

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SUMMARY: The regulations contained within Rule Chapter 68B-40, F.A.C., are being repealed, and all provisions are being merged with Rule Chapter 68B-14, F.A.C.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

**NOTICE OF WITHDRAWAL**

Notice is hereby given that the above rule, as noticed in Vol. 23, No. 33, August 15, 1997, of the Florida Administrative Weekly, has been withdrawn.

**DEPARTMENT OF REVENUE**

**NOTICE OF CABINET AGENDA ON  
SEPTEMBER 14, 1999**

The Governor and Cabinet, on September 14, 1999, sitting as head of the Department of Revenue, will consider approving the proposed amendments to Rule 12-18.001, FAC, Authorization for Compensation; Rule 12-18.002, FAC, Eligibility to File Claim for Compensation; Rule 12-18.003, FAC, Amount and Payment of Compensation; Rule 12-18.004, FAC, Submission of Information and Claims for Compensation; and Rule 12-18.008, FAC, Compensation for Vending Machine Violations; and the proposed repeal of Rule 12-18.005, FAC, Confidentiality and Anonymity, and Rule 12-18.006, FAC, Filing Claim for Compensation. The proposed amendments and proposed rule repeals conform the rules regarding compensation for information relating to tax violations to current statutory provisions, remove obsolete provisions, and remove the recitation of statutory language as mandated by s. 120.74, F.S. The amendments provide guidelines on how to submit a claim with the Department to receive compensation for information regarding tax violations; guidelines for determining when an applicant will be eligible for compensation; and guidelines used by the Department in determining the amount of compensation to be paid. These rules were originally noticed in the Florida Administrative Weekly on December 11, 1998, Vol. 24, No. 50, pp. 6746-6749. A public hearing was held on January 5, 1999. No interested parties from the private sector attended. In response to written comments received from the Joint Administrative Procedures Committee, dated February 1, 1999, a Notice of Change was published in the Florida Administrative Weekly on August 13, 1999, Vol. 25, No. 32, pp. 3695-3698.

**DEPARTMENT OF LABOR AND EMPLOYMENT  
SECURITY**

**Division of Workers' Compensation**

<b>RULE NO.:</b>	<b>RULE TITLE:</b>
38F-7.501	Florida Workers' Compensation Reimbursement Manual For Hospitals

**NOTICE OF CHANGE**

NOTICE IS HEREBY GIVEN in accordance with subparagraph 120.54(3)(d)1., F.S., that as a result of comments received from the Florida Legislative Joint Administrative Procedures Committee, the following changes have been made to the above-referenced proposed rule which was published in the March 5, 1999 issue of the Florida Administrative Weekly (Vol. 25, No. 9). No changes were made to the text of the

proposed rule as published; rather, all of the changes were made to the Florida Workers' Compensation Reimbursement Manual for Hospitals, 1999 Edition, incorporated by reference within the rule, as follows:

Section 2 – Publications Adopted by Reference – Additional identifying information for the referenced publications was provided.

Comprehensive Accreditation Manual for Hospitals: The Official Handbook (CAMH), with CAMH update 2, dated May 1999. Ordering information can be found in Appendix B to this manual.

Length of Stay by Operation, United States, 1999, ISBN: 1-57372-185-0; ISSN:

1097-3320. Ordering information can be found in Appendix B to this manual.

Length of Stay by Diagnosis, United States, 1999, ISBN: 1-57372-177-8; ISSN:

1099-3312. Ordering information can be found in Appendix B to this manual.

UB-92, National Uniform Billing Data Element Specifications Adopted by the Florida State Uniform Billing Committee, updated April 1, 1999, May 1999, June 1999, and July 1999 (UB-92 Manual). Ordering information can be found in Appendix B to this manual.

Section 10B – Additional identifying information for the referenced publication was provided.

Appendix A: Definitions – (4) – The definition for “carrier” was amended to exactly track the definition of “carrier” found in s. 440.13(1)(c), F.S.

Appendix A: Definitions – (15) – The definition for “Length of Stay Standards” was amended to delete the reference to the Length of Stay by Diagnosis and Operation, Southern Region publication.

Appendix B: Resource Documents – Additional identifying information for the referenced publications was provided.

**WATER MANAGEMENT DISTRICTS**

**South Florida Water Management District**

<b>RULE CHAPTER NO.:</b>	<b>RULE CHAPTER TITLE:</b>
40E-1	General And Procedural
<b>RULE NO.:</b>	<b>RULE TITLE:</b>
40E-1.607	Permit Application Processing Fees

**NOTICE OF WITHDRAWAL OF  
NOTICE OF RULEMAKING**

Notice is hereby given that the Notice of Proposed Rulemaking published in Vol. 25, No. 22, June 4, 1999, issue of the Florida Administrative Weekly, has been withdrawn. The proposed amendments to this rule and the Notice of Proposed Rulemaking were re-published in Vol. 25, No. 28, July 16, 1999, issue of the Florida Administrative Weekly, with the addition of the SERC summary. No changes were made to the rule text when it was re-published. Rulemaking is proceeding as noticed on July 16, 1999.

**WATER MANAGEMENT DISTRICTS**

**South Florida Water Management District**

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
40E-3	Water Wells
RULE NO.:	RULE TITLE:
40E-3.101	Content of Application

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**WATER MANAGEMENT DISTRICTS**

**South Florida Water Management District**

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
40E-3	Water Wells
RULE NO.:	RULE TITLE:
40E-3.201	Permit Application Fees

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**DEPARTMENT OF ELDER AFFAIRS**

**Assisted Living Facilities**

RULE NOS.:	RULE TITLES:
58A-5.0131	Definitions
58A-5.014	License Application, Change of Ownership, and Provisional License
58A-5.015	License Renewal and Conditional License
58A-5.016	License
58A-5.0181	Residency Criteria and Admission Procedures
58A-5.0185	Medication Practices
58A-5.019	Staffing Standards
58A-5.0191	Staff Training Requirements and Training Fee
58A-5.020	Food Service Standards

58A-5.021	Fiscal Standards
58A-5.023	Physical Plant Standards
58A-5.024	Records
58A-5.026	Emergency Management
58A-5.030	Extended Congregate Care Services
58A-5.033	Administrative Enforcement

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 25, No. 12, March 26, 1999, issue of the Florida Administrative Weekly.

58A-5.0131 Definitions.

(1) through (3) No change.

(4) "Assistance with activities of daily living" means individual assistance with the following:

(a) Ambulation – Providing physical support to enable the resident to move about within or outside the facility. Physical support includes supporting or holding the resident's hand, elbow, or arm; holding on to a support belt worn by the resident to assist in providing stability or direction while the resident ambulates; or pushing the resident's wheelchair. The term does not include assistance with transfer.

(4)(b) through (8) No change.

(9) "Certified nursing assistant (CNA)" means a person certified under part XV of chapter 468 s. 400.211, F.S.

(10) through (35) No change.

58A-5.014 License Application, Change of Ownership, and Provisional Licenses.

(1) LICENSE APPLICATION. An applicant for a standard assisted living facility license, or a limited mental health, extended congregate care, or limited nursing license may obtain a license application package from the AHCA central office.

(a) The completed application shall be signed, under oath, by an owner (or corporate officer if the owner is a corporation), the administrator, or an individual designated in writing by an owner or corporate officer, who is at least 18 years old, ~~notarized~~, and include the following:

1. through 5. No change.

6. For applicants anticipating a licensed capacity of 14 or fewer residents and located in an area zoned single-family or multi-family, documentation of compliance with the community residential home requirements specified in chapter 419, F.S., obtained from the Department of Children and Family Services' district community residential home coordinator. If not located in an area zoned single-family or multi-family, local Zoning Form, AHCA Form 3180-1021, September 1996, which is incorporated by reference, or a letter from the local zoning authority, signed by the county zoning official, which states that the applicant is in compliance with local zoning ordinances.

7. through 9. No change.

10. For each person specified in s. 400.4174(1), F.S.:

a. A signed Florida Abuse Hotline Information System Background Check, AHCA Form 3110-0003, July 1998, which is incorporated by reference;

b. A set of fingerprints obtained from the nearest available local law enforcement agency on the fingerprint card provided by the agency; and.

c. A check or money order to cover the cost of screening. ~~One check or money order can be submitted to cover both the screening and license fee costs described in paragraph (c).~~

11. through 14. No change.

(b) through (d) No change.

(2) CHANGE OF OWNERSHIP (CHOW). ~~An application package for a change of ownership of a currently licensed facility is available from the AHCA central office.~~

(a) Pursuant to s. 400.412, F.S., the transferor shall notify the agency in writing, at least 60 days prior to the date of transfer of ownership.

(b) Completed applications shall be filed with the agency by the transferee at least 60 days before the date of transfer of ownership as required by s. 400.412, F.S., and must include the information and fees required under subsection (1) of this rule. An application package for a change of ownership of a currently licensed facility is available from the AHCA central office.

~~(c)(b)~~ No change.

~~(d)(e)~~ The current resident contract on file with the facility shall be considered valid until such time as the transferee is licensed and negotiates a new contract with the resident.

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

(3) PROVISIONAL LICENSE.

(a) The agency shall may issue a provisional license to an applicant making an initial application for a standard license or who has filed a completed application for a change of ownership, and who is waiting for an agency survey, the if the applicant has met all other licensing requirements and is:

1. Waiting for the receipt of Federal Bureau of Investigation background screening results; or

2. Waiting for a response to a request for an exemption from the disqualification due to violation of background screening standards listed in ss. 435.03 or 435.05, F.S., as applicable, provided that the exemption from disqualification request is for: felonies committed more than 10 years ago; misdemeanors, including offenses that were felonies when committed but are now misdemeanors; findings of delinquency; and acts of domestic violence committed more than 5 years ago.

(a) through (c) renumbered (b) through (d) No change.

(4) No change.

58A-5.015 License Renewal and Conditional Licenses.

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

(c) Applicants for renewal of licenses shall remit license fees as required by s. 400.407, F.S., and rule 58A-5.014. With respect to the fee per bed required for a standard license, the number of OSS recipients claimed shall be the average number per month residing in the facility during the previous license period. ~~A per bed refund shall be credited to the bed fee for a facility whose average number of OSS residents per month exceeded the number of beds designated for OSS recipients during the previous license period.~~ An additional per bed charge shall be added to the bed fee for facilities whose average number of OSS residents per month was less than the number of beds designated for OSS recipients during the previous license period.

(2) CONDITIONAL LICENSE. Except as provided under s. 400.414, F.S., the agency shall may issue a conditional license to a facility if, at the time of license renewal the facility is found to have uncorrected violations which the facility has had an opportunity to correct.

(a) through (b) No change.

~~(c) A conditional license shall be revoked and license denied~~ if subsequent follow-up surveys by the agency indicate that necessary progress has not been made toward compliance with applicable licensing standards.

(d) through (3) No change.

58A-5.016 License.

(1) through (2) No change.

(3) A change in the use of space that increases or decreases a facility's capacity shall not be made without prior approval from the AHCA central office. Approval shall be based on the compliance with the physical plant standards provided in rule 58A-5.023, as well as documentation of compliance with applicable firesafety and sanitation standards as referenced in rule 58A-5.0161.

(4) A change in the use of space that involves converting to resident use an area which has not previously been inspected for such use shall not be made without prior approval from the AHCA area office. Approval shall be based on the compliance with the physical plant standards provided in rule 58A-5.023, as well as documentation of compliance with applicable firesafety and sanitation standards as referenced in rule 58A-5.0161.

(5) No change.

58A-5.0181 Residency Admission Criteria and Admission Procedures.

(1)(a) through (l) No change.

(m) Have been determined to be appropriate for admission to the facility by the facility administrator. The administrator shall base his/her decision on:

1. An assessment of the strengths, needs, and preferences of the individual, and the medical examination report required by s. 400.426, F.S., and subsection (2) of this rule;

2. The facility's admission policy criteria, and the services the facility is prepared to provide or arrange for to meet resident needs; and

3. The ability of the facility to meet the uniform fire safety standards for assisted living facilities established under s. 400.441, F.S., and rule chapter 4A-40.

(n) Resident admission criteria for facilities holding an extended congregate care license are described in rule 58A-5.030.

(2)(a) No change.

(b) Medical examinations conducted up to 30 days after the resident's admission to the facility must be recorded on the Resident Health Assessment, DOEA Form 1823, dated March 1999, which is incorporated by reference. A faxed copy of the completed form is acceptable. A copy of DOEA Form 1823 may be obtained from the DOEA Assisted Living Program. Previous versions of this form completed up to 6 months after (the effective date of this rule) are acceptable.

(c) through (g) No change.

(3) through (5) No change.

58A-5.0185 Medication Practices.

(1) through (2) No change.

(3) ASSISTANCE WITH SELF-ADMINISTRATION.

(a) For facilities which provide assistance with self-administered medication, either: a nurse; or an unlicensed a staff member who is at least 18 years old, trained to assist with self-administered medication in accordance with rule 58A-5.0191, and able to demonstrate to the administrator the ability to accurately read and interpret a prescription label, must be available to assist residents with self-administered medications in accordance with procedures described in s. 400.4256, F.S.

(3)(b) through (5) No change.

(6) MEDICATION STORAGE AND DISPOSAL.

(a) In order to accommodate the needs and preferences of residents and to encourage residents to remain as independent as possible, a resident may keep his/her medication, both prescription and over-the-counter, on his/her person both on or off the facility premises; or in his/her room or apartment which must be kept locked when the resident is absent unless the medication is in a secure place within the room or apartment; or in some other secure place which is out of sight of other residents. However, both prescription and over-the-counter medication for a resident shall be centrally stored if:

1. The facility ~~assists with or~~ administers the medication;
2. through 6. No change.

(6)(b) through (8) No change.

58A-5.019 Staffing Standards.

(1) through (3) No change.

(4) STAFFING STANDARDS.

(a) Minimum staffing:

~~1. At least one staff member shall be within the facility at all times when residents are in the facility. Residents serving as paid or volunteer staff may not be left solely in charge of other residents while the facility administrator and staff are absent from the facility.~~

2. Facilities shall maintain the following minimum staff hours. In addition to the 24-hour staffing required in subparagraph 1., facilities with more than 5 residents shall, at a minimum, add the following staff hours per day, 7 days per week:

Number of Residents	Staff Hours / <u>Week Day</u>
<u>0-5</u>	<u>168</u>
6-15	<u>212</u> <del>30</del>
16-25	<u>253</u> <del>35</del>
26-35	<u>294</u> <del>41</del>
36-45	<u>335</u> <del>47</del>
46-55	<u>375</u> <del>53</del>
56-65	<u>416</u> <del>58</del>
66-75	<u>457</u> <del>64</del>
76-85	<u>498</u> <del>70</del>
86-95	<u>539</u> <del>75</del>

For every 20 residents over 95 add 42 ~~6~~ staff hours per week day.

2. At least one staff member who has access to facility and resident records in case of an emergency shall be within the facility at all times when residents are in the facility. Residents serving as paid or volunteer staff may not be left solely in charge of other residents while the facility administrator, manager or other staff are absent from the facility.

3. In facilities with 17 or more residents, there shall be one staff member awake at all hours of the day and night.

4. At least one staff member who is ~~at least 18 years of age, has access to facility and resident records in case of an emergency, and is~~ trained in First Aid and CPR, as provided under rule 58A-5.0191, shall be within the facility at all times when residents are in the facility.

5. During periods of temporary absence of the administrator or manager when residents are on the premises, a staff member who is at least 18 years of age, must be designated in writing to be in charge of the facility.

6.5. Staff whose duties are exclusively building maintenance, clerical, or food preparation shall not be counted toward meeting the minimum staffing hours requirement.

7.6. The administrator or manager's time may be counted for the purpose of meeting the required staffing hours provided the administrator is actively involved in the day-to-day operation of the facility, including making decisions and providing supervision for all aspects of resident care, and is listed on the facility's staffing schedule.

8.7. Only on-the-job staff may be counted in meeting the minimum staffing hours. Vacant positions or absent staff may not be counted.

(4)(b) through (f) No change.

58A-5.0191 Staff Training Requirements and Training Fees.

(1) ASSISTED LIVING FACILITY CORE TRAINING AND UPDATES.

(a) No change.

(b) Administrators and managers, must complete the assisted living facility core training program within 3 months from the date of becoming a facility administrator or manager. Administrators who attended core training prior to July 1, 1997, and managers who attended core training program prior to April 20, 1998, shall not be required to take the competency test. Administrators licensed as nursing home administrators in accordance with part II of chapter 468, F.S., are exempt from this requirement.

(c) No change.

(d) Administrators and managers shall, in addition, attend update training for any portion of core training that has been revised as a result of new legislation, rule amendment, or updated materials. Update training received under this paragraph ~~can may~~ count towards the 12 hours of continuing education required by s. 400.452, F.S., and this subsection.

(e) through (4) No change.

(5) ASSISTANCE WITH SELF-ADMINISTERED MEDICATION AND MEDICATION MANAGEMENT. Unlicensed persons who will be providing assistance with self-administered medications as described in rule 58A-5.0185 must receive a minimum of 4 hours of training prior to assuming this responsibility. ~~A licensed registered nurse or pharmacist shall be considered as having met this requirement.~~ Courses provided in fulfillment of this requirement must meet the following criteria:

(a) through (7)(b) No change.

(c) All direct care staff providing care to residents in an extended congregate care program must complete at least ~~2~~ 6 hours of in-service training provided by the facility within 6 months of beginning employment in the facility. The training must address extended congregate care concepts and requirements, including statutory and rule requirements, and delivery of personal care and supportive services in an extended congregate care facility.

(8) through (9) No change.

(a) Facility staff who have regular contact with or provide direct care to residents with Alzheimer's disease and related disorders, shall obtain 4 hours of initial training within 3 months of employment. ~~Facility staff who are already employed prior to April 20, 1998, shall have 6 months from that date to complete this training.~~ Completion of the core training program after April 20, 1998, shall satisfy this requirement. Facility staff who meet the requirements for Alzheimer's training providers under paragraph (g) of this subsection will be considered as having met this requirement.

“Staff who have regular contact” means staff who interact on a daily basis with residents but do not provide direct care to residents. Initial training must address the following subject areas:

1. through 6. No change.

(b) Facility staff who provide direct care to residents with Alzheimer's disease and related disorders, must obtain an additional 4 hours of training within 9 months of employment. ~~Facility staff who are already employed prior to April 20, 1998, shall have 9 months from that date to complete this training.~~ Facility staff who meet the requirements for Alzheimer's training providers under paragraph (g) of this subsection will be considered as having met this requirement. Such training must address the following subject areas as they apply to these disorders:

1. through 5. No change.

(c) through (g) No change.

(10) TRAINING PROVIDER AND CURRICULUM APPROVAL; TRAINING DOCUMENTATION.

(a) All persons seeking to provide training which must be approved by the department under this rule shall submit ~~an application provided by the department documenting~~ their qualifications to provide training and proposed course curriculums to the department prior to training. Upon receipt of approval from the department, the training provider may identify the training program as “approved by the Florida Department of Elder Affairs for purposes of meeting the training requirements of s. 400. 4178 or s. 400.452, F.S., and Rule 58A-5.0191.” The department shall maintain a list of approved training providers and curriculum. Approval shall be granted for 3 years, whereupon the training provider must re-submit the training program to the department for re-approval.

(b) through (12) No change.

58A-5.020 Food Service Standards.

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

(e) Therapeutic diets shall be prepared and served as ordered by the health care provider.

1. No change.

2. The facility shall document a resident's refusal to comply with a therapeutic diet and notification to the resident's health care provider of such refusal. ~~However, a competent individual shall not be compelled to follow a therapeutic diet.~~ If a resident refuses to follow a therapeutic diet after the benefits are explained, a signed statement from the resident ~~or the resident's responsible party~~, refusing the diet is acceptable documentation of a resident's preferences. In such instances daily documentation is not necessary.

(f) For facilities serving three or more meals a day, no more than 14 hours shall elapse between the end of an evening meal containing a protein food and the beginning of a morning meal. Intervals between meals shall be evenly distributed

throughout the day with not less than two hours nor more than six hours between the end of one meal and the beginning of the next. For residents without access to kitchen facilities, snacks shall be offered provided upon resident request at least once per day ~~when residents are normally awake~~. Snacks are not considered to be meals for the purposes of calculating the time between meals.

(g) through (h) No change.

(3) FOOD HYGIENE. ~~(a) Depending on the licensed capacity of the ALF, facilities shall comply with the applicable portions of rule 64E-12.004, or rule chapter 64E-11 in all matters pertaining to food hygiene.~~ (b) Copies of the quarterly food hygiene inspection reports issued by the county health department, for the last 2 3 years pursuant to rule 64E-12.004, or rule chapter 64E-11, as applicable, depending on the licensed capacity of the ALF, shall be on file in the facility.

(4) No change.

58A-5.021 Fiscal Standards.

(1) FINANCIAL STABILITY. The facility shall be administered on a sound financial basis in order to ensure adequate resources to meet resident needs. For the purposes of s. 400.447, F.S., evidence of financial instability includes filed bankruptcy by any owner; issuance of checks returned for insufficient funds; delinquent accounts; nonpayment of local, state, or federal taxes or fees; unpaid utility bills; tax or judgment liens against facility or owners property; failure to meet employee payroll; confirmed complaints to the agency or district long-term care ombudsman council regarding withholding of refunds or funds due residents; failure to maintain liability insurance due to non-payment of premiums; non-payment of rent or mortgage; non-payment for essential services; or adverse court action which could result in the closure or change in ownership or management of the ALF. When there is evidence of financial instability, the agency shall ~~may~~ require the facility to submit the following documentation:

(a) Facilities with a capacity of 25 or less:

1. Payment of local, state or federal taxes;
2. Delinquent accounts, if any;
3. through 7. No change.

(b) No change.

(2) ACCOUNTING PROCEDURES. The facility shall maintain written business records, using generally accepted accounting principles as defined in rule 61H1-20.007, a recognized system of accounting which accurately reflect the facility's assets and liabilities and income and expenses. Income from residents shall be identified by resident name in supporting documents, and income and expenses from other sources, such as from day care or interest on facility funds, shall be separately identified.

(3) through (5) No change.

(6) SURETY BONDS. Pursuant to the requirements of Section 400.427(2), F.S.:

(a) A facility whose owner, administrator, or staff, or representative thereof, serves as the representative payee or attorney-in-fact for facility residents, must maintain a surety bond, a copy of which shall be filed with the agency. For corporations which own more than one facility in the state, one surety bond may be purchased to cover the needs of all residents served by the corporation.

1. No change.

2. If holding a power of attorney:

a. The minimum bond proceeds shall equal twice the average monthly income of the resident amount or value of all monies or other assets included under the power of attorney, including the average trust fund balance, plus the value of any resident property under the control of the attorney-in-fact held by the facility; or

b. For residents who receive OSS, the minimum bond proceeds shall equal twice the supplemental security income or social security disability income and the OSS payments including the personal allowance, plus the value of any resident property held at the facility.

(b) through (8) No change.

58A-5.023 Physical Plant Standards.

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

(b) During hours when residents are normally awake mechanical cooling devices, such as electric fans, must be used in those areas of buildings used by residents when inside temperatures exceed 85 degrees Fahrenheit provided outside temperatures remain below 90 degrees Fahrenheit. No residents shall be in any inside area that exceeds 90 degrees Fahrenheit. However, during daytime hours when outside temperatures exceed 90 degrees, and at night, an indoor temperature of no more than 81 degrees Fahrenheit must be maintained in all areas used by residents. ~~Newly licensed facilities or facilities renovated after (6 months after effective date of rule), shall not permit indoor temperatures to exceed 85 degrees in any area used by residents.~~

(c) Residents who have individually controlled thermostats in their bedrooms or apartments shall be permitted to control temperatures in those areas.

(3) through (5)(c) No change.

~~(d) Hot and cold water faucets shall be identified by use of H and C initials or by red and blue painted shading or dots.~~

~~(d)(e)~~ Sole access to a toilet or bathtub or shower shall not be through another resident's bedroom, except in apartments within a facility.

~~(e)(f)~~ Residents who use portable bedside commodes shall be provided with privacy in their use ~~Commodes must be emptied and sanitized daily.~~

(6) through (7)(d) No change.

(e) Pursuant to s. 400.441, F.S., facilities with 16 or fewer residents shall not be required to maintain an accessible telephone in each building where residents reside, maintain written staff job descriptions, have awake night staff, or maintain standardized recipes as provided in rules 58A-5.0182(6)(g), 58A-5.019(2)(e), 58A-5-019(4)(a), and 58A-5.020(2)(b) respectively.

58A-5.024 Records.

(1)(a) through (d) No change.

(d) An up-to-date record of major incidents occurring within the last 2 ~~3~~ years. Such record shall contain a clear description of each incident; the time, place, names of individuals involved; witnesses; nature of injuries; cause if known; action taken; a description of medical or other services provided; by whom such services were provided; and any steps taken to prevent recurrence. These reports shall be made by the individuals having first hand knowledge of the incidents, including paid staff, volunteer staff, emergency and temporary staff, and student interns.

(e) through (l) No change.

(m) All firesafety inspection reports issued by the local authority having jurisdiction or the State Fire Marshal pursuant to s. 400.441, F.S., and rule chapter 4A-40 issued within the last 2 ~~3~~ years.

(n) All sanitation inspection reports issued by the county health department pursuant to s. 381.031 and rule chapter 64E-12, issued within the last 2 ~~3~~ years.

(o) Pursuant to s. 400.435, F.S., all completed survey, inspection and complaint investigation reports, and notices of sanctions and moratoriums issued by the agency within the last 5 years.

(p) through (2) No change.

(3) RESIDENT RECORDS. Resident records shall be maintained on the premises and include:

(a) Resident demographic data as follows:

1. through 7. No change.

8 Branch of military service and military identification number for residents admitted after September 30, 1992, if available;

8.9. Name, address, and telephone number of next of kin, responsible party, or other person the resident would like to have notified in case of an emergency, and relationship to resident; and

9.10. Name, address, and phone number of health care provider, and case manager if applicable.

(b) through (o) No change.

(p) Except for resident contracts which must be retained for 5 years, all resident records shall be retained for 2 ~~3~~ years following the departure of a resident from the facility unless it is required by contract to retain the records for a longer period of time. Upon request, residents shall be provided a copy of their resident records upon departure from the facility.

(3)(q) through (4)(a) No change.

(b) The AH resident's records shall be available to the resident, and the resident's legal representative, designee, surrogate, guardian, or attorney in fact, case manager, or the resident's estate, and such additional parties as authorized in writing.

(c) through (d) No change.

58A-5.026 Emergency Management.

(1) No change.

(2) EMERGENCY PLAN APPROVAL. The plan shall be submitted for review and approval to the county emergency management agency ~~in accordance with rule 9G-20.007.~~

(a) The county emergency management agency has 60 days in which to review and approve the plan or advise the facility of necessary revisions. Any revisions must be made and the plan resubmitted to the county office of emergency management within 30 days of receiving notification from the county agency that the plan must be revised.

(2)(b) through (5) No change.

58A-5.030 Extended Congregate Care Services.

(1) through (3)(a) No change.

(b) A bathroom, with a toilet, sink, and bathtub or shower, which is shared ~~by with~~ a maximum of 4 ~~3~~ other residents. A centrally located hydro-massage bathtub may substitute for the bathtub or shower in two of the bathrooms. The entry door to the bathroom shall have a lock which is operable from the inside by the resident with no key needed. The resident's service plan may allow for a non-locking bathroom door if the resident's safety would otherwise be jeopardized.

~~(c) Air conditioning must be available to maintain inside temperatures not exceeding 85 degrees Fahrenheit in areas used by residents. Residents who have individually controlled thermostats in their rooms shall be permitted to control temperatures in their rooms.~~

(4) No change.

(5) ADMISSION AND CONTINUED RESIDENCY.

(a) An individual must meet the following minimum criteria in order to be admitted to an extended congregate care program.

1. through 6. No change.

7. Not require any of the following nursing services:

a. Oral or nasopharyngeal suctioning;

b. ~~Assistance with~~ Nasogastric tube feeding;

c. Monitoring of blood gases;

d. Intermittent positive pressure breathing therapy;

e. Skilled rehabilitative services as described in rule 59G-4.290; or

f. Treatment of a surgical incision, unless the surgical incision and the condition which caused it have been stabilized and a plan of care developed.

8. through 9. No change.



(5)(b) through (10) No change.

58A-5.033 Administrative Enforcement.

Facility staff shall cooperate with agency personnel during surveys, complaint investigations, monitoring visits, implementation of correction plans, license application and renewal procedures and other activities necessary to ensure compliance with part III of chapter 400, F.S., and this rule chapter.

(1) INSPECTIONS.

(a) Pursuant to s. 400.434, F.S., the agency shall conduct a survey, investigation, or appraisal of a facility:

1. through 5. No change.

6. ~~At any time~~ If the agency has reason to believe a facility is violating a provision of part III of chapter 400, F.S., or this rule chapter;

7. To determine if cited deficiencies have been corrected; and

8. To determine if a facility is operating without a license.

(b) No change.

(c) Agency personnel ~~shall may~~ interview facility staff and residents in order to determine whether the facility is respecting resident rights and to determine compliance with resident care standards. Interviews shall be conducted privately.

(d) Agency personnel shall respect the private possessions of residents and staff while conducting facility inspections.

(2) ABBREVIATED SURVEY.

(a) An applicant for license renewal who does not have any class I or class II violations or uncorrected class III violations, confirmed long-term care ombudsman council complaints reported to the agency by the LTCOC, or confirmed licensing complaints within the two licensing periods immediately preceding the current renewal date shall be eligible for an abbreviated biennial survey by the agency. Facilities that do not have two survey reports on file with the agency under current ownership are not eligible for an abbreviated inspection. Upon arrival at the facility, the agency shall inform the facility that it is eligible for and that an abbreviated survey will be conducted ~~prior to the survey~~.

(b) Compliance with key quality of care standards described in the following statutes and rules will be used by the agency during its abbreviated survey of eligible facilities:

1. through 3. No change.

4. Section 400.441, F.S., and rule 58A-5.0182, relating to the provision of supervision, assistance with ADLs, and arrangement for appointments and transportation to appointments;

5. Section 400.4256, F.S., and rule 58A-5.0185, relating to, and assistance with or administration of medications;

5. through 9. renumbered 6. through 10. No change.

(c) The agency will expand the abbreviated survey or conduct a full survey if violations which threaten or potentially threaten the health, safety, or security of residents for facilities in which significant problems are identified during the abbreviated survey. The facility shall be informed that a full survey will be conducted. If one or more of the following serious problems are identified during an abbreviated survey, a full biennial survey will be immediately conducted:

1. through 4. No change.

(3) through (4) No change.

(5) ADMINISTRATIVE SANCTIONS. Administrative fines ~~shall may~~ be imposed for class I violations, or class II, III, or IV violations which are not corrected within the time frame set by the agency, and for repeat class II or III violations, as set forth in s. 400.419, F.S.

(a) The agency ~~shall may~~ impose a fine for unclassified violations which do not meet the criteria for either a Class I, II, III, or IV violation as provided under s. 400.419, F.S., but which are not trivial or are uncorrected. Unclassified violations include, but are not limited to, the following violations:

1. through 4. No change.

(b) through (e) No change.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE CHANGE IS: Pat Dunn, Office of General Counsel, (850)414-2000, Meta Calder, Assisted Living Program, (850)414-2309; Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, FL 32399-7000.

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Division of Medicaid**

RULE NO.:  
59G-6.010

RULE TITLE:  
Payment Methodology for Nursing Home Services

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 25, No. 16, Florida Administrative Weekly, April 23, 1999. In response to comments received from the Joint Administrative Procedures Committee, Section I.D. has been amended to include "wind" as an emergency circumstance. Additionally, item 4 contained in Section III which reads "Any other requirements for licensing under laws in the State which are necessary for providing long-term care facility services, as applicable" will be removed.

**DEPARTMENT OF MANAGEMENT SERVICES**

**Personnel Management System**

RULE CHAPTER NO.:  
60L-14  
RULE NOS.:  
60L-14.001

RULE CHAPTER TITLE:  
State Training Program  
RULE TITLES:  
Scope and Purpose

60L-14.006 Basic Supervisory Skills Training Program, (BSSTP)  
 60L-14.0061 SMS/SES Professional Development Program  
**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Volume 25, No. 23, June 11, 1999, issue of the Florida Administrative Weekly.

60L-14.001 Scope and Purpose.

This chapter provides for a state training and development program for improving employee and organizational performance. This rule applies only to Career Service, Senior Management Service (SMS) and Selected Exempted Service (SES) employees in executive branch, except the State University System.

60L-14.006 Basic Supervisory Skills Training Program (BSSTP).

(5)(b) An agency may extend this period up to six months, with the approval of the agency head, when there are extenuating circumstances. Extenuating circumstances include, ~~but are not limited to:~~ military leave; natural disasters and other emergency conditions; parental leave; and disability or sick leave.

60L-14.0061 SMS/SES Professional Development Program.

(2) The components for the SMS/SES Professional Development Program shall include, ~~but are not limited to,~~ the following:

(a) through (h) No change.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Funeral Directors and Embalmers**

RULE NO.: RULE TITLE:  
 61G8-24.044 Operating Procedures

**NOTICE OF WITHDRAWAL**

Notice is hereby given that the above rule, as noticed in Vol. 25, No. 5, February 5, 1999, Florida Administrative Weekly has been withdrawn.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Professional Engineers**

RULE NO.: RULE TITLE:  
 61G15-21.002 Areas of competency and Grading Criteria

**NOTICE OF WITHDRAWN**

Notice is hereby given that the above rule, as noticed in Vol. 25, No. 30, July 30, 1999, Florida Administrative Weekly has been withdrawn.

**DEPARTMENT OF HEALTH**

**Board of Nursing Home Administrators**

RULE NO.: RULE TITLE:  
 64B10-15.0021 Approved Providers  
**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 25, No. 11, March 19, 1999, issue of the Florida Administrative Weekly. The changes are in response to comments received from the staff of the Joint Administrative Procedures Committee. Subsection (4) of the rule shall now read as follows:

(4) The Board shall monitor and review all programs; it shall disapprove any or all credit if there is a failure to meet the criteria of Rule 64B10-15.002(1), above.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John Taylor, Executive Director, Board of Nursing Home Administrators/MQA, 2020 Capital Circle, S. E., Bin #4, Tallahassee, Florida 32399-3254.

**FLORIDA HOUSING FINANCE CORPORATION**

RULE NOS.:	RULE TITLES:
67-21.002	Definitions
67-21.003	Application and Selection Process for Loans
67-21.0035	Applicant Administrative Appeal Process
67-21.004	Federal Set-Aside and Public Policy Requirements
67-21.006	Development Requirements
67-21.007	Fees
67-21.011	No Discrimination
67-21.013	Private Placements of Multifamily Mortgage Revenue Bonds
67-21.014	Credit Underwriting Procedures
67-21.015	Use of Bonds with Other Affordable Housing Finance Programs
67-21.016	Compliance Procedures
67-21.017	Transfer of Ownership
67-21.019	Issuance of Bonds for 501(c)(3) Corporations

**NOTICE OF CHANGE**

Notice is hereby given that in response to oral and written comments and recommendations made by the Joint Administrative Procedures Committee, the following changes in addition to non-published technical corrections/clarifications have been made to Rule 67-21, Florida Administrative Code as published in Volume 25, Number 27 of the Florida Administrative Weekly on July 9, 1999.

67-21.002 Definitions.

(6) "Applicant" means any person or entity, for profit or not-for profit, that is seeking a loan from Florida Housing for a multifamily Development and that has agreed to subject itself to the regulatory powers of Florida Housing by submitting an Application. The Applicant entity, as identified in the Application, cannot be changed until after final allocation of tax credits has been issued by FHFC.

(7) "Application" means the completed Form MFMRB2000, its instructions, and its appendices together with exhibits submitted to Florida Housing by the Applicant in accordance with the provisions of this Rule Chapter and in the Application in order to apply for the Multifamily Bond Program.

~~(9) "Authorized Investments" means any of the following securities:~~

~~(a) Investments permitted under s. 215.47(1) and (2), without regard to any limitations set forth therein.~~

~~(b) Investment agreements the issuer of which is rated or the guarantor of which is rated in one of the three highest rating categories by a nationally recognized rating service.~~

~~(14)(15) "Completeness and Threshold Check" or "CTC" means the examination of the Application by a Credit Underwriter assigned by FHFC. This examination shall determine if all required information has been provided in the Application, and simultaneously, the Credit Underwriter shall verify and analyze all such information in accordance with the Completeness and Threshold Checklist Check List found in Appendix A of the Application.~~

~~(22) "Cross-collateralization" means the pledging of the security of one Development to the obligations of another development.~~

~~(23) "Demonstration Development" shall mean a development which provides a unique, demonstrated benefit to a population or area not adequately served by existing Florida Housing programs, and which Development may serve as a replicable model for future Florida Housing programs, and otherwise complies with any rule of Florida Housing regarding Demonstration Developments.~~

(25) "Developer Fees" means the fee earned by the Developer. Such fee shall be limited to 18 percent of Total Development Costs excluding land and, for rehabilitation, building acquisition costs. A Developer Fee on the building acquisition cost shall be limited to 4% of the cost of the building(s) exclusive of land cost. Consulting fees, if any, must be paid out of the Developer Fee. Consulting fees include, for example, payments for Application consultants, construction management or supervision, or local government consultants. Fees for the Applicant's and Developer's attorney(s) which are in excess of an amount equal to the greater of \$40,000 or 0.75% of the total amount of the Bonds must also be paid out of the Developer Fee. Fees of the Applicant's or Developer's attorney(s) awarded in conjunction with litigation against

FHFC with respect to a Development shall not also be included in Total Development Costs. Fees for services provided by architects, accountants, appraisers, engineers or Financial Advisors may be included as part of the Total Development Costs, except those fees for a Financial Advisor that are in excess of \$18,000 must be paid out of the Developer Fee. In the event of extraordinary circumstances, Applicant may petition the Board for relief from the attorney fee and Financial Advisor caps. For the purpose of the HUD Risk Sharing Program, if there exists an Identity of Interest relationship as defined herein between the Applicant, or Developer and the General Contractor, the allowable fees shall in no case exceed the amount allowed for the Developer Fees pursuant to the HUD subsidy layering regulations. Florida Housing shall not authorize fees to be paid for duplicative services or duplicative overhead.

~~(30) "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 to 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 use of Housing Credits, 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 Housing Credits Program and Section 42 of the Code.~~

~~(33) "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; or~~

~~(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. The 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 67-21.002(35), F.A.C.

(47) "Local Government" means a unit of local general-purpose government as defined in Section 218.31(2), Florida Statutes F.S., (1995).

(56) "Program Documents or Loan Documents" means the Loan Commitment, Loan Agreement, Note, Mortgage, Credit Enhancement or Guarantee Instrument, Land Use Restriction Agreement, Trust Indenture, Preliminary and Final Official Statements, Intercreditor Agreement, Assignments, Bond Purchase Agreement, Compliance Monitoring Agreement, Mortgage Servicing Agreement and such other ordinary and customary documents necessary as are required by Florida Housing to issue and secure repayment of the Bonds and Mortgage, to protect the interests of the Bond owners and Florida Housing and to protect the tax-exempt status of the ~~Tax-Exempt~~ Bonds.

(57) "Public Policy Criteria" means the requirements and guidelines established by Florida Housing and set forth in 67-21.004, F.A.C. ~~Applicants who seek a Loan from Florida Housing shall elect which Public Policy Criteria they shall agree to incorporate into the design of their Development.~~ These requirements shall be incorporated in the Loan Commitment and Program Documents. Such Public Policy Criteria have been adopted for the purpose of accomplishing the programmatic goals of the Code, Florida Housing and the Act.

(59) "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), of the Code IRC.

(61) "Qualified Project Period" means the period of time, as provided in the Code, that a Project Development financed with Tax-Exempt Bonds must comply with the Lower Income Tenant Set-aside.

(62) "Set-Aside" means the occupancy requirements or restrictions for Developments financed by Florida Housing. Such Set-aside requirements shall be set forth in the Land Use Restriction Agreement and other such Program Documents as are deemed necessary by Florida Housing. The minimal Set-aside requirements are as follows:

(a) For Taxable Bonds – 20 percent or more of the residential units in the Development shall be occupied or held available for occupancy by one or more persons or a family whose Annual Household Income does not exceed 80 percent of the State or county median income, whichever median income is higher; provided, however, that if such taxable bonds are being issued in connection with Tax-Exempt Bonds, the requirements of (b) below shall govern.

67-21.003 Application and Selection Process for Loans.

(2) An Application may be submitted at any time; however, priority in reviewing and ranking Applications for award of State Bond Allocation for a calendar year shall be given to Applications received by Florida Housing by the deadline specified in the Notice of Funding Availability published in the Florida Administrative Weekly and which received a satisfactory CTC based upon the initial Application.

~~Any a~~Applications received after the noticed deadline shall not be processed, reviewed, or ranked in any way until such time as the list of Applications received by the noticed deadline has been exhausted. As set forth in said notice, Florida Housing may elect to reserve a portion of its private activity bond allocation for multifamily revenue bonds for use solely for Demonstration Developments or in connection with HUD multifamily developments. Developments wholly owned by not-for-profit corporations qualifying under Section 501(c)(3) of the Code which are not requesting State Bond Allocation are governed by Rule 67-21.019, F.A.C.

(5) Applications which are deemed by the Credit Underwriter to have satisfactorily met the requirements of the Completeness and Threshold Review Checklist set forth in the Application ~~receive a satisfactory CTC~~ shall be ranked using the criteria established by the Board pursuant to and listed in Rule 67-21.004, F.A.C.

(7) Based on the order of the ranked Applications and the availability of State Bond Allocation, the Board shall designate those Applications to be offered the opportunity to enter final Credit Underwriting. Notwithstanding the rankings, a portion of the State Bond Allocation equal to the amount of allocation requested in any Applicant's Program Application (including in a previous cycle) may be ~~designated or~~ reserved by the Board for future allocation necessary to resolve administrative or legal proceedings with respect to Program private activity bond allocations ~~applications.~~ ~~Additionally, notwithstanding the rankings, State Bond Allocation received by the Board after November 1 of any year may be designated by the Board to be allocated in the subsequent year's cycle.~~ The Board may invite up to an additional five more Developments into Credit Underwriting beyond what is expected to than can be funded with the available State Bond Allocation. Applicants shall be notified in writing of the opportunity to enter final Credit Underwriting. A detailed timeline for submitting required fees and information to the Credit Underwriter shall be included. Failure to meet the deadlines established by such timeline shall result in the immediate termination of Credit Underwriting activities and the Application shall be moved to the bottom of the ranked list. Applicants electing to proceed to final Credit Underwriting do so at their own risk. Any Applicant which declines invitation to final Credit Underwriting shall be removed from the ranked list.

(9) At the conclusion of the 14 day cure period referenced in (8) above, the Credit Underwriter shall evaluate the additional information and determine if the Application ~~is now~~ meets the requirements set forth in the Completeness and Threshold Review Checklist contained in the Application ~~satisfactory for purposes of the.~~ This determination must be submitted to FHFC not later than 7 days after the end of the 14 day cure period.

(10) Applications that successfully complete the CTC after the 14 day cure period referenced in (8) above shall be evaluated and ranked by staff using the criteria established by the Board ~~pursuant to and listed in~~ Rule 67-21.004, F.A.C. This ranking shall be presented to the Board for approval and authorization of invitations to Credit Underwriting. In the event that time constraints preclude presentation of this ranking to the Board for approval and authorization of Credit Underwriting, staff shall offer Applicants the opportunity to enter Credit Underwriting at their own risk only to the extent that there is sufficient State Bond Allocation to fully fund the proposed Developments.

(11) Florida Housing shall initiate TEFRA hearings on the proposed Developments whose Applications were received in response to the NOFA. Neither the TEFRA hearing, the invitation into final Credit Underwriting, nor the Acknowledgment Resolution obligate Florida Housing to finance the proposed Development in any way.

(13) Proposed Developments that are ranked, but not selected by the Board to enter final Credit Underwriting, shall remain on the ranking list in the event State Bond Allocation becomes available to fund additional Developments. If the current year's State Bond Allocation is insufficient to fully finance a Development, a new Application must be filed to be eligible for a future year's State Bond Allocation. ~~Developments designated for a portion of the current year's State Bond Allocation shall be required to close at such time as set forth in such designation.~~

(14) Florida Housing shall notify the Applicant, in writing, of the Board's determination related to approval of the final Credit Underwriting Report and require that the Applicant submit one-half of the Good Faith Deposit within 7 calendar days. Developments designated for a portion of the current year's State Bond Allocation shall be required to close at such time as set forth in such designation. In the event the loan does not close within the designated time frame due to the fault of the Developer or Applicant, then the State Bond Allocation shall be forfeited.

(15) Upon favorable recommendation of the final Credit Underwriting report and preliminary recommendation of the method of bond sale from Florida Housing's Financial Advisor, or from the staff, the Board shall designate by resolution the method of bond sale considered appropriate for financing. The Board shall consider authorizing the execution of the Loan Commitment and shall consider final Board Approval reserving State Bond Allocation for a Development. Requests for Taxable Bonds shall be considered by the Board in an amount recommended by the Credit Underwriter. The Board shall also assign a bond underwriter, structuring agent, or Financial Advisor and any other professionals necessary to complete the transaction. Staff shall assign FHFC counsel as needed.

(17) Upon execution of a Loan Commitment Applicant shall pay the balance of the Good Faith Deposit and Florida Housing shall authorize the preparation of the required documents which shall include:

- (a) Loan Agreement;
- (b) Note;
- (c) Mortgage;
- (d) Guarantee Instrument Agreements, if any;
- (e) Land Use Restriction Agreement;
- (f) Trust Indenture;
- (g) Preliminary and Final Official Statements, if any;
- (h) Financial Monitoring Agreements;
- (i) Compliance Monitoring Agreements; and
- (j) Such other documents as are necessary to establish and secure the Mortgage Loan and the issuance of the Bonds.

(18) If any Applicant, an Affiliate of an Applicant or a partner of a limited 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 shall be ineligible to participate in any program administered by the Corporation for a period of up to two fiscal years, which shall begin from the date the Board approves disqualification of the Applicant's Application. Such determination shall be either pursuant to a factual hearing before the Board at which the Applicant shall be entitled to present evidence or as a result of a finding by a court of law or recommended order of an administrative law judge.

(20) At no time during the Application, CTC, and appeal process may Applicants or their representatives contact Board members concerning their own Development or any other Applicant's Development.

67-21.0035 Applicant Administrative Appeal Process.

(2) Applicants who wish to contest the decision relative to the CTC for their own Application must petition for a review of the decision in writing within 21 ~~10~~ calendar days of the date of the notice. The request must specify in detail the basis for the appeal and the issues to be appealed. Unless the appeal involves disputed issues of material fact, the appeal shall be conducted on an informal basis. Florida Housing staff shall review the appeal and shall provide to the Applicant a written position paper which indicates whether a change will be made regarding each issue appealed. If the Applicant disagrees with Florida Housing's position paper, the Applicant shall be given an opportunity to participate in an informal administrative hearing. If the appeal raises issues of material fact, a formal hearing shall 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.

67-21.004 Federal Set-Aside and Public Policy Requirements.

(2) In addition to meeting the minimum required Set-aside described in paragraph (1) above, each Development selected for financing in the Program shall have Florida Housing ~~Tax-Exempt Bond Program~~ funding that does not exceed \$65,000 per unit, and shall satisfy the Public Policy Criteria as follows:

(a) All Applicants shall commit to provide at least 20 percent or 40 percent of each unit size in excess of one bedroom and studio units in the Development to be occupied or reserved for occupancy by Lower Income Tenants in proportion to the minimum Set-aside requirement elected, as follows:

1. if the Development satisfies the 20/50 Set-aside, 20 percent of the units at or below 50 percent of area median gross income limit, adjusted for family size and determined in accordance with Section 142(d) of the Code, or

2. if the Development satisfies the 40/60 Set-aside, 40 percent of the units at or below 60 percent of area median gross income limit, adjusted for family size and determined in accordance with Section 142(d) of the Code, or in the case of Developments financed through the issuance of Taxable Bonds (or for specific cases pursuant to the Code, Tax-Exempt Bonds), 20 percent of the units at or below 80 percent of state or county median income limit, whichever is higher, with family size adjustment (or for Developments financed prior to the Code, as amended, without family size adjustment). The foregoing shall not apply to Developments which are also financed with tax-exempt debt in which at least 50 percent of the Bonds issued are tax-exempt in nature.

3. in the case of Developments financed solely through the issuance of Taxable Bonds (or for specific cases pursuant to the Code, Tax-Exempt Bonds), 20 percent of the units at or below 80 percent of state or county median income limit, whichever is higher, with family size adjustment (or for Developments financed prior to the Code, as amended, without family size adjustment). The foregoing shall not apply to Developments which are also financed with tax-exempt debt in which at least 50 percent of the Bonds issued are tax-exempt in nature.

(b) In addition to satisfying 67-21.004(2)(a) above, a Development Application shall reflect the Applicant's commitment to satisfy a minimum of two ~~three~~ of the Public Policy Criteria listed in 1.-6. below in this sub-paragraph.

1. At least 20% of the units in the Development shall be three bedroom units or greater.

2. Increase the selected minimum Set-aside units by 10 percent, therefore:

(i) if the Development satisfies a 20/50 Set-aside, at least 30 percent of the units in the Development, shall be occupied or reserved for occupancy by persons or families having

incomes at or below 50 percent of area median gross income limit, adjusted for family size and determined in accordance with Section 142(d) of the Code,

(ii) if the Development satisfies a 40/60 Set-aside, at least 50 percent of the units in the Development, shall be occupied or reserved for occupancy by persons or families having incomes at or below 60 percent of area median gross income limit, adjusted for family size and determined in accordance with Section 142(d) of the Code, or

(iii) in the case of Developments financed solely through the issuance of Taxable Bonds, 30 percent of the units in the Development shall be occupied or reserved for occupancy by persons or families having incomes at or below 80 percent of the state or county median income limit, whichever is higher, with family size adjustment (or for Developments financed prior to the 1986 IRS Code, as amended without family size adjustment). The foregoing shall not apply to Developments which are also financed with tax-exempt debt in which at least 50 percent of the Bonds issued are tax-exempt in nature.

3. All units in the Development shall serve as Elderly Units pursuant to the Federal Fair Housing Act. This criterion cannot be selected in combination with the criterion to provide a minimum percentage of three-bedroom or four-bedroom units.

4. The Applicant agrees to a Qualified Project Period that shall extend a minimum of 10 years beyond the period of time provided for in the Code.

5. The Applicant shall develop and implement a minimum of two tenant programs as an integral part of the Development and approved by Florida Housing, ~~such as day care, literacy training, health care, meals, or other~~ These tenant programs are as described in the Application.

(4) Initial consideration shall be given based on any or all of the criteria set forth below as shall be established by the Board and included in the Application and in such order of priority as set forth in the Application. Such criteria shall be incorporated in the Application as Appendix C.

(a) A commitment to provide more than the minimum low-income set-aside; however, in no event shall the Set-aside for Multifamily Bond requirements exceed 80% of the units;

(b) Developments with no other Florida Housing subsidy (Developments utilizing Florida Housing's Guarantee Fund, HUD Risk-Sharing or Predevelopment Loan Fund shall not be considered as having a Florida Housing subsidy);

(c) Demonstration Developments that can serve as a model for satisfying a defined housing need as determined by the Board;

(d) The experience of the Developer or Applicant;

(e) Diversification of the Developers receiving funding in a given cycle;

(f) Diversification of the Developers receiving funding in previous cycles;

- (g) Developments with the lowest ratio dollar amount of State Bond Allocation per unit financed;
- (h) Developments which benefit a specific population, county or other area of the state;
- (i) Developments which have special or unique value to a population targeted by the Board;
- (j) Developments which target relief in areas of the state affected by a natural disaster;
- (k) Developments with the lowest per-unit Developer and General Contractor fee;
- (l) Developments with the lowest per unit cost;
- (m) Developments with a commitment for credit enhancement;
- (n) Developments with credit enhancement not constituting a private placement of Bonds;
- (o) Public Policy Criteria Selected by the Applicant;
- (p) Developments with a commitment from the Florida Housing Finance Corporation Guarantee Program;
- (q) Developments which provide Special farmworker housing needs;
- (r) Developments which provide uUrban-infill housing needs.

67-21.006 Development Requirements.

- (8) Commencing with the date on which at least 10 percent of the units in the Development are occupied:
  - (a) At least 20 percent or 40 percent, whichever is applicable based on Applicant's selection of the minimum federal Set-Aside, of the occupied and completed residential units in the Development shall be occupied by Lower Income Tenants, prior to the satisfaction of which no additional units shall be rented or leased, except to an individual or family that is also a Lower Income Tenant;
  - (b) All of the Public Policy Criteria selected in the Application must be met; and
  - (c) After initial rental occupancy of such residential units by Lower Income Tenants, at least 20 percent or 40 percent, whichever is applicable based on Applicant's Applications selection of the minimum federal Set-aside, of the completed residential units in the Development ~~project~~ at all times shall be rented to and occupied by Lower Income Tenants as required by Section 142(d) of the Code, if the Development is financed with the proceeds of Tax-Exempt Bonds, or as required by the Act, if the Development is financed with the proceeds of Taxable Bonds, or held available for rental if previously rented to and occupied by a Lower Income Tenant.
- (13) The Applicant may limit the leasing of units in a Development to older persons or those persons who qualify pursuant to the Federal Fair Housing Act in conjunction with the required income restrictions.

(14) In the event that the Applicant has determined that the market no longer supports the Development as Elderly Housing and desires for older persons pursuant to the Federal Fair Housing Act and desires to rent to younger persons or families, the following criteria must be met:

- a. A viable marketing plan is submitted to and is acceptable to Florida Housing showing a good faith effort to market the unit as Elderly Housing to older persons.
- b. The Applicant demonstrates that a good faith effort was made to lease the unit as Elderly Housing in accordance with the Federal Fair Housing Act to older persons and that such effort was made for at least six months ~~days~~ after the certificate of occupancy for the relevant unit was issued.
- c. The Applicant has requested and received Board approval.

(16) The owner of a Development must notify Florida Housing of an intended change in the management company. Florida Housing must approve, pursuant to Section 67-21.016(3), F.A.C., the Applicant's selection of a management agent prior to such company assuming responsibility for the Development. The Applicant's authorized representative must attend a Florida Housing-sponsored training workshop on certification and compliance procedures prior to the leasing of any units in the Development.

(19) Unless otherwise approved by the Board, Cross-collateralization shall not be allowed.

67-21.007 Fees.

(3) TEFRA Fee: This fee is included in the Application fee. \$500 of the Application Fee shall be applied to the actual cost of publishing required newspaper advertisements and Florida Administrative Weekly notices of TEFRA hearings. If the actual cost of the required publishing exceeds \$500.00, Applicant shall be invoiced for the difference. If a Local Public Fact Finding Hearing is requested, the Applicant shall be responsible for payment of any fees incurred by Florida Housing's ~~counsel~~. If the first TEFRA approval period has expired and second TEFRA notice and hearing is required, Applicant is responsible for all costs associated with additional TEFRA process.

(5) Good Faith Deposit: The Applicant shall pay a total deposit equal to one percent of the Bond Amount to Florida Housing, which may be applied toward the Cost of Issuance Fee. The Good Faith Deposit is payable in two equal installments: the first installment (one-half of one percent) is due within seven calendar days of the date when the Board approves the final Credit Underwriting Report. The balance is payable when the Applicant executes the Loan Commitment which shall be not later than 5 calendar days from receipt of the Loan Commitment. In the event the Loan does not close, the unused portion of the Good Faith Deposit shall be refunded to the Applicant borrower. Notwithstanding the foregoing, the Applicant borrower is responsible for all expenses incurred in

preparation for loan closing. Any and all costs to FHFC will be deducted from the Good Faith Deposit prior to refunding unused funds to the Applicant. In the event that additional invoices are received ~~additional costs are incurred~~ by FHFC subsequent to a determination that the Loan will not close and refunding the unused funds to the Applicant, which invoices relate to costs incurred prior to such determination and refunding. Applicant shall be responsible for payment of the balance due as invoiced.

(6) Cost of Issuance Fee: Florida Housing shall require Applicants or participating Qualified Lending Institutions selected for participation in the Program, to deliver to Florida Housing, or, at the request of Florida Housing, directly to the Trustee, before the date of delivery of the Bonds, a Cost of Issuance Fee in an amount determined by Florida Housing to be sufficient to pay the costs and expenses relating to issuance of the Bonds, which amount shall be deposited into an account to be held by the Trustee. Florida Housing shall provide the Applicant with a good faith estimate of the Cost of Issuance Fee prior to closing following award of a portion of Florida Housing's State Bond Allocation to the Development by the Board. The Applicant shall pay all costs and expenses incurred by Florida Housing in connection with the issuance of the Bonds, the expenditure of the Loan proceeds, and provision of a Credit Enhancement, if any, even if such costs and expenses may exceed the Cost of Issuance Fee. Any amounts remaining in this account at the time the balance is transferred and the account closed pursuant to the Trust Indenture shall be returned to the Applicant.

#### 67-21.011 No Discrimination.

Florida Housing, its staff or agents, Applicants, or participants under the Program shall not discriminate under this Program against any person or family, on the basis of race, creed, national origin, age, religion, handicap, familial status or sex, against persons or families on the basis of their having minor children, except that nothing herein shall be deemed to preclude a Developer from discrimination based on age in renting Elderly Housing units in accordance with the Federal Fair Housing Act or to preclude a Developer from discrimination based on income in renting units Set-aside for Lower Income Tenants in compliance with the requirements of the Code or with the requirements of section 420.509(19), F.S., for Tax-Exempt Bonds.

#### 67-21.013 Private Placements of Multifamily Mortgage Revenue Bonds.

Any issuance of Revenue Bonds by means of a negotiated Private Placement shall be sold only to a Qualified Institutional Buyer. ~~Florida Housing may issue Revenue Bonds to fund Mortgage Loans, or to refund outstanding Bonds by means of a negotiated Private Placement of such Bonds to a Qualified Institutional Buyer.~~ Florida Housing shall designate the placement agent with respect to such Bonds, who shall be on Florida Housing's approved bond underwriters list. A

Qualified Institutional Buyer who is an underwriter may contract to immediately resell such Bonds to other Qualified Institutional Buyers, which transaction shall continue to constitute a Private Placement. The amount of any placement agent fee and any amounts paid by any third party to an initial Qualified Institutional Buyer which is an underwriter shall be subject to the approval of Florida Housing or its designee. Unless such Bonds are rated in one of the three highest rating categories by a nationally recognized rating service, such Bonds shall not be held in a full book-entry system (but may be DTC-Eligible) and shall comply with at least one of the following criteria:

#### 67-21.014 Credit Underwriting Procedures.

(1) After the cycle closing date, Florida Housing shall assign and forward all Applications to the Credit Underwriter for the Completeness and Threshold Check.

(a) A statement by Florida Housing's Credit Underwriter positive recommendation as to compliance with the Completeness and Threshold Checklist set forth in the Application by Florida Housing's Credit Underwriter and approval by the Board shall be required for a Development to be invited to final Credit Underwriting, except as provided in 67-21.003(10).

(2)(c) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves when calculating the final net operating income available to service the debt. A minimum amount of \$200 per unit must be deposited annually in the replacement reserve account for all Developments. This amount may be adjusted by the Board based on a physical needs assessment. An Applicant may choose to fund a portion of the replacement reserves at closing from moneys other than the proceeds of the Bonds. This partial funding cannot exceed 50 percent of the required replacement reserves for two years and must be placed in escrow at closing. Applicants with Credit Enhancement may employ a different replacement reserve structure with Florida Housing's approval.

(g) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall notify Florida Housing and request the information from the Applicant. Such requested information shall be submitted within five business days of receipt of the request therefor. Failure for any reason to submit required information by the specified deadline shall result in a loss of ranking for the Application being removed from the ranking list.

(j) A limited restricted appraisal as defined by the Uniform Standards of Professional Appraisal Practice and separate market study shall be ordered as part of the Completeness and Threshold Check or at the request of the Developer, a full or self-contained appraisal may be ordered at such time. A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice shall be ordered not later than when an Application enters final Credit Underwriting.



The Applicant may choose an appraiser from the Credit Underwriter's approved list of appraisers; however, the Credit Underwriter shall order, upon notification by the Applicant and at the Applicant's expense, the appraisals of the Development. The Applicant is responsible for notifying the Credit Underwriter of the requested appraiser within 48 hours of when Application enters ~~final~~ Credit Underwriting for purposes of the CTC to ensure the timely delivery of the appraisals. The Credit Underwriter shall review the appraisals to properly evaluate the loan request in relation to the property value.

67-21.015 Use of Bonds with Other Affordable Housing Finance Programs.

(1) Subject to any ranking criteria which may be imposed pursuant to Rule 67-21.004(4)(b), F.A.C., Applicants may use Tax-Exempt or Taxable Bond financing in conjunction with other affordable housing finance programs administered by Florida Housing, including, by way of example, and not of limitation, the Housing Credit, the State Apartment Incentive Loan, the Florida Affordable Housing Guarantee, HOME Investment Partnerships Rental Loan, Predevelopment Loan Program and HUD Risk Sharing Programs.

(2) Applicants desiring to apply for financing from multiple programs shall submit separate applications using forms prescribed by each program and shall submit fees as required by the other programs, except that Applicants do not need to submit a separate Application for non competitive Housing Credits; this Application for Multifamily Bonds shall be used for non-competitive Housing Credits as well as Tax-exempt Bonds. ~~Applicants shall, however, be required to pay the Housing Credits Application Fee. This fee should be submitted to the Housing Credits Program at the same time as Final Cost paperwork is submitted to the Housing Credit Program.~~

67-21.016 Compliance Procedures.

(9) Sponsors shall annually certify that the household gross income, adjusted for family size of each household occupying a unit set aside for Lower Income Tenants 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 qualifying household ~~qualifying under the provisions of Section 420.5087(2), Florida Statutes~~, in order to ensure continuing compliance of the Development.

67-21.017 Transfer of Ownership.

(1) Any transfer of ownership of any Development shall be subject to compliance with the provisions of this Section 67-21.017 approval by Florida Housing as described below and ~~limitations of the Code~~. The determination of whether a transfer of ownership of a Development shall be deemed to take place for purposes of this rule shall be made in accordance

with the provisions of the Land Use Restriction Agreement and other Program Documents for such Development. ~~Owners Developers~~ shall advise Florida Housing in writing of any change of ownership of the owner Developer aggregating 50 percent or more of ownership interests in the owner Developer within any six-month period.

(3) Upon demonstration of compliance with the provisions of this Section 67-21.017 and favorable consideration by the Board to a request for transfer, Florida Housing shall assign a Credit Underwriter, Bond Counsel, Special Counsel, and other professionals as needed to effect the transfer.

67-21.019 Issuance of Bonds for 501(c)(3)'s Corporations.

(2) In connection with all bonds issued pursuant to 67-21.019, F.A.C., Applicants shall be required to comply with the provisions of Rule 67-21.003, 67-21.004 ~~other than paragraph (4) therein~~ and Rule 67-21.0045 through 67-21.018, as if the 501(c)(3) Bonds are being issued as Tax-exempt Bonds under Section 141 of the Code, except that:

~~(a) with respect to Rule 67-21.004, paragraph (4) does not apply;~~

(b) with respect to Rule 67-21.007(4), F.A.C., and Rule 67-21.014, F.A.C., no CTC or CTC fee shall be required; and

(c) except with respect to Rule 67-21.004(2), only one Public Policy Criteria shall be satisfied in addition to the minimum federal Set-aside.

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## Section IV Emergency Rules

NONE

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## Section V Petitions and Dispositions Regarding Rule Variance or Waiver

### DEPARTMENT OF LAW ENFORCEMENT

Notice is hereby given that the Alcohol Testing Program, Florida Department of Law Enforcement has received from A. J. Rotherberg on August 13 and August 16, 1999, a petition for Variance or Waiver of Rule 11D-8.008(4), F.A.C., pursuant to Section 120.542, F.S. Petitioner is requesting a variance from the requirement that a breath test operator permitted under chapter 316, 322, 327, F.S. and 11D, FAC., become re-permitted prior to the expiration of his current two year permit. Respondent has requested a variance of the two-year time limitation of the permit until he can attend the next available renewal class.

PURPOSE: Comments on this Petition should be filed with the Alcohol Testing Program, Florida Department of Law Enforcement, P. O. Box 1489, Tallahassee, Florida 32302,