AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATES: Beginning at 9:00 a.m., each day, October 7-8, 1999

PLACE: St. Petersburg Hilton Hotel, 333 First Street, South, St. Petersburg, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this meeting, is asked to advise the agency at least 5 calendar days before the meeting by contacting Andrena Knicely at (850)487-1406. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

All written material received by the Commission within 21 days of the date of publication of this notice shall be made a part of the official record.

SECTION 286.0105, FLORIDA STATUTES, PROVIDES THAT, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS HEARING, THEY WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSES, THEY MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULES IS:

68B-40.001 Purpose and Intent; Designation as Restricted Species.

Specific Authority 370.01(20), 370.027(2) FS. Law Implemented 370.01(20), 370.025, 370.027 FS. History--New 2-1-90, Formerly 46-40.001, Amended 12-31-92, 12-31-98, Repealed.

68B-40.002 Definitions.

Specific Authority 370.027(2) FS. Law Implemented 370.025, 370.027 FS. History--New 2-1-90, Formerly 46-40.002, Amended 12-31-92, 1-1-98, Repealed.

68B-40.003 Size Limits; Prohibition of Sale of Undersize Fish.

Specific Authority 370.027(2) FS. Law Implemented 370.025, 370.027 FS. History--New 2-1-90, Formerly, 46-40.003, Amended 12-31-92, 1-1-98, Repealed.

68B-40.004 Bag Limits.

Specific Authority 370.027(2) FS. Law Implemented 370.025, 370.027 FS. History--New 2-1-90, Formerly, 46-40.004, Amended 12-31-92, 4-1-96, 1-1-98, Repealed.

68B-40.005 Harvest for Commercial Purposes, Seasonal Prohibition From Sale.

Specific Authority 370.027(2) FS. Law Implemented 370.025, 370.027 FS. History--New 2-1-90, Formerly, 46-40.005, Amended 12-31-92, 3-18-96, 1-1-98, 12-31-98, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Allan L. Egbert, Ph.D., Executive Director, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 1999

Section III  
Notices of Changes, Corrections and  
Withdrawals

DEPARTMENT OF INSURANCE

RULE NO.:  
4-138.002

RULE TITLE:  
Financial and Market Conduct  
Examination Reimbursement  
Expenses