Section II
Proposed Rules

DEPARTMENT OF INSURANCE

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PURPOSE AND EFFECT: The proposed amendments are intended to conform the rule chapter to the statutes as they now exist. The rule chapter establishes standards for continuing education courses for insurance agents. In 1998 s. 626.2816, F.S. (1998 Supp.) was created. It provides the department with rulemaking authority for the specific purpose of "establishing standards for the approval, regulation, and operation of the continuing education program and for the discipline of licensees, course providers, instructors, school officials, and monitor groups." The standards are to be "designed to ensure that such course providers, instructors, school officials, and monitor groups have the knowledge, competence, and integrity to fulfill the educational objectives of §§ 626.2815, 626.869(5), 648.385, and 648.386." The rules address procedures and standards for electronic courses.

SUMMARY: The rules establish requirements and standards for continuing education courses and records for limited surety or bailbond agents, licensed worker's compensation adjusters, and others authorized to offer or teach related coursework.

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, 626.9611, 648.26 FS.

LAW IMPLEMENTED: 624.307(1), 624.4211, 624.501, 624.501(20), 624.501(20)(c), 626.2815, 626.2816, 626.611, 626.621, 626.681, 626.691, 626.869(5), 626.9541(1)(b), 648.26, 648.36, 648.38, 648.385, 648.386, 648.396, 648.396(4) 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: 9:30 a.m., September 26, 2000

PLACE: Room 116, Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Shirley Kerns, Bureau Chief, Bureau of Licensing, Division of Agent and Agency Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0319, phone (850)413-5405

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 RULES IS:

(Substantial rewording of Rule 4-228.010 follows. See Florida Administrative Code for present text.)

4-228.010 Purpose.

The purpose of this rule chapter is to establish requirements and standards for continuing education courses and records for persons:

(1) Licensed to solicit or sell insurance or act as limited surety or bail bond agents in this state;

(2) Licensed to adjust workers' compensation claims in this state; and

(3) Authorized to offer or teach related coursework in this state.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.2815, 626.2816, 626.869(5) FS. History–New 8-17-93, Amended _____.

(Substantial rewording of Rule 4-228.020 follows. See Florida Administrative Code for present text.)

4-228.020 Scope.

(1) This rule chapter shall apply to:

(a) All types and classes of agent and customer representative licenses for which an examination for licensure is required before consideration of any examination exception;

(b) All licensed adjusters who engage in adjusting workers' compensation claims;

(c) Bail bond agents; and

(d) All course providers, contact persons, instructors, school officials, administrative supervising instructors, supervising instructors, and monitors of continuing education courses.

(2) This rule chapter shall govern the implementation and enforcement of continuing education requirements, pursuant to sections 626.2815, 626.2816, 648.385, 648.386, and 626.869, Florida Statutes.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.2815, 626.869(5), 648.385, 648.396, 648.396 FS. History–New 8-17-93, Amended _____.

(Substantial rewording of Rule 4-228.030 follows. See Florida Administrative Code for present text.)

4-228.030 Definitions.

For purposes of these rules, the following definitions shall apply:

(1)(a) "Adjusting workers' compensation claims" means any of the following activities in connection with a workers' compensation claim:

1. Direct contact with the injured worker;

2. Preparing or signing reports;

3. Investigating;

4. Determining compensability, payment of medical bills, requiring medical examinations, or similar activity;

5. Supervising the adjuster who is in direct contact, signs reports, investigates and determines compensability; or

6. Reviewing or exercising any control of a workers' compensation claim.

(b) The term does not include:

1. Any activities for which adjuster licensure is not required; or

2. An all lines adjuster who handles only federal benefits under federal jurisdiction issued as an exclusive federal policy.

(2) "Administrative record" means any document relating to:

(a) Course provider approval,

(b) Course approval,

(c) Course offerings,

(d) Attendance,

(e) Course completions or credits,

(f) Instructor, administrative supervising instructor, or supervising instructor qualifications,

(g) Any other records required to be kept by the Florida Insurance Code, and any rule or order of the Department.

(3) "Administrative supervising Instructor" means a natural person appointed by an approved course provider on Form DI4-xxxx, Application for Administrative Supervising Instructor Appointment, rev. 2/99, which is adopted in Rule 4-228.180, for bail bond agent courses, to be responsible for:

(a) All course supervising instructors;

(b) The course outlines and curriculum;

(c) Certification of each bail bond agent;

(d) Completion of all required forms;

(e) Assuring that the course is approved prior to offering;

(g) Instruction of courses; and

(h) maintenance of necessary administrative records including class information, supervising instructor qualification, and attendance records.

(4) "Approved" or "qualified," with regard to a course provider, course, administrative supervising instructor, supervising instructor, or instructor, means that the Department has determined that the course provider, course, administrative supervising instructor, supervising instructor, or instructor, has met the criteria set forth in:

(a) Rules 4-228.040, 4-228.050, 4-228.055, 4-228.060, and 4-228.080, for approval and qualification;

(b) Form DI4-464, Application for Course Provider Approval, rev. 5/97, which is adopted in rule 4-228.180;

(c) Form DI4-1137, Application for School Official Appointment, rev. 2/99 which is adopted in Rule 4-228.180;

(d) Form DI4-1269, Application for Supervising Instructor Approval, rev. 2/99 which is adopted in Rule 4-228.180;

(e) Form DI4-398, Certification of Instructor, rev. 7/97, which is adopted in rule 4-228.180, and

(f) Form DI4-xxxx, Application for Administrative Supervising Instructor Appointment, rev. 2/99, which is adopted in rule 4-228.180.

(5) "Assessment" means the process for determining individual learning achievement.

(6) "Audit" means:

(a) Department activity to monitor the offering of courses, not excluding visits to:

1. Classrooms,

2. Exam sites, and

3. Administrative offices where administrative records are maintained; or

(b)1. Re-evaluating approved classroom course outlines and self-study programs based on current guidelines;

2. Review and verification of all applications, courses, outlines, texts and forms for accuracy of information submitted and conformance to rules and statutes.

(7)(a) "Class" means the study method of a course designed to be presented to a group of licensees using lecture, video, satellite, or other audio-visual presentation material which has an approved instructor, supervising instructor or other approved means of oversight and delivery present in the classroom during the presentation.

(b) A course with a "class" study method may have an infinite number of offerings. Each offering shall not exceed 12 months between the beginning and ending date.

(8) "Completion", when used in the context of:

(a) Self-study, means a passing grade of 70% or better on a monitored examination.

(b) "Interactive On-line" means achievement of 70% or better on an internal testing program administered by computer on line or via the internet and that is certified by the provider to the Department with each application for course approval.

(c) Class, means attendance for the full amount of time approved for each course.

(d) Seminar, means attendance for the full amount of time assigned for each workshop or break-out session selected, not to exceed the total hours approved for the course.

(9) "Compliance date" means the last day of the licensee's birth month, after holding for 24 consecutive months a license for which continuing education is required.

(10) "Contact person" means the person at the course provider level who:

(a) Has authority to transact business for the course provider through contracts, licenses, or other means;

(b) Is an owner, partner, corporate officer, or association board member or officer; and

(c) Appoints the school official or administrative supervising instructor to represent the course provider.

(d) Is designated to the Department on Form DI4-464, Application for Course Provider Approval, rev. 5/97, which is adopted in rule 4-228.180.

(11) "Course" shall mean any of the following which have been approved by the Department for the purpose of complying with continuing education requirements:

(a) Any class or seminar for:

1. Agents,

2. Customer representatives,

3. Adjusters who handle workers' compensation claims,

4. Limited surety agents,

5. Professional bail bond agents; or

(b) Any self-study program for:

1. Agents and customer representatives,

2. Limited surety agents, or

3. Professional bail bond agents.

(12) "Course Offering" means a unique offering of an approved classroom or seminar course, or a monitored exam of a self-study course, which includes a specific location, date(s), and time for the course or exam to be held; or a location, time and frequency of a monitored exam.

(13) "Course Provider" means a natural person, firm, institution of higher learning, partnership, company, corporation, society, or association offering, sponsoring, or providing courses approved by the Department in eligible continuing education subjects.

(14) "Credit hour" means one unit of credit based on a classroom hour or approved hour of credit for a seminar or self-study program.

(15) "Department" means the Florida Department of Insurance or its designees.

(16) "Disciplinary action" means administrative action pursuant to regulatory laws which has been taken against an individual or course provider as a licensee or approved course provider, instructor, supervising instructor, or school official for which:

(a) Probation, suspension, or revocation of any license (issued by this or any other state, country, or territory), approved status or other authority granted by regulatory laws has occurred; or

(b) A fine has been levied for a wrongdoing against a consumer, fellow licensee, or insurer.

(17) "Dually licensed" means holding concurrently at least one license type and class in life or health line of business, and at least one license type and class in property or casualty line of business.

(18) "Evaluation" means a process of measuring success of courses or programs or the elements of courses and programs such as instruction, learning materials, and administration.

(19) "Formal program of learning" means:

(a)1. A structured class with an instructor and detailed outline, or

2. A self-study course with text and structured lesson plans or study guide and exam.

3. Self-study may include videos or cassette tapes.

(b) Formal program of learning does not mean:

1. A discussion group with or without a leader; or

2. A general review outline for an examination.

(20) "Geographic Area" means one of two areas within which bail bond pre-licensing courses or continuing education courses are offered.

(21)(a) "Hour" means 60 minutes of class or seminar time, of which at least 50 minutes shall be instruction, with a maximum of 10 minutes of break per hour, all of which shall be accounted for on the agenda or syllabus.

(b) For self-study courses, "hour" means 50 minutes of time that is determined by the Department to be necessary to study text material in order to successfully complete the monitored final examination or on-line internal testing.

(22) "Incomplete application" or "incomplete form" means an application that contains errors or omissions, or that requires additional or clarifying information.

(23) "In-house", means an approved insurance continuing education course that is available only for employees of a course provider or for members of an association, or for which eligibility for registration requires affiliation with the course provider.

(24) "Instructor" means a natural person who has been approved by the Department and who teaches or otherwise instructs an approved continuing education classroom course or program.

(25) "Insurance Association" means an organization that is involved in the insurance industry and meets the following criteria:

(a) The organization is composed of:

1. Individuals licensed to sell insurance (agent association);

2. Companies authorized or admitted to transact insurance (company association);

3. Business entities (insurance-related trade association); or

4. Licensed and unlicensed individuals (insurance-related professional society), whether or not incorporated.

(b) The organization has:

1. Officers and a board of directors elected by the membership;

2. By-laws that establish requirements for membership;

3. Meeting schedules;

4. An agenda with an insurance-related purpose; and

5. At least ten actively enrolled members.

(26) "Interactive On-line" means a self-study course that is delivered to and taken by a student through the use of computer based technology with a connection to either a host home-office computer or the internet.

(27) "Monitor group" means a group designated by a course provider in an eligible occupational class, or an organized eligible group of individuals with a central coordinating person, approved by the Department to monitor self-study exams for approved course providers.

(28) "Monitored examination" means an objective measurement of the comprehension of a self-study program through a written or computer based examination unassisted by any person, textbooks, or other material under the supervision of a monitor from an approved monitor group.

(29) "Offering" is a specific time when a course that has been approved for continuing education credit is being held.

(30) "Office management" means:

(a) Office procedures,

(b) Internal activities relating to personnel management such as salary, incentives, annual reviews, office layout, and

(c) Other non-client oriented subjects.

(31) "On-line internal testing" means objective assessment and measurement of the comprehension of an interactive on-line self-study program through examination unassisted by any person, text book, access to on-line study program materials, or other materials during the exam.

(32) "Outline" means a synopsis or condensed version of a course incorporating the main ideas, and listing the major sections, topics, and sub-topics to be discussed, by use of Roman numerals and alpha and numeric sub-sections.

(33) "Property and casualty agent" refers to an agent who holds a type and class of licensure that authorizes the licensee to transact property, casualty, surety, or surplus lines insurance.

(34) "Public" means a course that is available to any person, in contrast to an "in-house" course.

(35) "Sales promotion" means discussion of production levels or target markets or other demographics of a specialized nature in order to promote or effectuate sales.

(36) "Salesmanship" means methods designed to:

(a) Induce a prospect's decision to buy, or

(b) Increase a licensee's effectiveness at generating new business, premium volume, or

(c) Any other method or technique related to increasing customer base in any fashion.

(37) "Satellite" means an audio-video method of presenting course material which is:

(a) Presented by an approved instructor, speaker, or lecturer; or

(b) Broadcast from a remote location to designated (identified) locations, specified on a Course Offering Form, where approved instructors are prepared with notes, outlines and/or word for word written scripts to continue, and complete if necessary, the presentation if the broadcast is interrupted for longer than five(5) minutes for any reason.

(38) "School official" means a natural person appointed by an approved course provider for other than bail bond agent courses to be responsible for:

(a) The timely filing of all required Department forms and documentation for courses, except for Form DI4-464, Application for Course Provider Approval, rev. 5/97, which is adopted in rule 4-228.180; and

(b) The maintenance of necessary administrative records including class information, instructor qualification, course completion records, and attendance records.

(c) The school official is appointed on Form DI4-1137, Application for School Official Appointment, which is adopted in Rule 4-228.180

(39) "Secondary course provider" means:

(a) course provider that seeks approval in Florida as a provider of self-study courses using texts that:

1. may or may not be approved in Florida, and

2. are developed and published by another provider of self-study courses whether or not approved in Florida.

(b) It does not include any nationally recognized provider of self-study courses or designation programs.

(40) "Self-study course" means a course designed to be studied independent of an instructor's presence through:

(a) Written, audio, or video materials, or

(b) Computer technology, including disks, on-line programs, or internet programs.

(41) "Seminar" means a course designed to be presented:

(a) using lecture, video, satellite, or other audio-visual presentation material by individuals with special expertise that has an approved speaker or instructor present during each presentation.

(b) any number of times within 12 months from the date the seminar is approved by the Department.

(c) A seminar is not an on-going class from year to year.

(d) Seminar courses are usually identified as conventions, conferences, or annual meetings.

(42) "Speaker" or "Lecturer" means a natural person whose speaking activities are usually national or international in nature with speaking schedules that are spread over a wide geographic area of two states or more and who:

(a) has special expertise,

(b) speaks at an approved seminar,

(c) is not employed by the course provider

(d) is a professional lecturer,

(e) contracts for each offering, and

(f) whose resume is furnished by the course provider with the course application.

(43) "Supervising Instructor" means a natural person who is:

(a) Approved by the Department,

(b) Appointed or employed by an approved course provider of bail bond agent continuing education courses, and

(c) Who may be responsible for one or more of the following activities of a Bail Bond Agent Course:

1. Certification to the administrative supervising instructor of each attending bail bond agent;

2. Assuring that the course is approved prior to instruction;

3. Instruction of courses; and

4. Collection and transfer of course completion and attendance records to the administrative supervising instructor.

(44) "Syllabus" means an agenda showing the schedule of how a continuing education course is to be presented, including time allotment to subject matter and including any meals and break times.

(45) "Title agent" refers to an agent who holds a type and class of licensure that authorizes them to:

(a) Determine insurability of title, and

(b) Issue title insurance.

(46) "Trade Association" means an association whose membership consists of legal business entities rather than individual persons as members.

(47) "Video" means VHS, Beta, 8 mm, or other film or television presentations of material.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.2815, 648.26, 626.869(5), 648.386 FS. History–New 8-17-93, Amended 4-11-94, _____.

(Substantial rewording of Rule 4-228.040 follows. See Florida Administrative Code for present text.)

4-228.040 Course Providers.

(1) Course provider application process.

(a) No course provider shall offer a continuing education course until the course provider has been approved by the Department.

(b) Course provider applications shall be submitted to the Department prior to submission of any course approval application.

(c) Applications for course provider approval shall be submitted on Form DI4-464, Application for Course Provider Approval, rev. 5/97, which is adopted in rule 4-228.180.

(2) Course provider approval. A course provider applicant shall be approved unless any of the grounds for disapproval listed below exist:

(a) A contact person, a school official, administrative supervising instructor, or a supervising instructor has plead nolo contendere, plead guilty, been found guilty, or been convicted of a felony under the laws of the United States of America or of any state thereof or under the laws of any country.

(b) Disciplinary action has been taken against a contact person, course provider, officer, administrative supervising instructor, or school official employed by or providing services to the course provider.

(c) Has demonstrated a lack of competence or trustworthiness.

(d) The course provider, or a contact person, school official, administrative supervising instructor, supervising instructor, or course associated therewith, has not otherwise met the qualifications specified in this rule, or has violated any provision of this rule part.

(3) General requirements.

(a) Course providers shall:

1. Maintain the records of each individual completing a course for 5 years from the date of completion including but not limited to the following records:

a. Registration forms.

b. Course fee payments.

c. Sign-in sheets.

d. Other attendance verifications.

e. Monitor affidavits.

f. Records of self-study text purchases from publishers.

g. Exam booklets.

h. Exam score sheets or records.

i. Electronic records relating to the completion of any applicable on line, internet, or computer-based course and related testing.

2. Produce on demand a physical copy of the certificates of completion whether maintained in hard copy or in computer records.

3. Be responsible for the compliance of their school officials, administrative supervising instructors, supervising instructors, instructors, speakers, and monitors with this rule chapter and the statutes implemented thereby.

4. Notify the Department within 30 days of a change in:

a. The provider, contact person, or school official telephone number,

b. The provider mailing address or administrative office address,

c. The provider name or ownership of the course provider,

d. The name of the school official or administrative supervising instructor, using Form DI4-465, Course Provider Information Update, rev. 5/97, which is adopted in rule 4-228.180, including related forms and necessary documentation.

5. Provide their complete street address if their mailing address is a post office box.

(b) Providers shall not:

1. Hold prep or cram courses prior to a self-study exam or be considered the same as giving assistance during the examination for purposes of this rule.

2. Hold classroom courses on the same subject immediately preceding a self-study exam to the same students who are taking the self-study exam.

(c) Providers may have a policy of providing a complimentary classroom course for students who fail a monitored exam or interactive on-line testing program.

(4) Self-study course providers shall:

(a) Have the same responsibilities for record keeping as any other provider. The course provider shall diligently examine the course completion records to maintain the integrity of the grades reported.

(b) Provide documentation of at least 5 years experience as a provider of self-study programs, or

(c) Provide documentation of credentials of at least one person who is on staff or under contract to provide course development services who has:

1. A college degree in instructional design and program development or comparable field, and

2. Documented experience and ability in writing self-study exams, and

3. At least 5 years of experience in development of self-study programs which do not include authorship of textbooks or other writings alone, or

(d) Apply to be approved as a secondary course provider by complying with the requirements in 4-228.080(11)(d) when submitting course applications.

(5) Course providers offering courses for bail bond agents shall:

(a) Provide a minimum of three continuing education course offerings per calendar year;

(b) Submit a course curriculum to the Department for approval;

(c) Offer a minimum of two hours of approved coursework per class;

(d) Offer classes that are taught by an approved supervising instructor; and

(e) Offer classes in at least two geographic areas of the state until the Department determines that there are adequate offerings statewide.

Specific Authority 624.308, 648.26 FS. Law Implemented 624.307(1), 624.501(20), 626.2815, 626.869(5), 648.386 FS. History–New 8-17-93, Amended 4-11-94, 2-28-95, _____.

(Substantial rewording of Rule 4-228.050 follows. See Florida Administrative Code for present text.)

4-228.050 School Officials and Administrative Supervising Instructors.

(1) A school official or administrative supervising instructor of required continuing education courses shall be appointed by an officer of the course provider, using:

(a) Form DI4-1137, Application For School Official Appointment, rev. 2/99, which is adopted in rule 4-228.180; or

(b) Form DI4-XXXX, Application for Administrative Supervising Instructor Appointment, rev. 2/99, which is adopted in rule 4-228.180.

(2) An administrative supervising instructor for the bail bond agent qualification courses shall have one of the following qualifications:

(a) At least 5 years experience in the past 10 years as a manager or officer of a managing general agency in Florida.

(b) At least 5 years experience in the past 10 years as manager or officer of an insurer authorized to engage in and actively engaged in underwriting bail in this state, provided there is a showing that the manager's or officer's experience is directly related to the bail bond industry.

(c) At least 10 years of experience as a licensed bail bond agent in Florida.

(3) Application for approval of a school official or administrative supervising instructor shall be submitted with the initial application for course approval on:

(a) Form DI4-1137, Application for School Official Appointment, rev. 2/99, which is adopted in 4-228.180; or

(b) Form DI4-XXXX, Application for Administrative Supervising Instructor Appointment, rev. 2/99, which is adopted in 4-228.180.

Specific Authority 624.308, 648.26 FS. Law Implemented 624.307(1), 624.501(20)(c), 626.2815, 626.869(5), 648.36 FS. History–New 8-17-93, Amended 4-11-94, 2-28-95, _____.

4-228.055 Supervising Instructors.

Specific Authority 624.308, 648.26 FS. Law Implemented 624.307(1), 648.396(4) FS. History–New 8-17-93, Repealed _____.

(Substantial rewording of Rule 4-228.060 follows. See Florida Administrative Code for present text.)

4-228.060 Instructors and Supervising Instructors.

(1) Continuing Education Courses. Instruction in continuing education courses shall be provided by instructors who possess the following qualifications:

(a) For agent and customer representative courses, at least 2 of the following:

1. A minimum of 5 years of substantially full-time working experience in the last ten years in the subject matter being taught.

2. Completion of a course on training techniques or methods of instructing adults as certified by a nationally-recognized course provider whose purpose is to review, evaluate and rate such courses. Such a course shall be a minimum of 40 hours of instruction.

3. A minimum of 40 hours of teaching experience in the last two years.

4. A professional designation from a recognized industry association in the line of business of the subject being taught.

5. A degree from an accredited school in the subject matter being taught.

(b) For workers' compensation adjuster courses, at least 2 of the following:

1. A minimum of 5 years of substantially full-time working experience in the subject matter being taught.

2. Completion of a course, with a minimum of 40 hours of instruction, designed to provide instruction regarding training techniques or methods of instructing adults as certified by a nationally-recognized course provider whose purpose is to review, evaluate, and rate such courses.

3. A professional designation from a recognized industry association in the line of business of the subject being taught.

4. Membership in the Florida Bar Association with minimum of two years of law practice or counsel in the subject area being taught.

5. A degree from an accredited school in the subject matter being taught.

(c) For bail bond agent courses:

1. During the past 10 years, the person must have had at least 5 years' experience as a manager or officer of a managing general agent in this state as prescribed in section 648.388, Florida Statutes;

2. During the past 10 years, the person must have had at least 5 years' experience as a manager or officer of an insurer authorized to and actively engaged in underwriting bail in this state, provided there is a showing that the manager's or officer's experience is directly related to the bail bond industry; or

3. The person has been a licensed bail bond agent in this state for at least 10 years.

(2)(a) Certification of the instructor's experience or education shall be furnished by the sponsoring course provider or the instructor on Form DI4-398, Certification of Instructor, rev. 7/97, which is adopted in 4-228.180, or on Form DI4-398, Application for Supervising Instructor Approval, rev. 7/97, which is adopted in 4-228.180, whichever is applicable.

(b) Certification shall be received by the Department or its designee and approved prior to the beginning of the course.

(c) Individuals may submit Certification of Instructor Forms or Application for supervising Instructor Approval forms independent of any school with only the applying instructor's signature. If an individual submits a certification form, a resume shall be attached.

(d) The Department will not approve an instructor or supervising instructor if:

1. The Certification of Instructor Form or Application for Supervising Instructor Approval form is incomplete,

2. There has been any disciplinary action taken against any license or eligibility for a license issued by this or any other state, country, or territory,

3. The instructor or supervising instructor has otherwise violated any insurance regulation, including this rule chapter.

4. The instructor or supervising instructor has been found guilty of or has pleaded guilty or nolo contendere to a felony or crime punishable by imprisonment of one year or more under the laws of the United States of America or of any state thereof or under the laws of any country, or

5. The instructor or supervising instructor is not in compliance with any applicable continuing education requirements.

(3)(a) The Department shall have the right to review existing records of approved instructors and supervising instructors and to terminate the approved status of any instructor or supervising instructor found to have had any disciplinary action taken against any license issued by this or any other state, country, or territory, at any time before or after being approved as an instructor or supervising instructor.

(b) School officials, administrative supervising instructors, and applicants are responsible for verifying eligibility of instructors or supervising instructors before submitting for approval.

(4) The Department shall have the right to review existing records of approved instructors or supervising instructors and terminate approved status for any instructor found to not qualify.

(5)(a) Approved instructors or supervising instructors for approved classroom courses shall display a photo ID to any Department auditor who conducts an official audit during their instruction time.

(b) Instructors or supervising instructors who are also licensees in Florida with a photo ID license may use their license photo ID card for identification.

(6)(a) Instructors and supervising instructors shall have the authority and responsibility to deny credit to anyone who disrupts the class or is inattentive.

(b) Based on the course providers' policies, refunds may be given.

(c) The following activities of students during approved class time, if knowingly allowed by an instructor, administrative supervising instructor, supervising instructor, or school official, shall be considered to be a violation of this rule chapter:

1. Sleeping;

2. Reading of non-course books, newspapers, or other non-course material;

3. Using a cellular phone or other electronic device except to take class notes or to complete mathematical exercises;

4. Leaving the class other than during authorized breaks.

(d) Penalties will be assessed against licensee, instructor, supervising instructor, administrative supervising instructor, and course provider as provided in rules 4-228.210 and 4-228.220.

(7)(a) Department employees shall not be approved as instructors, administrative supervising instructors, or supervising instructors.

(b) Department employees may be permitted to serve as guest lecturers or presenters if accompanied by an approved instructor for the appropriate course.

(c) Such instances shall be approved in advance by the Department of Insurance, Bureau of Licensing, in conjunction with the course approval process.

(d) A resume of the guest lecturer or presenter shall be submitted to the Department along with an outline of the material and amount of instruction time to be covered by the Department employee.

(8) If an instructor or supervising instructor who is required to meet a continuing education requirement relative to an insurance license issued by the Department is deemed to be non-compliant with the requirement, the instructor or supervising instructor approval status shall be suspended until the instructor or supervising instructor meets the requirement.

Specific Authority 624.308, 648.26 FS. Law Implemented 624.307(1), 624.501(20)(c), 626.2815, 626.869(5), 648.386 FS. History–New 8-17-93, Amended 4-11-94, 2-28-95, _____.

4-228.070 Speakers.

Specific Authority 624.308 FS. Law Implemented 626.2815, 626.869(5) FS. History–New 8-17-93, Repealed _____.

(Substantial rewording of Rule 4-228.080 follows. See Florida Administrative Code for present text.)

4-228.080 Course Approval; Requirements; Guidelines.

(1)(a) Each course shall be approved by the Department prior to the initial course offering and before any advertisement of the course.

(b) For course approval, the course provider shall provide a completed Form DI4-1268, Application for Course Approval, rev. 7/97, which is adopted in 4-228.180.

(c) The Department will approve a course as an acceptable continuing education program if it:

1. Is a formal program of learning which contributes directly to the professionalism, ethics or competence of a licensee;

2. Is not defined as an ineligible course topic in 4-228.080(3);

3. Is submitted using Form DI4-1268, Application for Course Approval, rev. 7/97, which is adopted in 4-228.180, together with a non-refundable fee for each program as specified in section 624.501, Florida Statutes, except:

a. Courses that are part of a national designation program named in the continuing education law, section 626.2815, Florida Statutes, or

b. Any insurance-related course as referenced in section 626.2815(3)(i), Florida Statutes;

4. Has significant intellectual or practical content to enhance and improve the insurance knowledge of the participants;

5. Uses the most recent policy forms editions and laws;

6. Includes evaluation, critique, and assessment methods;

7. Includes a recommended course level of basic, intermediate, or advanced determined by criteria set forth in 4-228.080(2) for agents only as defined in section 626.2815, Florida Statutes;

8. Includes a bibliography of reference sources, if any;

9. Includes a list and sample of supplemental teaching aids, if any; and

10. Meets all other criteria set forth in this rule.

(2) Course Levels – This requirement does not apply to courses for customer representatives, title agents, bail bond agents, or adjusters.

(a)1. BASIC LEVEL courses shall contain the following statement in all methods of advertisement or solicitation for the course: "BASIC LEVEL – This course has been designated by the Florida Department of Insurance as BASIC level. It is intended for the student who has little or no knowledge of the subject matter or who has little or no prior experience with the subject matter."

2. If applicable, any advertisement or other form of solicitation for a BASIC level course shall advise that it is open to all students, but will only count toward meeting the continuing education requirement of an agent if the agent has been licensed less than six years, as defined in Rule 4-228.

(b) INTERMEDIATE LEVEL courses shall contain the following statement in all methods of advertisement or solicitation for the course: "INTERMEDIATE LEVEL – This course has been designated by the Florida Department of Insurance as INTERMEDIATE level. It is intended for the student who has a basic knowledge with the subject matter or who has limited experience with the subject matter."

(c) ADVANCED LEVEL courses shall contain the following statement in all methods of advertisement or solicitation for the course: "ADVANCED LEVEL – This course has been designated by the Florida Department of Insurance as ADVANCED level. It is intended for the student who has significant knowledge of the subject matter and who has significant experience in the subject matter area."

(d)1. The notices described above may be used to describe a listing of courses. It is not necessary that the statement accompany each individual reference to a course.

2. Providers shall evaluate their courses prior to submission to the Department for approval, using the criteria below, and shall indicate on the course approval application which level is proposed for a course.

3. The Department will assign a level after its review based upon the following:

a. BASIC course elements:

(I) Learning objectives that are intended to provide the student with a basic knowledge and comprehension of the subject matter;

(II) Significant course time is devoted to building a familiarity with appropriate terminology, definitions and concepts of the subject matter, such as forms and coverage issues;

(III) Focus of the course might be characterized as "an introduction to" or "fundamentals of" the subject matter rather than application of the subject matter to client specific situations.

b. INTERMEDIATE course elements:

(I) A limited review, up to a maximum of 25% of total course time or material, of terms, definitions and concepts considered to be the basic concepts of the subject matter;

(II) Significant course time is devoted to the application of those basic concepts to client specific situations through case studies, problem solving exercises, calculations and other related tools;

(III) Analysis of Florida Statutes, Department rules and relevant case law as it applies to the insurance representative's conduct, product or service may also be included.

c. ADVANCED course elements:

(I) Analysis of more sophisticated or complex issues concerning the subject matter;

(II) Development of ideas helpful to the insurance representative who already specializes in or is hoping to specialize in the subject matter and related field of practice;

(III) Technical analysis of the theory underlying the subject matter;

(IV) Ideas considered to be leading edge within the subject matter;

(V) Complex case studies, calculations or other related analysis tools.

(e)1. The Department's course approval process may assign a different level, subject, or number of hours than requested on the course application when final approval is given.

2. Credits are awarded in whole hour units rounded only down.

3. "Agency Management" when used in the context of course approval subjects includes:

a. Legal responsibilities to clients,

b. Agency planning including goals and objectives, strategic, and catastrophic planning,

c. Financial management, and

d. Mergers and acquisitions as it relates to service to and relationship with purchasers of insurance.

e. It does not include personnel management, office automation, day-to-day office functions such as ordering supplies, marketing plans, or sales subjects as excluded in this section.

(3) The following are not eligible course topics or courses for continuing education:

(a) Courses approved for prelicense training or which use an approved or previously approved prelicensing study manual for more than 25% of the course time or credit effort;

(b) Courses designed to prepare students for a license examination;

(c) Courses in:

1. Mechanical office or business skills (including typing, speed reading, etc.);

2. The use of calculators or other machines or equipment;

3. The use of computer software or equipment, except in computer-based needs analysis, computer solutions to risk management as related to insurance customers, rating, and underwriting, or other line of authority;

4. Accounting or tax preparation in connection with the internal business of the licensee;

5. That relate only to the organizational procedures and internal policies of an insurer or any other employer;

6. Motivation; or

7. Salesmanship or sales promotion, including meetings held in conjunction with the general business of the licensee;

(d) Courses which are primarily intended to impart knowledge of specific products of specific companies, if the use of the products relates to the sales promotion or marketing of one or more of the products discussed;

(e) Self-study courses for adjusters who handle workers' compensation claims.

(4) The following subjects shall be eligible for approval of credit but will be discounted 50%:

(a) Courses in communication, time management, or stress management; or

(b) Courses in investments and securities other than variable products.

(5)(a) If approval has been granted for the initial offering of a class or self-study examination of an approved course, approval for subsequent offerings shall be granted without requiring a new application for course approval.

(b) A notice of subsequent offering shall be filed with the Department at least 30 days before the first day of the course or the date of the self-study examination, on Form DI4-397, Schedule of Course Offerings, rev. 7/96, which is adopted in 4-228.180.

(6) Materials and speeches used in subsequent offerings of approved courses shall be updated to maintain currency of the information.

(7)(a) Courses for agents and customer representatives will not be approved for more than 28 hours of credit regardless of total class hours, number of consecutive sessions in a seminar, or volume of text required for self-study.

(b) Courses for adjusters who handle workers' compensation claims will not be approved for more than 24 hours of credit regardless of total class hours or number of consecutive sessions in a seminar.

(c) Courses for Bail Bond Agents will not be approved for more than 14 hours per course.

(d) Courses for title agents will not be approved for more than 10 hours.

(8)(a) Approval of courses which have not been offered for a period of 5 years will expire.

(b) Future use of the courses requires a new fee and application.

(c) "Use" means the activity of presenting the classroom course and filing Form DI4-400, Roster, rev. 7/96, or Form DI4-1111, Computer Transmittal Form, rev. 7/96, which are adopted in 4-228.180.

(9) Classroom Courses; Supplemental Requirements.

(a)1. Classroom courses require a 3-tiered outline of approximately one and one-half pages per hour of instruction and a syllabus.

2. Syllabus and outline may be combined.

3. Copies of the outline shall be distributed to each student when a class is offered.

(b) Instructors' lesson plans shall be submitted to the Department if available. Course providers shall keep the instructor's lesson plans on file for Department audit.

(10) Seminar Courses; Supplemental Requirements.

(a) The detail required in the outline of each subject may be less for seminars than for classes.

(b) Sponsors may require attendance at all sessions, or variable credit may be given for selected topics (sessions or workshops).

(c) Providers shall declare whether partial credit is desired, and shall keep attendance records for each separate part.

(d) An application and fee is required for each new seminar.

(e) A resume shall be filed with the course application for each speaker of a session or workshop of an agent, customer representative, workman's compensation adjuster, or bail bond course application for the seminar study method. If the speakers change for each offering, new speaker resumes shall be sent to the Department to be filed in the course application file.

(f) For agent, customer representative, and workers' compensation adjuster seminar courses, if only speakers are used to present the material, the school official shall qualify as an instructor and shall file a Certification of Instructor Form.

(g) Only the school official's or administrative supervising instructor's signature is required on Form DI4-0400, Roster, rev. 7/96, and on each Form DI4-399, Certificate of Completion, rev. 7/96, which are adopted in 4-228.180.

(h) The Department course file will be closed after 12 months from the approval date.

(11) Self-Study Courses; Supplemental Requirements.

(a) Course Approval.

1. All applications shall include:

a. Form DI4-1268, Application For Course Approval, rev. 7/97, which is adopted in 4-228.180;

b. The curriculum to be studied, texts, and sample examinations;

c. A copy of the printed procedures for staff, school official, or administrative supervising instructors for distribution of course material and examinations;

2. A new course application is required for:

a. Any previously approved classroom study method course that is submitted for approval as self-study whether submitted as a computer based or textbook program.

b. Any previously approved self-study, seminar or classroom course that is submitted for approval as an interactive on-line course.

3. Self-Study course applications, for other than interactive on-line; software-based or other computer-based courses, shall include:

a. A signed written statement by the school official or administrative supervising instructor, affirming the total number of words in the text excluding any exhibits, forms, appendices, graphics, or pictures;

b. A certification report from a computer software program that analyzes documents for number of words, degree of difficulty as determined by the computer software program, and grade level of the material. The report shall clearly identify the software used by name of manufacturer and version number;

c. A copy of the detailed instructions to staff, school official or administrative supervising instructors, students, and monitor group for the monitoring process;

4. Interactive on-line, software-based, or other computer based training course applications shall include:

a. On-line access for the Department to review the course or a copy of course software with instructions;

b. Any supplemental workbook, lesson plan, or study guide, and sample examinations;

c. A certification report from a computer software program such as RightWriter that analyzes documents for number of words, grade level, and degree of difficulty as determined by the software program. The report shall clearly identify the software used by name of manufacture and version number;

d. Details of how access is controlled;

e. For courses with monitored exams, a copy of the detailed instructions to staff, school officials or administrative supervising instructors, students, and monitor group for the monitoring process.

f. For interactive on-line courses without a monitored exam, information which demonstrates that:

(I) Student identity is assessed and controlled upon registration and throughout the duration of the course;

(II) Students are provided access to qualified experts or other persons authorized by the provider who can respond to questions regarding course requirements and material. Such qualified experts must be available on a ratio of one per every 30 students enrolled at any one time;

(III) Student's progress is assessed and feedback is provided to the student upon completion of approximately each quarter (25%) of course material;

(IV) On-line testing is administered to determine the level of the student's comprehension of course material. Students are required to acknowledge their understanding that the on-line course testing must be completed unassisted by any person, the course material or other materials. The student acknowledgement shall also include the student's understanding that a violation of such standards may result in the loss of course credit and/or administrative sanction by the Florida Department of Insurance.

(b) Monitor Group Approval.

1. For other than interactive on-line self-study courses, the monitor group and the course shall be submitted by the provider to the Department and shall be approved by the Department, pursuant to section 228.010, prior to distribution or advertisement of course material to licensees. The monitor group shall be submitted by the provider to the Department with the Application for Course Approval and may be chosen from among the following classification types for exams given to resident Florida agents:

a. Accredited elementary or secondary educational programs or accredited institutions of higher learning:

(I) Principals, or professional staff designated by a principal;

(II) College instructors, counselors, or officials.

b. U. S. Military Training Facilities – education officers or chaplains.

c. Insurer home office training departments – home office training managers only.

d. Course providers approved by the Department to offer education courses in Florida:

(I) Providers that offer courses to licensees who have a sales relationship with that provider are considered to have a conflict of interest for purposes of monitoring exams; i.e., insurer or agency staff at any level other than stated in 4-228-080(11)(b)1.d.; and

(II) Shall not monitor the exam of one of the insurer's or agency's licensees. Instructors or other employed staff must not have conflict of interest;

e. National insurance trade, agent, or adjuster associations or societies.

f. Librarians.

g. Other organization types may be submitted to the Department for approval, with complete information and history.

2. The individual monitor assigned by the monitor group shall not monitor the exam of any relative, subordinate, associate, or employee.

3. For monitoring of self-study examinations outside of Florida:

a. Upon specific request by an approved course provider, the Department will approve a procedure which allows the course provider to create different examination monitoring instructions for non-resident licensees from those for examinations in Florida for resident licensees.

b. A non-resident licensee will be allowed to locate a monitor within their community who:

(I) Holds one of the job professions of the eligible groups, or

(II) Is a court clerk of the county in which they live, or

(III) Is a member of the state bar association in student's resident state.

4. The monitor shall:

a. Open the sealed examination envelope and observe the student taking the examination;

b. Complete a signed written document from the provider stating:

(I) The monitor group by which the monitor is employed,

(II) The monitor's business address, license type and identification number if any, and telephone number,

(III) That the monitor is not a relative, work supervisor or immediate employer of the examinee,

(IV) The student did not use any study materials to complete the examination,

(V) The student was not assisted by the monitor or anyone else.

(VI) That the monitor verified the identification of the student.

(c) Self-study examinations.

1. Self-study examination questions for other than interactive on-line courses shall be referenced back to the text. If requested by the Department, the school official, administrative supervising instructor, or course provider representative shall identify the location in the text of the answer for a particular question on an exam.

2. Except for designation programs named in the continuing education law, self-study course exams shall:

a. Have a minimum total number of questions based on the number of approved credit hours of:

15 – 28 hours	=	100 questions
8 – 14 hours	=	50 questions
1 – 7 hours	=	25 questions;

b. Be substantially revised annually for each course unless examinations are updated with each course sold.

3. A licensee must achieve a grade of 70% or more on a monitored examination taken through a monitoring process approved by the Department or on the internal testing approved for an interactive on-line course.

4. Instructions to resident licensees of Florida shall be included and prominently located in each course order form or packet of course material sold for other than interactive on-line courses including the following information:

a. The location, dates, and times that the monitored examination will be offered,

b. A phone number of the approved course provider,

c. The number of approved credit hours for the course and the approved line of authority for the course,

d. The approved course number.

e. A statement of personal responsibility for the student to sign stating that the student completed the exam without assistance.

f. For textbook based course exams, if the examination is included in the course package:

(I) A notice shall be included stating that if the student opens the examination envelope prior to the monitor inspecting the envelope, the monitor will not allow the student to complete that examination.

(II) The exam envelope shall be sealed with a resistant seal or wrapping.

5. Instructions to non-resident licensees of Florida shall include:

a. A phone number of the approved course provider,

b. The number of approved credit hours for the course and the approved line of authority for the course,

c. The approved course number,

d. The list of eligible monitor groups from which the student shall locate a monitor,

e. The instructions for the monitor, including the amount of time allowed for completion of the examination and a statement of examination completion to be signed by the monitor,

f. A statement of the student's personal responsibility that the student would be required to sign and that would be provided to the student and retained by the approved course provider as part of the course completion records,

g. The examination sealed with a resistant seal or wrapping with instructions:

(I) That the examination shall not be opened by anyone other than the monitor,

(II) That the monitor shall send the examination to the approved course provider.

6. Monitors for exams for other than an interactive on-line shall:

a. Be present to observe the exam and shall mail a monitor affidavit to the provider, school official, or administrative supervising instructor.

b. Collect the disk, CD, or other exam document for other than interactive on-line programs and mail or deliver it to the approved course provider, school official, or administrative supervising instructor for grading certification.

7. Self-study examinations may be given in the student's place of business if the approved course provider arranges for the approved monitor group to provide a monitor during the examination for other than interactive on-line courses.

8. The student shall not have possession of the answers for either in-state or out-of-state examinations after completion of the examination.

9. Form DI4-459, Self-Study Course Offering Form, rev. 7/96, which is adopted in 4-228.180, shall be submitted and approved:

a. For examinations in the State of Florida, at least 30 days before the date the examination is to be held.

b. For out-of-state examinations, not later than the filing of the roster record unless the exam date and time is requested by the student at least 45 days in advance.

10. The exam booklet, score sheet, sign-in or attendance record, and other examination records shall reflect the student's license number and shall be maintained by the sponsoring course provider for a period of 5 years.

11. Self-study course exam grades may not be curved or rounded up to achieve a passing score.

12. Students of self-study courses shall not grade their own exams or each other's exams.

13. Self-study exams may not include:

a. True or False questions,

b. Obvious or tricky questions,

c. Question stems that:

(I) Do not track study material. For example, text says "contract" and the question uses the term "Form" or "Policy".

(II) Do not provide enough information to determine the correct answer.

(III) Are not clear and concise.

d. Answer choices that:

(I) Are not in parallel form,

(II) Are of the best answer variety, multiple response, or all of the above,

(III) Are inadequately keyed responses,

(IV) Do not have enough information in the correct answer.

14. Self-study questions should avoid absolutes (always, never).

(d) Secondary course providers shall have in addition to other requirements for self-study course approval:

1. A letter from the text publisher acknowledging that material will be marketed as an independent self-study program under that course provider's name.

2. At least two (2) unique examinations for each course prepared by the text publisher or secondary course provider with the number of questions prescribed in 4-228.080(11)(a)3., unless a unique exam with the number of questions prescribed in 4-228.080(11)(a)3. is created for each course from a bank of at least:

a. 150 questions for a 1-7 hour credit exam,

b. 250 questions for an 8-14 hour credit exam,

c. 500 questions for a 15-28 hour credit exam.

3. Information on the exam process including certification of the number of questions in the test bank.

4. The specific text reference by page and paragraph to particular questions and the level of difficulty of the examination shall be provided upon request by the Department. If the level of difficulty of the examination is lower than the level of difficulty of the study material, the evaluation of the credit hours will be reduced.

5. The number of words in the text excluding pictures, graphs, indexes and tables of content.

6. A bibliography of all source material.

7. Footnotes in proper format.

8. A plan to update text material either by agreement with the publisher or by use of supplemental material provided by the secondary course provider.

9. A plan to update the examination as material is outdated, and to alternate examinations in random fashion geographically and by examination date unless unique exams are created for each course purchased.

10. Printed instructions to students on examination procedures with a contact telephone number for any questions.

11. Printed instructions to the monitor group on handling the examination process.

12. Details on how examination materials will be secured and delivered to the monitor.

13. Approval by the Department of the secondary course provider's selected monitor group with a contact person who coordinates all notices to individual monitor persons at each site.

14. Computer based training, whether on-line, on the internet, or by disk, will not be approved for secondary providers.

(e) Published texts on insurance subjects not offered by the author or publisher as part of a self-study program may not be used by secondary course providers as their source text, unless an extensive study guide is prepared as a supplement.

(12) Course Audits.

(a) The Department reserves the right to audit courses and administrative records with or without notice to the sponsoring course provider.

(b) Audits will result in notice to the course provider of deficiencies found, if any, and of corrective action required by the course provider where warranted.

(c) The Department will reduce the number of approved credit hours for the course or disapprove the course entirely if the course provider fails to correct the deficiencies.

(13) Disapproval. Any one of the following criteria shall constitute grounds for the Department to disapprove an Application for Course Approval:

(a) A contact person, a school official, or administrative supervising instructor of the provider has been found guilty of or having pleaded guilty or nolo contendere to a felony under the law of the United States of America or of any state thereof or under the law of any country before or after the filing of an application with the Department whether or not declared on the application.

(b) Disciplinary action has been taken against a contact person, school official, or administrative supervising instructor of the provider before or after the filing of an application with the Department whether or not declared on the application.

(c) The application is incomplete.

(d) The course or course provider, a contact person, a school official, or administrative supervising instructor associated therewith, has not otherwise met the qualifications specified in this rule, or has violated any provision of this rule part.

Specific Authority 624.308, 648.26 FS. Law Implemented 624.307(1), 624.501(20), 626.2815, 626.869(5), 648.386 FS. History–New 8-17-93, Amended 4-11-94, 2-28-95, _____.

(Substantial rewording of Rule 4-228.090 follows. See Florida Administrative Code for present text.)

4-228.090 Course Offerings and Attendance Records.

(1) Class or Seminar Offerings.

(a) A completed Form DI4-397, rev. 7/96, Schedule of Course Offerings, adopted in rule 4-228.180, shall be furnished by the provider for each class or seminar offering for each location.

1. The form shall be received by the Department 30 days prior to the first day of the class, and shall be approved by the Department prior to the beginning of the class or seminar offering.

2. The form shall be submitted no more than 1 year in advance of the beginning of the class or seminar offering.

3.a. Assigned room numbers and/or building names shall be included on the filed course offering form unless the street address is inclusive of the room location.

b. Location information shall be posted at the entrance to the building or in the lobby of such locations as hotels or conference centers.

4. Requests for changes to approved course offerings shall be in writing and approved by the Department prior to the beginning of the class or seminar offering.

5. The original approved course offering shall be used for revisions by making changes on the original and sending the original to the Department.

(b) Classes and seminars shall be in session on scheduled dates during specified hours.

(c) The class or seminar shall be held in an area readily accessible for audit by an authorized Department employee.

(d) Building and parking areas shall be well lighted for identification and safety during evening hours.

(e) Classes and seminars may be scheduled for any day of the week for no more than 10 hours in any one day or to conclude no later than 10:00 p.m.

(f) Students shall be provided with a syllabus containing, at minimum:

1. The course title;

2. Times and dates of the course offering;

3. The name, address, and telephone number of the sponsoring course provider;

4. A detailed outline of the subject matter to be covered for classroom courses, or workshop summaries for seminars; and

5. Appropriate handouts.

(2) Self-Study Exam Offerings.

(a) The provider of each self-study course other than approved interactive on-line courses shall furnish a completed Form DI4-459, Self-Study Course Offering Form, rev. 7/96, adopted in rule 4-228.180, for each examination location in Florida.

1. The form shall be received by the Department 30 days prior to the day of the examination and approved by the Department prior to the beginning of the examination.

2. The form may be submitted up to 1 year in advance of the date of the examination.

3.a. Assigned room numbers and building names shall be included on the filed Course Offering form unless the street address is inclusive of the room location.

b. Location information shall be posted at the entrance to the building or in the lobby of such locations as hotels or conference centers.

4. If exams are scheduled on demand by appointment when requested by a licensee:

a. A Schedule of Self-study Course Offering Form DI4-459 shall be filed for each request.

b. Each request may include multiple courses.

c. A unique course offering ID shall be given to each course.

d. Location may be public or private.

e. Offering may be for one or more licensees.

f. A roster shall be filed for each unique course offering ID using Form DI4-400, Roster, rev. 7/96, or Form 1111, Computer Transmittal Form, rev. 7/96, which are adopted in rule 4-228.180, listing students who successfully complete the examination.

g. Exams shall be in session or monitors shall be available on scheduled dates for approved offerings unless a cancellation has been filed.

5. If exams are scheduled on a blanket basis by open appointment by providers:

a. A frequency shall be established such as every Thursday, or the first and third Friday, etc. for each month with open hours designated.

b. A schedule form shall be filed for each month with the first day of the month as the beginning date and the last day as the ending date.

c. Each form may include multiple courses.

d. Locations shall be pre-arranged and open during specific designated hours.

e. Locations shall be filed with the schedule form for each month.

f. A unique course offering ID will be given to each course for each month to include all locations.

g. The rosters shall be filed after the last exam for that month is given and shall include all students who took exams for that month.

h. A separate roster shall be filed using Form DI4-400, Roster, rev. 7/96, or Form 1111, Computer Transmittal Form, rev 7/96, which are adopted in rule 4-228.180, for each course using the course offering ID given for that month for that course.

i. Monitors shall be available during scheduled hours on scheduled dates for approved open exam offerings whether or not a licensee chooses that particular offering unless a cancellation has been filed.

6. Exam times shall be during normal business hours any day of the week with no exam concluding later than 10:00 p.m.

7. At least two hours shall be scheduled for each exam.

8. No changes will be permitted to approved Self-study Course Offerings unless requested in writing and approved by the Department prior to the monitored exam.

9. Examinations given outside of Florida for non-residents do not require the filing of a Self-study Course Offering Form in advance.

10. Self-study Course Offering Forms for non-residents at the discretion of the provider may be submitted with the Roster Form.

(b) Examination locations:

1. Inside Florida.

a. Shall be open on scheduled dates during specified hours.

b. Shall be readily accessible for audit by an authorized Department employee.

c. May be public or private.

2. Out-of-state for non-resident licensees.

a. Shall be monitored by a monitor from an approved monitor group.

b. May be public or private.

c. Shall not be used by Florida resident agents unless the exam is part of a designation program approved in section 626.2815, Florida Statutes.

(3) Course providers with member chapters:

(a) Affiliated chapters may file schedules of course offerings for courses approved for the provider.

(b) The chapter shall communicate with the provider to identify current approved course names and course ID numbers.

(c) Only approved classroom courses are eligible.

(d) Self-study designation courses being taught in a classroom setting by Society of CLU Chapters shall be submitted for classroom course approval by the chapter, with the application fee.

(e) An affiliated chapter's school official shall sign the Schedule of Course Offering Form and the Roster.

(f) The approved course provider name shall appear on the forms.

(g) Administrative records are the responsibility of the approved course provider; however, they may be maintained by each chapter if available for spontaneous administrative audits by the Department.

(4) Class, Seminar, or Examination Attendance.

(a) The student's photo ID license or driver's license shall be used for verification of identity by the course provider for each offering.

(b) A Roster submitted to the Department that includes the name of a licensee who was not in attendance shall be grounds for administrative action by the Department.

(5) Cancellations of Class, Seminar, or Self-study exam Offerings.

(a) If a course offering is canceled at least 5 days prior to the scheduled beginning date, written notice shall be submitted to the Department the same day.

(b) If a course offering is canceled within 5 days of the scheduled beginning date, notice of the cancellation shall be received by the Department within 5 days after the scheduled beginning date.

(6) Parts of an approved course may not be presented separately from the entire approved outline material.

(7) A course provider shall not award credit for a class, seminar, or self-study examination that was offered prior to the approval date of the course application by the Department.

Specific Authority 624.308, 648.26 FS. Law Implemented 624.307(1), 626.2815, 626.869(5), 648.386 FS. History–New 8-17-93, Amended 4-11-94, _____.

(Substantial rewording of Rule 4-228.100 follows. See Florida Administrative Code for present text.)

4-228.100 Certification of Students.

(1)(a) A completed Certificate of Completion shall be issued to each person completing a continuing education course. The name, address and license number of the student shall be filled in on the Certificate of Completion by the course provider or administrative supervising instructor.

(b)1. Course providers shall submit a completed roster of all students who complete a classroom course, seminar, or self-study examination.

2. The roster shall be received by the Department within 20 days after the course completion date on the approved schedule of course offering.

3. If credit for instruction is requested, the roster shall also include:

a. The instructor's full name,

b. License number, and

c. The number of hours taught.

(c) Rosters for completion of self-study examinations out-of-state may be sent once a month on the last day of the month, or when the last results of examinations for that month are completed.

(d) Rosters for all courses, if submitted electronically, shall be submitted to the Department using the Department-supplied software.

1. The provider shall use a 3.5" micro diskette or other transmittal means as specified by the Department based on current computer requirements.

2. The diskette shall be accompanied by Form DI4-1111, Computer Transmittal Form, rev. 7/96, which is adopted in 4-228.180.

(2)(a) Classroom study method courses shall be attended or completed in their entirety in order for a licensee to receive credit.

(b) Providers may not issue certificates of completion to students who do not attend or complete the entire continuing education course.

(c) At the discretion of the sponsoring course provider, students may miss a class and attend a makeup class to complete the attendance requirement upon a showing of good cause.

(d) "Good cause" means an incident or occurrence which is beyond the control of the applicant and which prevents compliance. Examples of good cause include disabling accident, illness, call to military duty, or declared national emergency.

(e) The sponsoring course provider may hold makeup sessions to accommodate any student.

(3)(a) Seminar study method courses will be evaluated for the total number of hours of credit possible at the event.

(b) Providers may issue certificates of completion to students who do not attend the entire seminar if the seminar is made up of individual workshops or sessions where the subject presentation is completed in each workshop, such as conventions and annual meetings.

(c) Attendees may receive less credit than the total possible by attending fewer than the total possible sessions.

(4)(a) Licensees shall maintain records of all course completions for 5 years from the completion dates.

(b) Failure to maintain these records shall result in the Department relying solely on the submitted documents from course providers and Department records for compliance verification.

(c) The number of hours credited to a licensee's record will include only time spent on approved educational offerings.

(d) The number of approved hours for a course will include only the hours of approved subjects.

(5) Certificates shall be issued as soon as attendance records can be verified and shall be issued within 30 days of the completion date of the class or seminar.

(6) Neither students nor instructors may earn continuing education credit for attending or instructing at any subsequent offering of the same continuing education course for three years after attending or teaching the course.

(7)(a) Each approved course provider shall maintain accurate attendance records containing:

1. The name, date, and location of the offering;

2. Documentation that an ID was checked;

3. Name and license ID number of licensee;

4. Proof of at least 2 attendance checks for class and seminar courses over 4 hours; and

5. A statement signed by the instructor or school official that the attendance records are correct.

(b) Records shall be maintained by the approved course provider and shall be available to the Department for a period of 5 years after each completion of an offering.

(c) Attendance records shall be submitted to the Department only if they are requested by the Department.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 624.501(20)(c), 626.2815, 626.869(5) FS. History–New 8-17-93, Amended 4-11-94, _____.

(Substantial rewording of Rule 4-228.110 follows. See Florida Administrative Code for present text.)

4-228.110 Textbooks.

(1) Textbooks are not required for class and seminar courses.

(2) Any printed material distributed to students shall be of a readable quality.

(3) Any textbook shall contain accurate and current information relating to the subject being taught.

(4) Textbooks or other detailed study material such as computer software or videos used for self-study courses shall be submitted for approval, and will be required for class and seminar approval, if the Department determines that the outline alone does not reasonably provide clear and sufficient information to allow the Department to determine whether approval shall be granted.

(5) Each self-study course other than approved interactive on-line or other on-line or internet courses shall be sold with the approved textbook and supplemental material.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.2815, 626.869(5) FS. History–New 8-17-93, Amended _____.

(Substantial rewording of Rule 4-228.120 follows. See Florida Administrative Code for present text.)

4-228.120 Course Fees.

(1) Fees for courses shall be clearly identified to students.

(2) A statement regarding the course provider's cancellation and refund policy shall be a part of the registration process.

(3) If a substitute course is not offered within 50 miles of a student's place of business, a refund may be requested.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.2815, 626.869(5) FS. History–New 8-17-93, Amended _____.

(Substantial rewording of Rule 4-228.130 follows. See Florida Administrative Code for present text.)

4-228.130 Facilities.

(1) Each course, seminar, or self-study examination shall be conducted in a classroom or other facility which is adequate to comfortably accommodate the faculty and the number of participants.

(2) If course time exceeds two hours, the facility shall provide an adequate writing surface and chair for each student in attendance.

(3) The sponsor may limit the number of participants enrolled in a course.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.2815, 626.869(5) FS. History–New 8-17-93, Amended _____.

4-228.140 Examinations.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.2815, 626.869(5) FS. History–New 8-17-93, Repealed _____.

(Substantial rewording of Rule 4-228.150 follows. See Florida Administrative Code for present text.)

4-228.150 Advertising.

(1)(a) Courses shall not be advertised in any manner as an approved insurance continuing education course unless course approval has been granted, in writing, by the Department.

(b) The wording "approval pending" or similar language is prohibited since it is inherently misleading.

(2) Advertising shall be truthful, clear, and not deceptive or misleading.

(3) Advertising shall display the name and provider number of the course provider.

(4) A school official or administrative supervising instructor shall not advertise independent of an approved provider.

(5)(a) Continuing education advertising relating to approved continuing education courses shall include the following statement: "This course has been approved by the Florida Department of Insurance for insurance continuing education credit."

(b) The statement shall be prominently displayed on any pamphlet, advertisement, or circular.

(c) The number of hours for which a course has been approved shall be prominently displayed on continuing education advertisements or circulars, and shall differentiate between approved continuing education credit hours and non-credit hours.

(6)(a) If the course is longer than the number of hours of credit to be given, it shall be clear that credit is not earned for the entire course.

(b) Advertising of approved continuing education courses shall be clearly distinguishable from the advertisement of all other courses and services which have not been approved to meet continuing education requirements.

(7) Advertising for continuing education courses shall include language regarding course levels as described in rule 4-228.080.

(8) Advertising shall be truthful, clear, and not deceptive or misleading.

(9) Advertising of several courses together to represent a single offering shall identify each course separately with the approved course names, credit hours, and course ID numbers.

(10) Advertising of continuing education courses shall show the name of the entity as shown on the Application for Entity, as incorporated in rule 4-228.040.

(11) Advertising of continuing education shall not include any sales promotion wording for any entity that may be underwriting the cost of the course for the participants.

(12) Advertising of self-study courses shall not include a guarantee of passing the monitored examination.

(13) An approved course provider that places, or causes to be placed, advertisement for continuing education courses bears sole responsibility for the content of the advertisement and its compliance with all applicable regulations.

(14) Advertising of continuing education courses shall include the line of authority for which a course has been approved as stated in the course approval letter from the Department.

Specific Authority 624.308, 626.9611 FS. Law Implemented 624.307(1), 626.2815, 626.869(5), 626.9541(1)(b) FS. History–New 8-17-93, Amended _____.

(Substantial rewording of Rule 4-228.160 follows. See Florida Administrative Code for present text.)

4-228.160 Prohibited Practices.

The following practices of approved course providers, school officials, administrative supervising instructors, supervising instructors, and instructors are prohibited:

(1) Misrepresenting any material submitted to the Department.

(2) Failure to conduct classes for the total required hours.

(3) Allowing a proxy to complete the course.

(4) Falsification of any course completion record or other document related to the course.

(5) Allowing any individual to fulfill the duties of a school official or administrative supervising instructor who is not approved as such.

(6) Offering or teaching a course without the express written consent of the approved course provider.

Specific Authority 624.308, 648.26 FS. Law Implemented 624.307(1), 626.2815, 626.869(5), 648.386 FS. History–New 8-17-93, Amended _____.

4-228.170 Falsification of Reports.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.2815, 626.611, 626.621, 626.869(5) FS. History–New 8-17-93, Repealed _____.

(Substantial rewording of Rule 4-228.180 follows. See Florida Administrative Code for present text.)

4-228.180 Forms.

(1) The following forms are hereby adopted and incorporated by reference:

	FORM	TITLE	REVISED
(a)	DI4-397	Schedule of Course Offerings	rev. 7/96
(b)	DI4-398	Application for Supervising Instructor Approval	rev. 7/97
(c)	DI4-398	Certification of Instructor	rev. 5/97
(d)	DI4-399	Certificate of Completion	rev. 7/96
(e)	DI4-400	Roster	rev. 7/96
(f)	DI4-401	Attendance Record	rev. 2/99
(g)	DI4-459	Self-Study Course Offering Form	rev. 7/96
(h)	DI4-460	Request for Extension of Time	rev. 7/97
(i)	DI4-463	Nonresident Agent Certification	rev. 7/97
(j)	DI4-464	Application for Course Provider Approval	rev. 5/97
(k)	DI4-465	Course Provider Information Update	rev. 5/97
(l)	DI4-465	Provider Information	rev. 7/97
(m)	DI4-501	Appointment Form	rev. 1/92
(n)	DI4-1106	Statement of Government Status	rev. 6/93
(o)	DI4-1107	Statement of Author Credit	rev. 7/96
(p)	DI4-1108	Statement of Adjuster Status	rev. 6/93
(q)	DI4-1109	Application for CLU/CPCU/ College Degree + Experience Status	rev. 7/96
(r)	DI4-1111	Computer Transmittal Form	rev. 7/96
(s)	DI4-1137	Application for School Official Appointment	rev. 2/99
(t)	DI4-1268	Application for Course Approval	rev. 7/97
(u)	DI4-1269	Application for Supervising Instructor Approval	rev. 2/99
(v)	DI4-XXXX	Application for Administrative Supervising Instructor Appointment	rev. 2/99

(2)(a) All forms in (1) above may be obtained from and shall be submitted to the Bureau of Agent and Agency Licensing, Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0319, or the current contract vendor for the specific process for which the form is needed, and may be reproduced at will.

(b) No facsimile transmissions of forms will be accepted by the Department for filing purposes.

(3) Forms shall be filed in accordance with the respective time provisions set forth in this rule chapter.

(a) Forms filed after a particular deadline shall be considered late, as determined by the Department date-received stamp.

(b) Forms shall be original, and facsimile transmissions will not be accepted to prevent late filing status.

(c) Changes to information on approved original forms shall be sent to the Department as soon as knowledge of the change occurs.

Specific Authority 624.308, 648.26 FS. Law Implemented 624.307(1), 624.501, 626.2815, 626.869(5), 648.386 FS. History–New 8-17-93, Amended _____.

(Substantial rewording of Rule 4-228.190 follows. See Florida Administrative Code for present text.)

4-228.190 Transition Time in the Event of Rule Changes.

(1) Any course provider whose status or course is affected by the effective date of this rule chapter or amendment of this rule chapter shall have up to 90 days to bring their program or status into compliance with this rule chapter and amendments.

(2) Requirements for fees, form processing, conduct of classes, examinations, administrative supervising instructors, instructors, speakers, students, school officials or supervising instructors shall apply immediately.

(3) This rule section does not affect any statutorily mandated effective dates or requirements.

Specific Authority 624.308, 648.26 FS. Law Implemented 624.307(1), 624.501, 626.2815, 626.611, 626.621, 626.681, 626.869(5), 648.386 FS. History–New 8-17-93, Amended _____.

(Substantial rewording of Rule 4-228.210 follows. See Florida Administrative Code for present text.)

4-228.210 Penalties for Course Providers, School Officials, Administrative Supervising Instructors, Supervising Instructors, Instructors, and Monitors.

The Department shall impose the following penalties upon a Department finding of a violation of this rule chapter, or sections 626.2815, 626.869(5), or 648.385 and 648.386, Florida Statutes, by course providers, school officials, administrative supervising instructors, supervising instructors, instructors, or monitors:

(1) Order the refund of all course tuition and fees to licensees in the event a refund is necessary to compensate a student or prospective student for a loss incurred.

(2) Require course providers, school officials, administrative supervising instructors, supervising instructors, instructors, and/or monitors to provide licensees with a suitable course to replace the course that was found in violation.

(3) Withdraw approval of courses sponsored by the provider.

(4) Suspend or revoke the authority to instruct or deny the approval of a course provider, school official, administrative supervising instructor, supervising instructor, instructor, speaker, lecturer, or monitor if the Department finds:

(a) A violation of any provision of section 626.611 or 626.621, Florida Statutes, or any subsection of this rule chapter, or

(b) The person has had any disciplinary action taken against any license relating to the business of insurance issued by this or any other state, country, or territory at any time before or after being approved in this state.

(5) The Department shall refuse approval of future courses if past offerings are not in compliance with Florida Statutes or this rule chapter.

(6) The following fines shall apply to specific instances of misconduct and are not exclusive of other penalties set forth in this rule chapter:

(a) Three or more instances in a 90-day period of failure to notify the Department of a course offering until after the course offering has been completed or of failure to notify the Department of a change in a course offering as soon as knowledge of the change occurs – $100.00 per instance. (There has been a suggestion that we modify this on a graduated scale for willful and non-willful occurrences.)

(b) Advertising as approved, approval pending, or similar language or soliciting attendance for any course before the Department has notified the school official or supervising instructor of the status of the course application – $1,000 per incident.

(c) Advertising as approved, approval pending, or similar language, or soliciting attendance for any course that was either never approved by the Department or which was disapproved, closed, or withdrawn – $1,000 per incident.

(d) Instruction of a class by an unapproved instructor – $500 penalty to instructor and approved course provider.

(e) Failure to maintain course completion and attendance records for audit as specified in 4-228.040(3)(a) and 4-228.080(11)(c)11. for 5 years following the completion date of each offering – $500 per audit.

(f) Falsification of any document, form, outline or information in connection with any course – $1,000 per violation.

(g) Failure to use only the approved outline on file with the Department – $500 per violation.

(h) Failure to notify the Department within 30 days of a change of address – $100 per violation.

(i) For violation of any section of this rule chapter, other than for non-compliance with continuing education requirements, for which no monetary penalty is provided – $250 per violation for a first occurrence; $500 per violation for a second or subsequent occurrence.

Specific Authority 624.308, 648.26 FS. Law Implemented 624.307(1), 624.4211, 626.2815, 626.611, 626.621, 626.869(5), 648.385, 648.386 FS. History–New 8-17-93, Amended 4-11-94, _____.

(Substantial rewording of Rule 4-228.220 follows. See Florida Administrative Code for present text.)

4-228.220 Licensee Compliance; Requirements; Penalties for Non-Compliance.

(1)(a) A licensee shall be required to meet continuing education requirements by the end of the licensee's birth month after being licensed 24 months, and every two years thereafter.

(b) Lack of an appointment does not eliminate the continuing education requirement.

(c) A person applying for and receiving a license in the person's birth month shall be required to provide documentation of continuing education credits earned as of the birth month two years later.

(2)(a) The Department shall refuse to renew or continue the appointments or issue new appointments of any licensee who does not satisfy the minimum continuing education requirements by the compliance date.

(b) Any accrued continuing education requirements after the licensee's failure to meet the requirements of any compliance period shall be satisfied in addition to the initial amount before appointments will be processed.

(3) These remedies are not exclusive of the provisions of sections 626.611, 626.621, 626.681, and 626.691, Florida Statutes.

(4) The licensee is responsible for maintaining a file of certificates issued for approved courses taken, which may be used to correct Department records if necessary.

(5) Except as otherwise stated in this rule, credit shall be earned in the line of business for which the licensee is licensed.

(a) Customer representatives and general lines, industrial fire, auto physical damage, and surplus lines agents shall earn credits in property and casualty courses related to the authority of their license to satisfy the total hours of credit required for their license.

(b) Life; health; industrial life; and life, health and variable annuity agents, shall earn credits in a life or health course related to the authority of their license to satisfy the total hours of credit required for their license.

(c) Adjusters who handle workers' compensation claims shall earn credits in courses on workers' compensation subjects.

(d) Title agents who are licensed only as title agents shall earn credits in courses on title subjects.

(e) Bail Bond Agents shall earn credits in courses in Bail Bond Agent license subjects.

(f) General lines agents who are licensed only in property and casualty shall earn:

1. 28 hours of credit (at least 14 hours in property and casualty subjects and the balance in health), or

2. 14 hours of credit (at least 7 hours in property and casualty subjects and the balance in health), if they have:

a. 25 years of licensed experience in property and casualty, and

b. a CPCU designation or a degree in risk management or insurance with 18 hours of approved insurance courses in property and casualty, and

c. requested and have been approved for a reduction of their total requirement

3. For compliance periods that begin January 1, 1998 or later and end December 31, 1999, or later, licensees defined in this section who have been licensed for six years or more in Florida as of the beginning date of the compliance period, shall earn:

a. 20 hours of credit (at least 10 hours in property and casualty and the balance in health only) or

b. 10 hours of credit (at least 5 hours in property and casualty and the balance in health only) if they have:

(I) 25 years of licensed experience in property and casualty, and

(II) CPCU designation or a degree in risk management or insurance with 18 hours of approved insurance courses in property and casualty, and

(II) requested and have been approved for a reduction of their total requirement.

(g) General lines agents who also are licensed as life or health or variable annuity agents shall earn:

1. 28 hours of credit:

a. 14 hours in property and casualty subjects; and

b. 14 hours in their license line of authority of life, or health, or variable annuity subjects; or

2. 14 hours of credit:

a. 7 hours in property and casualty subjects; and

b. 7 hours in their license line of authority of life, or health, or variable annuity subjects, if they have:

(I) 25 years of licensed experience in property and casualty; and

(II) a CPCU designation or a risk management and insurance degree with 18 semester hours of credit in property and casualty subjects approved by the Department; or

(III) 25 years of licensed experience in their license line of authority of life, or health, or variable annuity subjects; and

(IV) a CLU designation or a risk management and insurance degree with 18 semester hours of credit in life or health or variable annuity subjects approved by the Department; and

(V) requested and have been approved for a reduction of their total requirement.

3. For compliance periods that begin January 1, 1998 or later and end December 31, 1999, or later, licensees defined in this section who have been licensed for six years or more in Florida as of the beginning date of the compliance period, shall earn:

a. 20 hours of credit:

(I) 10 hours in property and casualty subjects; and

(II) 10 hours in their license line of authority of life or health or variable annuity subjects; or

b. 10 hours of credit:

(I) 5 hours in property and casualty subjects; and

(II) 5 hours in their license line of authority of life or health or variable annuity subjects if they have:

(A) 25 years of licensed experience in property and casualty; and

(B) a CPCU designation or a risk management and insurance degree with 18 semester hours of credit in property and casualty subjects approved by the Department; or

(C) 25 years of licensed experience in their license line of authority of life, or health, or variable annuity subjects; and

(D) a CLU designation or a risk management and insurance degree with 18 semester hours of credit in life or health, and

(E) requested and have been approved for the reduction.

(h) General lines agents who have become appointed as health agents with an insurer that requests a health only (2-40 type and class) appointment for the agent, shall earn 50% of the total credits required in property and casualty subjects and 50% in health only subjects.

(i) Credit hours for a single course cannot be used to satisfy the requirement for more than one license type and class during the compliance period. Credit hours for a single course cannot be split to satisfy the requirement of more than one continuing education law.

(j) Customer representatives who are licensed only as customer representatives shall earn:

1. 14 hours of credit (at least 7 hours in property and casualty and the balance of hours in health only); or

2. 10 hours of credit (at least 5 hours in property and casualty insurance and the balance in health only) for compliance periods that begin January 1, 1998 or later and end December 31, 1999 or later.

(k) Customer representatives who are also licensed as a life or health or variable annuity agent shall earn:

1. 28 hours of credit:

a. 14 hours in property and casualty subjects; and

b. 14 hours in their license line of authority of life or health or variable annuity subjects, until a reduction applies as specified in section 626.2815(3)(d), Florida Statutes; or

2. 14 hours of credit:

a. 7 hours in property and casualty; and

b. 7 hours in their license line of authority of life or health or variable annuity subjects, until a reduction applies as specified in section 626.2815(3)(d), Florida Statutes, if they have:

(I) 25 years of licensed experience as a life or health or variable annuity agent; and

(II) a CLU designation or a degree in risk management and insurance with 18 hours of approved insurance courses in their license line of authority of life or health or variable annuity subjects; and

(III) requested and have been approved for a reduction of their total requirement.

3. For compliance periods that begin January 1, 1998 or later and end December 31, 1999 or later licensees who have been licensed in Florida for six (6) years or more as a life or health or variable annuity agent as of the beginning of the compliance period, shall earn:

a. 20 hours (10 hours in property and casualty subjects and 10 hours in their license line of authority of life or health or variable annuity subjects) every 2 years; or

b. 10 hours (5 hours in property and casualty subjects and 5 hours in their license line of authority of life or health or variable annuity subjects) every 2 years if they have:

(I) 25 years of licensed experience as a life or health or variable annuity agent; and

(II) a CLU designation, or a degree in risk management or insurance with 18 hours of approved insurance courses in their license line of authority; and

(III) requested and have been approved for a reduction of their total requirement.

(l) Limited customer representatives who are licensed only as limited customer representatives shall earn:

1. 14 hours of credit in personal automobile-only insurance subjects.

2. For compliance periods that begin January 1, 1998 or later and end December 31, 1999 or later, shall earn 10 hours of credit in personal automobile-only insurance subjects.

(m) Limited customer representatives who are also licensed as life or health or variable annuity agent shall earn:

1. 28 hours of credit:

a. 14 hours in personal automobile insurance subjects; and

b. 14 hours in their license line of authority of life or health or variable annuity insurance subjects until a reduction applies as specified in section 626.2815(3)(d), Florida Statutes.

2. For compliance periods that begin January 1, 1998 or later and end December 31, 1999 or later, licensees who have been licensed in Florida for six (6) years or more as a life or health or variable annuity agent as of the beginning of the compliance period, shall earn:

a. 20 hours every 2 years:

(I) 10 in personal auto; and

(II) 10 in their license line of authority of life or health or variable annuity; or

b. 10 hours every 2 years:

(I) 5 in personal auto; and

(II) 5 in their license line of authority of life or health or variable annuity if they have:

(A) 25 years of licensed experience as a life or health or variable annuity agent; and

(B) a CPCU or CLU designation, or a degree with 18 hours of approved insurance courses in their license line of authority; and

(C) requested and have been approved for a reduction of their total requirement.

(n) Administrative agents who are only licensed as administrative agents shall earn:

1. 14 hours of credit in life or health or variable annuity insurance subjects;

2. For compliance periods that begin January 1, 1998 or later and end December 31, 1999 or later, shall earn 10 hours of credit in life or health or variable annuity insurance subjects.

(o) Administrative agents who are also licensed as property and casualty insurance agents shall earn:

1. 28 hours of credit:

a. 14 hours in life or health or variable annuity insurance; and

b. 14 hours in property and casualty insurance subjects relative to the authority of the insurance license lines of authority until a reduction applies as specified in section 626.2815(3)(d), Florida Statutes, or

2. 14 hours:

a. 7 hours in life or health or variable annuity; and

b. 7 hours in property and casualty insurance subjects if they have:

(I) 25 years of licensed experience as a property and casualty agent; and

(II) a CPCU designation or a risk management and insurance degree with 18 semester hours of approved insurance courses property and casualty insurance subjects; and

(III) requested and been approved for a reduction of their total requirement.

3. For compliance periods that begin with January 1, 1998 or later and end December 31, 1999 or later, licensees who have been licensed in Florida for six (6) years or more as property and casualty agents as of the beginning of the compliance period shall earn:

a. 20 hours every 2 years;

(I) 10 in property and casualty; and

(II) 10 in life or health or variable annuity; or

b. 10 hours every 2 years;

(I) 5 in property and casualty; and

(II) 5 in life or health or variable annuity, if they have:

(A) 25 years of licensed experience as a property and casualty agent; and

(B) a CPCU designation, or a degree with 18 semester hours of approved insurance courses in property and casualty insurance subjects; and

(C) requested and have been approved for a reduction of their total requirement.

(p) Administrative agents who are also licensed as any other type of life or health or variable annuity agent shall earn:

1. 28 hours of life or health or variable annuity credits until a reduction applies as specified in section 626.2815(3)(d), Florida Statutes; or

2. 14 hours of life or health or variable annuity credits, if they have:

a. 25 years of licensed experience in life or health or variable annuity; and

b. Either a CLU designation, or a risk management and insurance degree with 18 hours of approved insurance courses in their license line of authority; and

c. requested and have been approved for a reduction of their total requirement.

3. For compliance periods that begin January 1, 1998 or later and end December 31, 1999 or later, licensees who have been licensed in Florida for six (6) years or more as a life or health or variable annuity agent as of the beginning of the compliance period, shall earn:

a. 20 hours every two years of life or health or variable annuity credits; or

b. 10 hours every 2 years if they have:

(I) 25 years of licensed experience in life or health or variable annuity; and

(II) Either a CLU designation, or a risk management and insurance degree with 18 hours of approved insurance courses in their license line of authority; and

(III) requested and have been approved for a reduction of their total requirement.

(q) Title agents who are also licensed as life or health or variable annuity agents shall earn:

1. 28 hours of credit:

a. 14 hours in title insurance subjects; and

b. 14 hours in their license line of authority of life or health or variable annuity insurance subjects; or

2. 14 hours of credit:

a. 7 hours in title insurance subjects; and

b. 7 hours in their license line of authority of life or health or variable annuity insurance subjects, if they have:

(I) 25 years of licensed experience as a life or health or variable annuity agent; and

(II) a CLU designation or a risk management and insurance degree with 18 hours of approved insurance course credits in their license line of authority of life or health or variable annuity subjects; and

(III) requested and have been approved for a reduction of their total requirement.

3. For compliance periods that begin January 1, 1998 or later and end December 31, 1999 or later, licensees defined in this section who have been licensed in Florida for six (6) years or more as a life or health or variable annuity agent as of the beginning of the compliance period shall earn:

a. 20 hours every 2 years:

(I) 10 hours in title subjects; and

(II)10 hours in their license line of authority of life or health or variable annuity; or

b. 10 hours every 2 years:

(I) 5 in title subjects; and

(II) 5 in their license line of authority of life or health or variable annuity if they have:

(A) 25 years of licensed experience as a life or health or variable annuity agent; and

(B) a CLU designation, or a degree with 18 hours of approved insurance courses in their license line of authority of life or health or variable annuity subjects; and

(C) requested and have been approved for a reduction of their total requirement.

(r) Title agents who are also licensed as property and casualty insurance agents shall earn:

1. 28 hours of credit:

a. 14 hours in title insurance subjects; and

b. 14 hours in property and casualty insurance subjects relative to the authority of the license; or

2. 14 hours every 2 years:

a. 7 in title subjects; and

b. 7 in property and casualty, if they have:

(I) 25 years of licensed experience in property and casualty insurance; and

(II) a CPCU designation or a risk management and insurance degree with 18 hours of approved insurance courses in property and casualty subjects; and

(III) requested and have been approved for a reduction of their total requirement.

3. For compliance periods that begin January 1, 1998 or later and end December 31, 1999 or later, licensees who have been licensed in Florida for six (6) years or more as a property and casualty agent as of the beginning of the compliance period shall earn:

a. 20 hours every 2 years:

(I) 10 in title subjects; and

(II) 10 in property and casualty; or

b. 10 hours every 2 years:

(I) 5 in title subjects; and

(II) 5 in property and casualty, if they have:

(A) 25 years of licensed experience in property and casualty; and

(B) a CPCU designation, or a degree with 18 hours of approved insurance courses in property and casualty insurance subjects; and

(C) requested and have been approved for a reduction of their total requirement.

(s) Title agents who are also licensed as property and casualty insurance agents and life or health or variable annuity insurance agents shall earn:

1. 28 hours of credit:

a. 14 hours in title insurance subjects; and

b. 7 hours in property and casualty insurance subjects; and

c. 7 hours in life or health or variable annuity insurance subjects relative to the authority of the license; or

2. 14 total hours every two years:

a. 7 hours of title; and

b. 4 hours of property and casualty; and

c. 3 hours in their license line of authority of life or health or variable annuity, if they have:

(I) 25 years of licensed experience in property and casualty or life or health or variable annuity insurance; and

(II) a CPCU or CLU designation or a degree in risk management or insurance with 18 hours of approved insurance course in their license line of authority; and

(III) requested and have been approved for a reduction of their total requirement.

3. For compliance periods that begin January 1, 1998 or later and end December 31, 1999 or later, licensees defined in this section who have been licensed for six (6) years or more as a property and casualty or life or health or variable annuity agent as of the beginning of the compliance period, shall earn:

a. 20 hours every 2 years:

(I) 10 in title subjects; and

(II) 5 in property and casualty; and

(III) 5 in their license line of authority of life or health or variable annuity subjects; or

b. 10 hours every 2 years:

(I) 5 in title subjects; and

(II) 3 in property and casualty; and

(III) 2 in their license line of authority of life or health or variable annuity subjects, if they have:

(A) 25 years of licensed experience in life or health or variable annuity or property and casualty insurance; and

(B) either a CPCU or CLU designation, or a risk management and insurance degree with 18 hours of approved insurance courses in their license line of authority; and

(C) requested and have been approved for a reduction of their total requirement.

(t) Industrial fire agents who are also licensed as life or health or variable annuity agents shall earn:

1. 28 hours of credit every two years:

a. 24 hours in their license line of authority of life or health or variable annuity; and

b. 4 hours of property or personal liability subjects relative to their license authority; or

2. 14 hours every two years:

a. 4 of property and personal liability subjects relative to the industrial fire license; and

b. 10 hours in their license line of authority of life or health or variable annuity, if they have:

(I) 25 years of licensed experience in property and casualty or life or health or variable insurance; and

(II) a CPCU of CLU designation or a degree in risk management or insurance with 18 hours of approved insurance courses in their license line of authority; and

(III) requested and have been approved for a reduction of their total requirement.

3. For compliance periods that begin January 1, 1998 or later and end December 31, 1999 or later, licensees defined in this section who have been licensed in Florida for six (6) years or more as a life or health or variable annuity agent as of the beginning of the compliance period shall earn:

a. 20 hours every 2 years:

(I) 4 hours in property or personal liability; and

(II) 16 hours in life or health or variable annuity relative to their license authority; or

b. 10 hours every 2 years:

(I) 4 hours in property or personal liability; and

(II) 6 hours in life or health or variable annuity relative to if they have:

(A) 25 years of life or health or variable annuity or property and casualty licensed insurance experience; and

(B) Either a CLU or CPCU designation, or degree in risk management or insurance with 18 hours of approved insurance courses in their license line of authority; and

(C) requested and have been approved for a reduction of their total requirement.

(u) Persons who adjust workers' compensation claims who are also licensed as a life, health, property and casualty, industrial fire, surplus lines, or title agent, bail bond agent, or as a customer representative or limited customer representative shall earn, in addition to the hours required for the agent or customer representative license, the total required hours for:

a. The adjuster license, and

b. The bail bond agent license.

(v)1. If a dually licensed agent or customer representative earns all the hours in one line of business, the Department will not assume that the licensee intends to drop the other license.

2. The licensee will not be in compliance unless the Department is notified to change the license status, using Form DI4-501, Appointment Form, rev. 1/92, which is adopted in 4-228.180.

(w)1. If an agent or customer representative has qualified for exemption from the requirements of these rules due to employment with a governmental entity as defined in section 626.2815, Florida Statutes, (other than agents or customer representatives employed by the Department of Insurance), the

individual shall declare that status to the Department on Form DI4-1106, Statement of Government Status, rev. 6/93, which is adopted in 4-228.180.

2. The agent or customer representative shall notify the Department within 30 days of any change in that status pursuant to Rule 4-228.250(3).

(x)1. An agent or customer representative will no longer qualify for a reduction in the required hours if the license to which those qualifications apply is terminated, and if the reduction was based on:

a. Being licensed for at least 6 years in Florida, or

b. 25 years of experience, and

c. Status as a CLU or CPCU, or

d. A college degree in insurance with at least eighteen semester hours of credit in subjects pertaining to their license.

2. The licensee shall earn the number of hours required for the type and class of licensure by the next compliance date after the date that the license to which those qualifications apply has expired.

(y) Credits earned by adjusters to satisfy the workers' compensation requirements of 24 hours of credit shall be earned as follows:

1. Two hours of ethics;

2. Ten hours in workers' compensation law and policy;

3. Twelve hours in optional approved workers' compensation subjects or additional hours in workers' compensation law and policy, or ethics.

4. Workers' compensation law and policy courses shall cover the requirements for benefits as found in Florida Statutes or Florida Administrative Code.

(z)1. All lines adjusters who handle workers' compensation claims are required by section 626.869, Florida Statutes, and this rule chapter to earn 24 hours of continuing education credit in Florida approved classroom courses.

2. Any adjuster to whom this rule applies who also holds an agent's license shall meet each requirement separately.

3. Credits shall not be credited to both requirements from the same course.

(aa)1. Credits from the same course will not be credited to more than one continuing education requirement of a licensee.

2. Credits will not be split between the substantive categories or lines of business of a particular requirement for an applicable class of licensure.

3. Credit hours in courses which are generic in nature will not be split between the substantive categories related to the applicable particular classes of licensure or more than one continuing education requirement of a licensee.

4. As used in this subsection, the term “generic” means credit hours for courses which usually do not include specific subjects on property and casualty, life, health, or title insurance. The subject is common to and applicable to any licensed agent or customer representative. The courses do not apply to adjusters or bail bond agents. Some generic courses are specific to life and health subjects while others are applicable to life or health or property and casualty or title insurance. An example of a generic course that would apply to life or health or property and casualty or title would be a course on communication.

(bb) Section 626.2815(3)(d), Florida Statutes, allows excess hours to be carried forward to the next compliance period. Excess hours may be used to satisfy part or all of the requirement for the next compliance period. Excess hours may be earned at any time during the period.

(cc) Agents shall not earn more than 50% of their required credit hours in courses described in paragraphs 4-228.080(4)(a), (b), and (c).

(dd) Six-year rule.

1. Agents licensed for less than 6 years in Florida as of the beginning of their compliance period shall earn credit for taking courses classified as basic, intermediate, or advanced.

2.a. Agents licensed and appointed, with respect to the type of course being taken, for 6 years or more will earn credit for taking courses classified as intermediate or advanced.

b. Agents may take courses classified at the “basic” course level; however the hours will not be credited to satisfy their requirement.

3. Agents who are dually licensed and who have been licensed for at least six years or more for at least one applicable type and class of licensure will only earn credit for taking courses that are approved as “intermediate” and “advanced” for all license types held regardless of the length of time of licensure of the others.

(ee) Section 626.2815(3)(b), Florida Statutes, allows a reduction in hours from 28 to 20 per compliance period for certain licensees who have been licensed in Florida for 6 years or more. If the license expires, is surrendered, canceled, revoked, or otherwise no longer exists to which the experience applies, the reduction in hours is no longer in effect for the remaining licenses.

(ff)1. section 648.385(2)(a), Florida Statutes, requires a bail bond agent to earn 14 hours of continuing education credit for compliance periods beginning January, 1997, and every month thereafter.

2. The first compliance date for which the hours shall have been earned was December 31, 1998. Every month thereafter, compliance is required for bail bond agents who have been licensed for 24 months or longer and every two years thereafter on the last day of the birth month.

3. Credits shall be earned in subjects relative to the line of authority for the license.

4. Credits for bail bond agents are required in addition to any requirement for licenses held under any other continuing education law.

(gg) If the bail bond agent also holds other insurance licenses for which continuing education is required pursuant to sections 626.2815 and 626.869, Florida Statutes, the agent shall earn the credits for the bail bond agent in addition to the required hours for the other licenses held.

(6) CLU/CPCU/College Degree + 25 Years Experience.

(a) A letter requesting credit for either the CLU or CPCU designation or a college degree, and applicable experience or Form DI4-1109, Application for CLU/CPCU/College Degree + Experience Status, rev. 7/96, which is adopted in 4-228.180, shall be submitted with all written documentation to qualify a licensee prior to the birth month in the year in which compliance is due.

(b) Documentation may include achievements attained in the birth month.

(c) The years of experience shall be in the same line of business as the designation.

(d) Years of experience in the opposite line of business will not qualify for the reduced continuing education requirement.

(e) Within 30 days of a status change which disqualifies the licensee from the reduction, the licensee shall notify the Department.

(f) On the next compliance date after the status has been changed for at least 24 months, the requirements will apply for that type and class without the reduction.

(7) Non-Resident Certification.

(a)1. Non-resident licensees who reside in a state that requires continuing education and that has a reciprocal agreement with Florida for continuing education may comply with Florida's continuing education requirement by meeting their home state's requirement and by submitting a properly completed Form DI4-463, Nonresident Agent Certification, rev. 7/97, which is adopted in 4-228.180, with supporting documentation attached as prescribed in the form.

2. Non-resident licensees who do not reside in a state that requires continuing education or that does not have a reciprocal agreement with Florida, but who are licensed in another state that does have a continuing education requirement and a reciprocal agreement with Florida, may comply with Florida's continuing education requirement by meeting that state's continuing education requirement and by submitting a properly completed Form DI4-463, Non-resident Agent Certification, rev. 7/97, which is adopted in 4-228.180, from that state with supporting documentation attached as prescribed in the form.

(b) Nonresident adjusters who handle workers' compensation claims shall complete the total required hours of credit in Florida approved classroom courses or seminars for workers' compensation adjusters.

(8) Licensees are not required to file certificates of completion with the Department unless requested to do so by the Department for audit purposes or to correct discrepancies in Department records.

(9) Change of License Category.

(a)1. Licensees may use the qualifications of a license type and class that is required to earn continuing education credits to qualify for a license type and class that is not required to earn continuing education credits.

2. If the licensee does not continue an appointment for the license type that has a continuing education requirement, the licensee will not be required to earn continuing education credits during the time that the non-continuing education type and class license is held.

(b) Licensees may not reinstate the status of the license type and class that is required to earn continuing education credits, and cannot receive an appointment for that type and class license, unless in the 24 months prior to the request the licensee has earned the required number of hours of continuing education credit for the license type and class to be reinstated.

(c) Licensees may not reinstate a license that has a greater number of hours required than the license it was changed to unless in the 24 months prior to the request the licensee has earned the difference in the number of hours required or the number of hours required for a compliance period for the license to be reinstated.

(d) If the non-continuing education type and class license is held for more than 24 months, only the number of hours of credit required for one compliance period will be required in order to change the status of the license and to receive an appointment.

(10) Licensees who have changed type and class prior to the effective date of this rule will have their compliance date set by the last status date for that particular type and class unless some other license date exists for another type and class which is required to have continuing education which pre-dates this last status date.

(11)(a) All lines adjusters shall declare their status as adjusting workers' compensation claims, as defined in 4-228.030, on Form DI4-1108, Statement of Adjuster Status, rev. 6/93, which is adopted in 4-228.180, and notify the Department within 30 days of any change in that status.

(b) Signature date on the form will be used to establish the compliance date for adjusters whose status was changed from "not handling workers' compensation claims" to "handling workers' compensation claims".

(12)(a) Licensees who surrender one or all of their licenses shall surrender their photo identification card to the Department and submit a letter specifying which type and class of licensure they wish to surrender along with a statement indicating their intention not to meet applicable continuing education requirements for the specified type and class of licensure.

(b) If a licensee does not surrender all licenses held, the licensee shall also submit $5.00 to the License Control Section, c/o Revenue Processing, P. O. Box 6000, Tallahassee, FL 32314, with a request for a new photo identification card.

Specific Authority 624.308, 648.26 FS. Law Implemented 624.307(1), 624.501, 626.2815, 626.611, 626.621, 626.681, 626.691, 626.869(5), 648.385 FS. History–New 8-17-93, Amended 4-11-94, _____.

(Substantial rewording of Rule 4-228.230 follows. See Florida Administrative Code for present text.)

4-228.230 Extensions.

(1)(a) The Department will grant an extension of time of 90 days to complete the minimum continuing education requirement to an individual upon a showing of good cause.

(b) "Good cause" means an incident or occurrence which is beyond the control of the applicant and which prevents compliance. Examples of good cause include: Disabling accident, illness, call to military duty, or declared national emergency.

(c) It is the responsibility of the licensee to request an extension on Form DI4-460, Request for Extension of Time, rev. 7/97, which is adopted in 4-228.180.

(d) The person's license and appointments shall remain in effect during the extension period.

(2) Requests for extensions shall be submitted to the Department or its designee in writing at least 30 days prior to the applicable compliance date and shall include appropriate documentation of the good cause for extension.

(3) When an extension is granted, a new compliance date is temporarily created for that compliance period only.

(4)(a) If the minimum continuing education requirement is not satisfied by the extended compliance date, the Department will notify the person and the person will be assessed $50.00 for additional administrative efforts necessary to process this notification and other materials in connection with this non-compliance, pursuant to section 624.501(20)(c), Florida Statutes, for non-compliance with sections 626.2815 and 626.869(5), Florida Statutes, and this rule chapter.

(b) If the minimum continuing education requirement is not satisfied by the last day of the extended compliance period, the Department shall refuse to renew the licensee's appointments and refuse to issue new appointments.

(c) Failure to be appointed for a particular type and class of license for 24 months will result in termination of a person's license for that type and class.

(5) Permanent conditions are not eligible for indefinite extensions of time to complete the requirements.

(6) A maximum of four (4) 90-day extensions may be granted for each compliance period if acceptable documentation is received by the Department

Specific Authority 624.308 FS. Law Implemented 624.307(1), 624.501, 626.2815, 626.869(5) FS. History–New 8-17-93, Amended 4-11-94, _____.

(Substantial rewording of Rule 4-228.240 follows. See Florida Administrative Code for present text.)

4-228.240 Applicability of Continuing Education Requirement for New Licensees.

(1) Individuals who become licensed are not required to meet continuing education requirements until 2 years have elapsed from the date of licensure.

(a) After the first compliance year is established, a licensee shall continue to meet the applicable continuing education requirements every 2 years thereafter regardless of when additional licenses or appointments are added.

(b) As subsequent licensure is granted for other lines of insurance requiring continuing education, the licensee's compliance date will remain the same.

(c) The total 2-year requirement remains in that same yearly sequence for all license types combined and not in alternating years.

(2) If additional lines of insurance are added to an individual's license, licensees are not required to meet continuing education requirements applicable to that area of licensure until a minimum of 2 years from the date of issue of the new license has elapsed.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.2815, 626.869(5) FS. History–New 8-17-93, Amended 4-11-94, _____.

(Substantial rewording of Rule 4-228.250 follows. See Florida Administrative Code for present text.)

4-228.250 Exempted Licensees.

(1) Individuals who hold only the following limited licenses are exempt from the requirements of section 626.2815, Florida Statutes:

(a) Motor Vehicle Physical Damage and Mechanical Breakdown Agent (2-21);

(b) Crop Hail and Multi-peril Crop Agent (4-30).

(2) If the individual holds any other life and health or property and casualty type and class of license in addition to the above-listed licenses, they shall comply with the full requirements of section 626.2815, Florida Statutes, and this rule chapter.

(3) Members of a governmental entity.

(a)1. Licensees who are officials or employees of a Florida entity as set forth in section 626.2815(3)(g), Florida Statutes, are exempt from the continuing education requirements.

2. Anyone wishing to qualify for this status other than Department of Insurance employees shall send a letter of request and documentation, or Form DI4-1106, Statement of Government Status, rev. 6/93, which is adopted in 4-228.180, to the Education Section of the Bureau of Agent and Agency Licensing, Department of Insurance, prior to their compliance date.

3. Employment must:

a. Consist of 20 hours per week or more; and

b. Have a position description with duties and responsibilities that are determined by the Department to require monitoring and review of insurance laws, regulation, and practices.

4. Within 30 days of a status change which disqualifies them from the exemption, the licensee shall notify the Department.

5. On the last day of their next birth month after the status has been changed for at least 24 months, the requirements of this rule chapter will apply for that type and class of licensure without the exemption.

(b)1. Department of Insurance employees who also have an agent or adjuster license will automatically be recorded as an employee of a governmental course provider on the day that they are employed by the Department and their continuing education requirements will be suspended.

2. The date on which the employee leaves the Department will also be recorded and will be used to establish a new compliance date on the last day of their next birth month after they have left the Department for 24 months or more.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.2815(3)(c), 626.869(5) FS. History–New 8-17-93, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Shirley Kerns, Bureau Chief, Agent and Agency Services, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: John Hale, Division Director, Agent and Agency Services, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 23, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 30, 1997, Vol. 23, No. 22

DEPARTMENT OF EDUCATION

State Board of Independent Colleges and Universities

RULE TITLE: RULE NO.:

Fees and Expenses 6E-1.0034

PURPOSE AND EFFECT: The purpose of the proposed rule is to adjust the fee structure which supports the board. The effect is that the fees will be adjusted to reflect rising costs in the eight years since they have been changed.

SUMMARY: The rule is amended to reflect provisions of a recent statutory amendment, which specifies that institutions under the Authorization status will not pay Base Fees, but requires them to pay applicable Workload Fees for the work done by the Board's staff to gather and review data to ensure compliance with the statutory requirements for that status. A further amendment changes the fees charged for site visits from a set fee to actual travel and administrative expenses.

SPECIFIC AUTHORITY: 246.041(1)(e), 246.051(1), 246.071, 246.101(1) FS.

LAW IMPLEMENTED: 246.101 FS.

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

TIME AND DATE: 11:00 a.m., Friday, October 6, 2000

PLACE: Adam's Mark Hotel, 1500 Sand Lake Road, Orlando, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sandra Knight, Deputy Director, State Board of Independent Colleges and Universities, Department of Education, 2586 Seagate Drive, Suite 200, Tallahassee, FL 32301, telephone (850)488-8695

THE FULL TEXT OF THE PROPOSED RULE IS:

6E-1.0034 Fees and Expenses.

(1) Base Fee. All nonpublic colleges, universities, and centers of out-of-state institutions derive benefit from the services performed by the board. Such services include but are not limited to administration of the fair consumer practices program and the data collection and dissemination program. Each college holding a certificate of exemption; or a temporary, level I or II provisional, or regular license~~,; or an authorization,~~ with an enrollment of less than 100, shall submit annually a base fee of $400; and each college with enrollment of 100 or more shall submit annually a base fee of $1,200, payable no later than August 15 of each year. Base fees shall be prorated for new institutions. Enrollment shall be determined by the total student headcount in Florida, full-time and part-time, reported by each college in its annual data report; or for a new institution, by its anticipated enrollment in Florida during its first year of operation.

(2) Workload Fees. The main Florida campus and additional locations of each nonpublic college, and the main Florida center and each branch location under the purview of the licensing, certificate of exemption, and authorization programs of the board receive technical assistance from the board, along with help in developing and implementing institutional articulation agreements and achieving candidacy status with accrediting agencies; and significant amounts of staff and administrative time are spent on evaluating applications, traveling to colleges for onsite visits, assisting colleges which are experiencing problems with financial aid or financial stability, and making reviews. The following workload fees are assessed in addition to the base fee, and must be received prior to board consideration of each action.

Application for Temporary License $5,000

Special Review (Changing levels of licensure, adding new degrees or majors, adding new locations, or resubmitting applications) $2,200

Annual Review of Regular License
Main Florida Campus.....$2,500
Each Additional Florida Location.....$1,000
Site Visits..... Actual expenses and administrative costs
~~One day, per person .....$700~~
~~Two days, per person .....$900~~
Annual Permission to Operate in Florida
~~Without Offering Educational Programs~~.....$800
Approval to Use "College" or "University,"
First time or special review.....$500
Annual Licensure of Recruiting Agents..... $325
Evaluation of Additional Accrediting
Agencies, Upon Request of Agency $500
Review and Collection of Data Pursuant
to s. 246.084, F.S.
Enrollment of less than 100 .....$400
Enrollment of 100 or more.....$1,200

(3) through (5) No change.

(6) All fees, and any fines imposed for probation or other violations pursuant to ss. 246.041(1)(n)7., 246.084(g), 246.101(6), or 246.111(1), Florida Statutes, or Rule 6E-2.0061(2)(c)1. or (e), FAC, shall be paid to the Comptroller of the Department of Education for deposit into the Institutional Assessment Trust Fund as established in s. 246.31, Florida Statutes, and identified as a separate revenue account for the authorized expenses of the Board under the provisions of s. 246.041(1)(j), Florida Statutes. Payment of such fees and fines shall be accompanied by Board Form SBICU 400, Transmittal of Fees, effective 2000 ~~October 1993~~. This form is hereby incorporated by reference and made a part of this rule. Copies of the form may be obtained without cost by contacting the State Board of Independent Colleges and Universities, Department of Education, Tallahassee, FL 32399.

Specific Authority 246.041(1)(e), 246.051(1), 246.071, 246.093(1), 246.101(1) FS. Law Implemented 246.041(1)(l),(n)7., 246.061, 246.084, 246.093, 246.101, 246.111, 246.31 FS. History–New 7-15-91, Amended 12-7-92, 10-19-93, 12-11-96, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Sandra Knight, Deputy Director, State Board of Independent Colleges and Universities

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: C. Wayne Freeberg, Executive Director, State Board of Independent Colleges and Universities

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 19, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 2, 2000 (Further discussed in FAW, June 23, 2000)

DEPARTMENT OF CORRECTIONS

RULE TITLES:	RULE NOS.:
Offender Grievance Procedures	33-302.101
Employer Notification of Supervision Status	33-302.102
Correctional Probation Officers Carrying Firearms	33-302.104

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify titles, forms, and procedures relating to offender grievance procedures, notification to employers of offenders' supervision status, and the carrying of firearms by correctional probation officers.

SUMMARY: The proposed rules: clarify to whom offenders under supervision may submit grievances; require retention of a copies of grievances in an offender's file; clarify procedures whereby employers are notified of an offender's supervision status; clarify titles and provide applicable forms; clarify the application process for correctional probation officer authorization to carry a firearm; clarify eligibility requirements to carry a firearm; establish re-qualification requirements; and, clarify procedures relevant to the use of force and procedures following the use of a firearm.

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, 120.53(1)(a), 790.06, 944.09 FS.

LAW IMPLEMENTED: 20.315, 120.53(1)(a), 790.06, 944.09 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

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

THE FULL TEXT OF THE PROPOSED RULES IS:

33-302.101 Offender Grievance Procedures.

(1) No change.

(2) The following procedures outline the steps to be taken by an offender under field supervision, including ~~in a probation and restitution center, or~~ an offender in pretrial intervention who has a complaint concerning actions on supervision. Steps for filing complaints are:

(a) No change.

(b) The offender may submit a written grievance outlining the problem to the officer's immediate supervisor ~~or to the major of the probation and restitution center for offenders assigned to a probation and restitution center~~ if the issue is not resolved with his correctional probation officer. The supervisor

~~or major~~ shall respond, in writing, with a response that attempts to resolve the issue, within 15 days of the receipt of the grievance. A copy of both the grievance and the supervisor's ~~or major's~~ response shall be forwarded to the correctional probation administrator for informational purposes. A copy of the grievance and all responses to the grievance shall be maintained in the offender file.

(c) In the event the issue is not resolved with the supervisor ~~or major~~, contact can be made by the offender with the correctional probation administrator for the purpose of review. The correctional probation administrator shall respond to the offender in writing, with a response that attempts to resolve the issue, within 10 days of contact.

(d) In the event the issue is not resolved with the correctional probation administrator, the offender may file a written complaint with the regional director of community corrections for review. The regional director of community corrections shall provide a written response which attempts to resolve the issue within 30 days, with a copy to the Department of Corrections Inspector General's Office.

(3) through (4) No change.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History–New 5-28-86, Amended 10-1-89, 9-30-91, 2-15-98, Formerly 33-24.005, Amended _____.

33-302.102 Employer Notification of Supervision Status.

Correctional probation officers shall notify the employer of each offender under his or her supervision of the offender's supervision status within 30 days of the onset of supervision and within 30 days of an offender's new employment situation. The officer shall advise the employer of the offense or offenses for which the offender is under department supervision ~~Offenders under supervision in the community are required to notify their employer of their supervision status within 30 days or their officer shall inform their employer accordingly, unless otherwise stated in the supervision order~~.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History–New 5-28-86, Formerly 33-24.010, Amended _____.

33-302.104 Correctional Probation Officers Carrying Firearms.

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

(c) "Correctional probation officer" means a person who is employed full time by the Department of Corrections whose primary responsibility is the supervised custody, surveillance, and control of assigned offenders and includes supervisory personnel whose duties include the supervision, training and guidance of correctional probation officers. This term does not include personnel above the level of regional ~~division~~ director of community corrections.

(d) "Firearm card" means the document issued by the department pursuant to this rule to a correctional probation officer who has been authorized by the department to carry a firearm while on duty. Form DC3-223 ~~DC3-326~~, Firearms Qualification and Authorization, shall be used for this purpose. Form DC3-223 ~~DC3-326~~ is hereby incorporated by reference. A copy of this form may be obtained from Department of Corrections, Forms Control Administrator, Office of the General Counsel ~~Probation and Parole Services~~, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is _____ ~~July 1, 1992~~.

(3) Authorization Procedures.

(a) In addition to the requirements of this rule, correctional probation officers who want to carry firearms shall also be required to comply with rule 33-209.103 where applicable.

(b)~~(a)~~ Any correctional probation officer who wants to carry a firearm while on duty shall complete Form DC3-226, Request for Authorization to Carry a Firearm on Duty, and submit it ~~make written application by interoffice memorandum~~ for such authorization through the circuit ~~correctional probation~~ administrator. Form DC3-226, Request for Authorization to Carry a Firearm on Duty, is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. Requests for copies to be mailed must be accompanied by a self-addressed stamped envelope. The effective date of this form is _____. Any circuit ~~correctional probation~~ administrator or assistant to the regional ~~division~~ director of community corrections who wants to carry a firearm while on duty shall make application utilizing Form DC3-226 to the regional ~~division~~ director of community corrections. A regional director of community corrections who wants to carry a firearm while on duty shall make application utilizing Form DC3-226 to the deputy director of community corrections. The written application shall contain documentation that the individual has complied with the training and qualification requirements set forth in (c) ~~(b)~~ below. The application shall also contain a statement that the officer has read and understands rule 33-302.104 and 33-209.103.

(c)~~(b)~~ Correctional probation officers who wish to carry firearms while on duty shall complete training and qualification requirements pursuant to rule 33-209.103. Correctional probation officers shall not be allowed to carry a firearm on duty until firearms qualification is successfully completed and the Firearms Qualification and Authorization, Form DC3-223, has been issued. Qualification, requalification and training shall be completed using the specific weapon that the officer will be using on duty and any type of ammunition approved by the local training center. Documentation of the model, make, and serial number of the weapon used and firearm inspection by a certified gunsmith or law enforcement armorer shall be submitted on the Firearm Inspection/Repair Certificate, Form DC3-240, along with the documentation of training and qualification in the application for authority to carry the firearm. A receipt of purchase or affidavit of

ownership for the weapon shall also be provided. Form DC3-240 is hereby incorporated by reference. A copy of the form is available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is _____.

(d)~~(c)~~ If an officer temporarily or permanently replaces the firearm used for qualification, the officer shall notify the department of the replacement and provide the model, make and serial number of the replacement firearm. The officer shall re-qualify with the replacement weapon and submit a Firearms Inspection/Repair Certificate, Form DC3-240, and Firearms Re-qualification Certificate, Form DC3-241, for the replacement firearm to the circuit administrator. Form DC3-241 is hereby incorporated by reference. A copy of the form is available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is _____.

(e)~~(d)~~ Upon review of the application, the documentation of training and qualification pursuant to 33-209.103, and after completing an FCIC/NCIC check on the firearm by serial number and an FCIC check has been completed on the applicant to determine if there is a domestic violence injunction that would disqualify the applicant from possessing a firearm if convicted of domestic violence, the circuit ~~correctional probation~~ administrator or regional ~~division~~ director of community corrections or deputy director of community corrections shall approve the request within 10 working days and shall issue a Firearms Qualification and Authorization Card, Form DC3-223, ~~written card~~ which establishes that the officer has been authorized to carry a firearm. Each circuit ~~correctional probation~~ administrator shall maintain a list of all officers in that circuit who have been authorized to carry firearms. Form DC3-224 ~~DC3-327~~, Firearm Authorization List, will be used for this purpose. Form DC3-224 ~~DC3-327~~ is hereby incorporated by reference. A copy of this form may be obtained from the Forms Control Administrator, Office of the General Counsel ~~Probation and Parole Services~~, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. ~~Requests must be accompanied by a self-addressed stamped envelope.~~ The effective date of this form is _____ ~~July 1, 1992~~. A copy of the application (Form DC3-226), documentation of qualification (Form DC3-240), firearms authorization card (Form DC3-223), and receipt or affidavit of ownership shall be placed in the employee's personnel file. Subsequent requalification documentation (Form DC3-241) will also be placed in the employee's personnel file. ~~If an officer temporarily or permanently replaces the firearm used for qualification, the officer shall notify the department of the replacement and provide the model, make and serial number of the replacement firearm.~~

(f)~~(e)~~ The firearms authorization card, Form DC3-223, shall expire one year from the date of initial firearms card issuance ~~qualification~~ unless written documentation of re-qualification is submitted to the authorizing entity prior to the expiration of the firearms card. The officer shall be required to successfully re-qualify each year thereafter pursuant to 33-209.103 and this rule in order to remain qualified to carry a firearm. All correctional probation officers shall be provided the opportunity to prepare for annual firearms re-qualification by participating in re-qualification firearms training. A correctional probation officer who declines the opportunity to participate in re-qualification firearms training shall sign a statement indicating that the opportunity was provided and was declined. Form DC2-902, Refusal of Re-qualification Firearms Training, shall be used for this purpose. Form DC2-902 is hereby incorporated by reference. A copy of the form is available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is _____. ~~All correctional probation officers authorized to carry a firearm shall annually complete one hour of department approved firearm in-service training in addition to that required in 33-209.103.~~

(g) Re-qualification must occur within 90 days prior to the employee's firearm card expiration date. Upon re-qualification, the firearms instructor will complete the Firearm Re-qualification Certificate, Form DC3-241, with the re-qualification score, and will sign the form as the trainer. The officer will certify that the firearm referenced on this form is the firearm used in the course of his or her duties and that he or she uses only authorized ammunition, and shall return the form to the circuit administrator for issuance of a new Firearms Qualification and Authorization Card, Form DC3-223. The new firearm card will be issued with an expiration date one year from the expiration date of the previous firearm card.

(h) A circuit administrator or designee shall immediately suspend authorization to carry a firearm, except for firearm training purposes, and shall secure the firearm card from any officer who has failed to re-qualify as of the card expiration date. A correctional probation officer who attempts to re-qualify and fails shall be provided the opportunity to participate in remedial firearm training as specified in chapter 33-209 at a time approved by the circuit administrator.

(i) A correctional probation officer who fails to complete firearm re-qualification after remedial training has been provided, and who wishes to renew authorization to carry a firearm, must re-attend and successfully complete basic recruit firearm training at the officer's own expense.

(j) A correctional probation officer who does not re-qualify prior to the date of expiration of the firearm card shall not be permitted to carry a firearm while on duty, except for firearm training purposes. The officer shall have one year from the date the firearm card expired to successfully

re-qualify to continue to carry a firearm. If the officer successfully re-qualifies, a new firearm card will be issued with an expiration date one year from the date of re-qualification. If the officer does not successfully re-qualify within that year, the officer will be required to re-attend and successfully complete basic recruit firearm training at his or her own expense.

(k)~~(f)~~ No change.

(4) Carrying a Firearm While on Duty.

(a) through (b) No change.

(c) Each probation office shall have a designated secure space containing a secure locker. Officers shall place their holstered firearms in the secure locker immediately upon entering the office. It is not necessary for the officer to remove the firearm from the locker for those occasions when the officer leaves the office for personal time or when the firearm is not desired. The firearm shall be removed from the locker at the conclusion of the duty day. No firearm shall be left in the probation office overnight.

(d) through (7)(a)4. No change.

(b) In accordance with firearms training, correctional probation officers are authorized to use deadly force only after all other reasonable efforts to avoid confrontation have been exhausted, including retreat or use of defensive tactics or chemical agents. ~~Other efforts include, but are not limited to, retreat or use of chemical agents or defensive tactics.~~ Effective December 1, 2000, all officers authorized to carry firearms must be certified to carry chemical agents per rule 33-302.105 and must carry chemical agents while carrying firearms.

(c) through (d) No change.

(8) Procedures Following Use of Firearm.

(a) Except during authorized training, when a correctional probation officer displays or discharges a firearm, the officer shall report the incident to his or her immediate supervisor and route all necessary paperwork as required by rule 33-302.105 ~~notify the appropriate law enforcement authorities as soon as possible and shall advise them of the circumstances of the incident. After contacting the law enforcement authorities, the officer shall contact and advise a supervisor of the incident. The supervisor shall immediately contact the correctional probation administrator and shall then report to the scene of the incident. The correctional probation administrator shall immediately contact the division director of community corrections. The division director of community corrections shall immediately notify the regional director of the incident. The regional director shall immediately contact the inspector general, who shall then initiate an investigation.~~

~~(b) Except during authorized training, when an officer displays or discharges a firearm, the officer who used the firearm shall complete an Inspector General's Office Electronic Mail E-Form and submit it to his or her immediate supervisor within 24 hours after the incident. The report shall contain a description of the type and amount of force used, the location and reason for use, and the factual circumstances of the incident.~~

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

(9) Removal of Authorization to Carry a Firearm.

(a) The circuit ~~correctional probation~~ administrator shall have the authority to permanently remove or to temporarily suspend the authorization to carry a firearm ~~pending a psychological examination~~ for a correctional probation officer, a correctional probation supervisor or circuit ~~correctional probation~~ deputy administrator ~~to carry a firearm~~ if the officer has exhibited behavior which indicates that the carrying of a firearm by this officer could present a threat to the security of other officers, offenders, or the general public, or the officer has demonstrated an inability to properly care, maintain, handle or secure the firearm. The regional ~~division~~ director of community corrections shall have this same authority with regard to a circuit ~~correctional probation~~ administrator or assistant to the regional ~~division~~ director of community corrections. The deputy director of community corrections shall have the same authority with regard to a regional director of community corrections. The regional director of community corrections shall be notified each time a decision is made to remove an officer's authorization to carry a firearm.

(b) Should an officer fail to complete requalification, the circuit ~~correctional probation~~ administrator shall immediately suspend the officer's authorization to carry a firearm and secure the officer's authorization card. Upon successful completion of requalification attempts and requalification pursuant to chapter 33-209, the officer shall have his or her authorization reinstated.

(10) through (b) No change.

(c) If an officer finds that his or her firearm needs repair, it shall not be carried or used for any reason. The officer shall advise his or her immediate supervisor of its condition using Form DC3-240 and shall make arrangements to have it repaired. The officer shall advise the supervisor when the repair has been completed via Form DC3-240.

(d) No change.

(e) Each officer shall be responsible for having the authorized firearm, including any temporary or replacement firearm, inspected annually by a certified gunsmith or law enforcement armorer to ensure that it performs properly and conforms with the manufacturer's standards. The officer shall present certification of such inspection to the circuit ~~correctional probation~~ administrator via Form DC3-240.

(11) Costs. Unless otherwise appropriated by the Legislature, or as specified in this rule, all costs of firearms, ammunition, training, licensing and other associated matters shall be borne by the employee.

~~(12) Effective Date. The effective date of this rule is 7-7-92.~~

Specific Authority 20.315, 120.53(1)(a), 790.06, 944.09 FS. Law Implemented 20.315, 120.53(1)(a), 790.06, 944.09 FS. History–New 5-28-86, Amended 7-7-92, 12-20-92, 3-30-94, 9-27-94, 12-19-94, 3-8-95, 2-15-98, Formerly 33-24.013, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tina Hayes

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael W. Moore, Secretary, Department of Corrections

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 17, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 22, 1999

DEPARTMENT OF CORRECTIONS

RULE TITLE: RULE NO.:
Administrative Confinement 33-602.220

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify terms and conditions relating to administrative confinement and to establish procedures relating thereto.

SUMMARY: The proposed rule clarifies: procedures for placement in administrative confinement; reasons authorizing placement; review of placement; administrative confinement facilities; conditions and privileges of inmates; restraint and escort requirements; administrative confinement records; and, staffing issues.

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: 20.315, 944.09, 945.04 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: Giselle Lylen Rivera, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

(Substantial rewording of Rule 33-602.220 follows. See Florida Administrative Code for present text.)

33-602.220 Administrative Confinement.

(1) Definitions.

(a) Administrative Confinement – 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.

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

(c) Confinement Review – refers to the evaluation of pertinent information or documentation concerning an inmate's confinement status to determine if changes or modifications are required or recommended.

(d) Confinement visit – refers to personal contact by staff members with inmates in confinement status to ensure that the inmates welfare is properly addressed.

(e) Clinical health care personnel – physician, clinical associate, nurse, Correctional Medical Technician Certified (CMTC), psychologist or psychological specialist.

(f) Institutional Classification Team (ICT) – refers to the committee consisting of the Warden or Assistant Warden, Classification Supervisor, and Chief of Security, that is responsible for making work, program, housing and inmate status decisions at a facility and for making other recommendations to the State Classification Office (SCO).

(g) State Classification Office (SCO) – refers to a staff member at the Central Office level who is responsible for the review of inmate classification decisions. Duties include approving or rejecting ICT recommendations.

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

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

(j) Institutional Classification Team Docket – refers to the official record of an Institutional Classification Team hearing.

(2) Procedures for Placement in Administrative Confinement.

(a) Administrative confinement is a temporary confinement status that may limit conditions and privileges as provided in subsection (5) 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 shall permit. Any deviations shall be fully documented as set forth in the provisions of this rule.

(b) 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 DC6-233a, including the reasons for the action and a summary of the inmate's comments. Form DC6-233a is incorporated by

reference in (10) of this rule. The heading and Section I shall be completed by the official who placed the inmate in administrative confinement. 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 DC6-229, Daily Record of Segregation. 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 (3) 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. Any written statements provided by the inmate shall be attached to the form.

(c) The Institutional Classification Team shall review inmates in administrative confinement within 72 hours. The only exception to being seen within 72 hours is when the ICT cannot complete its review within the allotted timeframe due to a holiday. If the review cannot be completed within 72 hours, the action of the senior correctional officer shall be reviewed within 72 hours by the duty warden, documented on the DC6-229, Daily Record of Segregation, and evaluated within 5 days by the ICT. Inmates placed into administrative confinement shall not be released from this status until approved by the ICT. The classification supervisor shall be responsible for ensuring that the ICT docket is prepared. The ICT Chairperson is responsible for scheduling the ICT hearing date and time. All Reports of Administrative Confinement, DC6-233, shall be completed the same day an inmate is placed into confinement and forwarded to the institutional classification unit for placement on the docket for review by the ICT. It shall be the responsibility of the classification officer to place the inmate on the docket so the ICT can review the inmate for release. If an inmate has been held in administrative confinement pending a disciplinary hearing and the decision is not to impose disciplinary confinement as a part of the disciplinary action, the disciplinary team or hearing officer shall notify the confinement supervisor who shall coordinate the release of the inmate from administrative confinement. If the confinement supervisor discovers other pending issues or actions, the ICT shall be required to immediately review the case. In the event it is necessary to release an inmate from administrative confinement during weekends or holidays the duty warden is authorized to approve the release immediately.

(3) 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 are pending 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 ICT authorizes an extension. This extension shall be documented on Form DC6-229, Daily Record of Segregation.

(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 shall be initiated pursuant to rules 33-601.801 through 601.813 and shall be completed within seven days.

(c) Inmates shall be placed in administrative confinement pending review of the inmate's request for protection from other inmates, (33-602.221). The inmate shall be placed in administrative confinement by a senior correctional officer when the inmate presents a signed written statement alleging that the inmate fears for his safety from other inmates, and that the inmate feels there is no other reasonable alternative open to him. A senior correctional officer shall also place an inmate in administrative confinement, pending review for protective management, based on evidence that such a review is necessary. The inmate shall be encouraged to provide information and otherwise cooperate with the investigation of the matter. The protective management process, including the ICT's action, shall be completed within 15 working days from the initial confinement of the inmate.

1. The Institutional Classification Team (ICT) shall initiate an investigation to gather information. A member of the ICT shall complete the heading and section IA of the DC6-234, Report of Protective Management. Form DC6-234 is incorporated by reference in (10) of this rule. The committee member shall utilize the documentation in the DC6-233a, 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 ICT.

2. If the inmate submits a request for release in writing at any time during the ICT review process, the area housing supervisor shall provide the inmate with a Form DC6-203, Protection Waiver/Appeal Decision Form. Form DC6-203 is incorporated by reference in (10) of this rule. The inmate shall complete Form DC6-203 and return it to the area housing supervisor for submission to the ICT along with the inmate's written request. The ICT shall review the inmate's request and place the inmate on the docket. The ICT shall interview the

inmate and submit their recommendation along with the DC6-203 and any other documentation to the SCO for final consideration. The SCO review and decision shall be conducted during the next routine on-site visit.

3. Once the investigation is complete, the ICT shall interview the inmate to determine whether the inmate has a legitimate, verifiable need for protection. The ICT shall review all documentation available concerning the need for protection to include any written statements submitted by the inmate. The ICT shall document its findings and recommendations on the Report of Protective Management, Form DC6-234. 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 ICT shall make recommendations concerning protective management based on the facts within 15 working days from the date of initial confinement. If the ICT determines that protection is necessary, the inmate shall remain in administrative confinement at that facility pending review by the SCO. The review action shall be documented on the Report of Protective Management, DC6-234. In the event the ICT determines that protection is not appropriate, the inmate shall remain in administrative confinement and the DC6-234 shall be forwarded to the State Classification Office along with team findings and recommendations. The State Classification Office shall approve, disapprove or return for additional information the recommendation of the Institutional Classification Team.

5. The State Classification Office (SCO) shall determine within five working days whether protection is necessary based upon the investigation and any follow-up he deems appropriate. The SCO shall approve or disapprove placement of the inmate in protective management. The SCO's decision shall also be documented on the Report of Protective Management and this report shall be returned to the institution. If the SCO determines that a need for protection exists, he shall indicate in the Report of Protective Management that the inmate shall be placed in a protective management unit or transferred, whichever is appropriate. 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 effected within five working days. SCO members are authorized to make transfers. If the SCO determines that protective management is not necessary, the inmate may appeal this decision directly to the Office of the Secretary pursuant to 33-103.007 and 33-103.011. The inmate shall be notified of the SCO's decision by the ICT and this notification shall be documented on the Report of Protective Management, DC6-234. At the time of notification, the inmate shall be asked if he 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 by the SCO, a determination shall be made by the ICT as to appropriate housing. The inmate shall remain in administrative confinement until this decision is made.

(d) Inmates who present a signed written statement alleging that they are in fear of staff, feel that there is no other reasonable alternative, and provide specific information to support this claim shall also be placed in administrative confinement. These cases shall be reported via e-mail to the Office of the Inspector General for review and possible investigation. After completion of the review and investigation, the inspector general shall submit the case to the ICT or SCO with recommendations for disposition. If the case is submitted to the ICT, the ICT shall docket the case for consideration no later than the next ICT meeting. If the case is submitted to the SCO, the SCO shall coordinate with the ICT regarding recommendations.

(e) 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 ICT. This extension shall be documented on the Daily Record of Segregation, DC6-229. If it is necessary to continue the inmate's confinement beyond this first extension, written authorization must be obtained from the SCO for a 30 day extension. This authorization shall be attached to the DC6-229. The SCO shall have the authority to authorize an additional 30 day extension 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 against other inmates, 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 (d) 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.

(f) 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.

(g) 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.

(4) Administrative Confinement Facilities.

(a) The number of inmates housed in an administrative confinement cell shall not exceed the number of bunks in the cell. The only exception to this policy is during an emergency situation as declared by the warden or duty warden. The regional director and the emergency action center in central office shall be advised of the emergency. If the emergency situation exists in excess of 24 hours, the warden or duty warden must get specific authorization from the regional director to continue to house inmates beyond the 24 hour period. 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 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 DC6-229, 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 other confinement cells, whenever possible given the physical design of the facility and the number of inmates housed in administrative confinement shall not exceed the number of bunks in the cell. Whenever such location is not possible, physical barriers shall preclude the cross association of those in administrative confinement with those in other status confinement. Administrative confinement cells shall be built to permit verbal communication and unobstructed observation by the staff.

(5) Conditions and Privileges.

(a) Clothing – 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 DC6-229 and approved by the chief of security. 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 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 DC6-229. Under no circumstances shall an inmate be left without a means to cover himself or herself.

(b) Bedding and Linen – 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 DC6-229 and the Chief of Security shall make the final decision in regard to the appropriateness of the action no later than the next working day following the action.

(c) Personal Property – Inmates shall be allowed to retain the same personal property as is permitted general population inmates unless there is a indication of a security problem, in which case removal or denial of any item shall be documented on Form DC6-229. An Inmate Impounded Personal Property List, Form DC6-220, designating what personal items were removed, shall be completed by security staff and signed by the inmate. The original will be placed in the inmate's property file and a copy of the form will be given to the inmate. Form DC6-220 is incorporated by reference in rule 33-501.401. All property retained by the inmate must fit into the storage area provided.

(d) Comfort Items – Inmates in administrative confinement shall be permitted the same personal hygiene items and other medically needed or prescribed items as is permitted general population inmates unless there is an indication of a security problem. 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 DC6-229, which must be reviewed by the Chief of Security. 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, and feminine hygiene products for women, and toilet tissue.

(e) 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.

(f) Diet and Meals – 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 DC6-229.

(g) Canteen Items – 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.

1. 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 count as three items, not one item.

2. 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 shall count as one item and two packages or less of notebook paper shall count as one item.

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

(i) Visiting – All visits for inmates in administrative confinement must be approved in advance by the ICT or warden. Requests for inmates in administrative confinement to visit shall be in writing to the ICT. 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.

(j) 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 ICT or warden.

(k) 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. Indigent inmates shall be provided paper and writing utensils in order to prepare legal papers. Inmates who are not indigent shall be allowed to purchase paper and envelopes for this purpose through a canteen order. Typewriters or typing services are not considered required items and shall not be permitted in confinement cells.

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

(m) Writing Utensils – Inmates in administrative confinement shall possess only a security pen. Other types of pens shall be confiscated and stored 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 a security pen is unavailable, the inmate shall be allowed to sign out a regular pen from the confinement housing 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.

(n) Reading Materials – 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.

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

(p) 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 DC6-229. The ICT 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. If the inmate requests a physical fitness program handout, the wellness specialist or the confinement officer shall provide the inmate with an in-cell exercise guide and document such on the Daily Record of Segregation. 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.

(6) 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) Prior to 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.

(f) Inmates in administrative confinement shall receive a personal contact or visit by the following staff members. All visits by staff shall be documented on the Inspection of Special Housing Record, Form DC6-228. The staff member shall also document his or her visit on the Daily Record of Segregation, Form DC6-229, if any discussion of significance, action or behavior of the inmate occurs or any important information is obtained which may have an influence or effect on the status of confinement. These visits shall be conducted a minimum of:

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

2. Daily by the area housing supervisor.

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

4. Daily by the Chief of Security (when on duty at the facility) except in case of riot or other institutional emergency.

5. Daily by a clinical health care person.

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

7. Weekly by the warden and assistant wardens.

8. At least once a week by a classification officer.

9. At least once a month by a member of the Institutional Classification Team to ensure that the inmate's welfare is properly provided for, and to determine the time and method of release or any program changes.

(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/Restraint 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 DC6-229 and followed with an Incident Report, Form DC6-210. Form DC6-210 is incorporated by reference in rule 33-602.210.

(7) Review of Administrative Confinement.

(a) An ICT member shall also review inmates in administrative confinement every week. The goal shall be toward returning the inmate to open population as soon as the facts of the case indicate that this can be done safely.

(b) Any inmate assigned to administrative confinement for more than 30 days shall be given a psychological assessment by a mental health professional to determine his or her mental condition. The assessment shall include a personal interview. The psychologist or psychological specialist shall prepare a report to the ICT regarding the results of the assessment with recommendations. The ICT shall then make a decision regarding continuation of confinement. Any recommendations by the psychologist or psychologist specialist that the inmate be released from administrative confinement shall be forwarded by the ICT to the SCO. 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.

(c) If an inmate is confined for more than 30 days, the ICT shall interview the inmate and shall prepare a formal assessment and evaluation report. 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.

(d) The State Classification Office (SCO) at the next onsite visit shall review such reports and may interview the inmate before determining the final disposition of the inmate's administrative confinement status.

(8) Administrative Confinement Records.

(a) A Report of Administrative Confinement, Form DC6-233a, shall be kept for each inmate placed in administrative confinement. A photocopy of the DC6-233a, with section I completed, shall be kept in administrative confinement with the other confinement records for each inmate. Upon completion of the DC6-233a, the white copy of the form shall be mailed to central office to be filed in the central office inmate record and the yellow copy shall be filed in the institutional inmate record.

(b) A Daily Record of Segregation, Form DC6-229, shall be maintained for each inmate as long as he is in administrative confinement. The DC6-229 shall be utilized to document any activity such as cell searches, items removed, showers, recreation, haircuts and shaves and also unusual occurrences such as refusal to come out of the cell or refusal to eat. If items that inmates in administrative confinement are not 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 shall be documented on Form DC6-229 and the Chief of Security shall 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 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 DC6-229 shall be maintained in the housing area for one week, at which time the form shall be forwarded to the ICT for review. Once reviewed, these forms shall be forwarded to classification to be filed in the institutional inmate record.

(c) An Inspection of Special Housing Record, Form DC6-228, 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 DC6-228 shall be maintained in the housing area and forwarded to the Chief of Security on a weekly basis where it shall be maintained on file pursuant to the current retention schedule. Form DC6-228 is incorporated by reference in (10) of this rule.

(9) 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 shall review the circumstances for possible reassignment.

(10) Forms. The following forms referenced in this rule are hereby incorporated by reference. A copy of any of these forms may be obtained from the Forms Control Administrator, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

(a) Form DC4-650, Observation Checklist/Restraint Observation Checklist, and effective date _____.

(b) Form DC6-203, Protection Waiver/Appeal Decision Form, and effective date _____.

(c) Form DC6-228, Inspection of Special Housing, effective date _____.

(d) Form DC6-229, Daily Record of Segregation, effective date _____.

(e) Form DC6-233a, Report of Administrative Confinement, effective date _____.

(f) Form DC6-234, Report of Protective Management, effective date _____.

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, Formerly 33-3.0081, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Stan Czerniak

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael W. Moore, Secretary, Department of Corrections

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 17, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 19, 2000

COMMISSION ON ETHICS

RULE TITLE: RULE NO.:
List of Forms and Instructions 34-7.010

PURPOSE AND EFFECT: The purpose of the proposed amendment is to promulgate the 2001 version of various forms that are required to be filed annually, as well as the Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees. In addition, the enactment of Chapters 2000-232, 2000-243, and 2000-258, Laws of Florida, substantially affects reporting obligations for public officers and public employees and numerous changes to the Commission's forms will need to be made as a result of these statutory provisions. More specifically, the statutory definition

of "liability" has been amended and will result in changes to CE Form 1 and CE Form 6. The statutory definition of "local officer" has been amended and will affect who is required to file CE Form 1. The reporting thresholds and instructions on CE Form 1 and CE Form 6 will be amended to provide the alternative of reporting based on either percentages or dollar amounts. The quarterly client disclosure filing deadline has been changed and this will also affect CE Form 2. Officers and employees will begin filing CE Form 1 and CE Form 6 with the Commission as of January 1, 2001. Chapter 2000-243, LOF, made this effective January 1, 2001; however, Chapter 2000-258, LOF, transferred the Secretary of State's filing duties to the Commission effective July 1, 2001. The Commission anticipates entering into a memorandum of agreement with the Secretary of State to assume responsibility for all filing as of January 1, 2001. There will be automatic fines and penalties for late-filing, and CE Form 1 and CE Form 6 will both be amended to address the final financial disclosure required within 60 days of leaving office or employment as well as amendment of previously filed disclosures. The asset and liability reporting on CE Form 6 will be amended as a result of Section 12, Chapter 2000-243, LOF. New forms – CE Form 1F-2000 and CE Form 6F-2000 – will be promulgated for use to make the final 60-day disclosure during the remainder of the current year and two other new forms being promulgated – CE Form 1F-2001 and CE Form 6F-2001 – will become effective January 1, 2001 for use next calendar year. CE Form 9, CE Form 30, and CE Form 10 will be amended to reflect that "consideration" for a gift must be paid within 90 days, and that consideration does not include a promise to pay, unless it is in writing; "Reporting individual" was statutorily changed to include candidates upon qualifying and candidates who have won their election but not yet assumed office; gift and honorarium-related expense disclosures (CE Form 30, CE Form 10, and CE Form 9) will be filed with the Commission, not the Secretary of State, as of January 1, 2001; and the Technological Research and Development Authority is added to the list of agencies that can make certain gifts. These statutory changes will also need to be addressed in the Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees.

SUMMARY: The forms promulgated by the Commission and adopted by reference in Rule 34-7.010, specifically: CE Form 1, CE Form 2, CE Form 6, the Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees, CE Form 9, CE Form 10, CE Form 30, CE Form 1F-2000, CE Form 6F-2000, CE Form 1F-2001, and CE Form 6F-2001.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated regulatory costs 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 within 21 days of this notice.

SPECIFIC AUTHORITY: Art. II, Sec. 8(f),(h), Fla. Const., 112.3147, 112.3215(13), 112.322(7),(10), 112.324 FS., Chapters 2000-232, 2000-243, 2000-258, Laws of Florida.

LAW IMPLEMENTED: Art. II, Sec. 8(a),(f),(h), Fla. Const., 112.313(9),(12), 112.3143, 112.3144, 112.3145, 112.3148, 112.3149, 112.3215 FS., Chapters 2000-232, 2000-243, 2000-258, Laws of Florida.

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

TIME AND DATE: 9:00 a.m., October 5, 2000

PLACE: Cabinet Meeting Room, The Capitol, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Julia Cobb Costas, Staff Attorney

THE FULL TEXT OF THE PROPOSED RULE IS:

34-7.010 List of Forms and Instructions.

(1) No change.

(a) Form 1, Statement of Financial Interests. To be utilized by state officers, local officers, candidates for state or local office and specified state employees for compliance with Section 112.3145(2) and (3), Florida Statutes. Effective 1/2001 ~~1/2000~~.

(b) Form 2, Quarterly Client Disclosure. To be utilized by elected constitutional officers, state officers, local officers and specified employees for compliance with Section 112.3145(4), Florida Statutes. Effective 1/2001 ~~1/2000~~.

(c) Form 6, Full and Public Disclosure of Financial Interests. To be utilized by all elected constitutional officers, candidates for such offices, other statewide elected officers, and others as prescribed by law for compliance with Article II, Section 8(a) and (h), Florida Constitution, as specified in Chapter 34-8 of these rules. Effective 1/2001 ~~1/2000~~.

(d) No change.

(e) A Guide to the Sunshine Amendment and Code of Ethics for Public Officers, Candidates, and Employees. Instructions to be utilized by public officers, public employees, candidates for public office, and other interested persons in complying with the Sunshine Amendment and the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes. Effective 1/2001 ~~1/2000~~.

(f) through (l) No change.

(m) Form 9, Quarterly Gift Disclosure. To be utilized by persons who are required to file Form 1 or Form 6 and by State procurement employees for compliance with the quarterly gift disclosure requirements of Section 112.3148(8), Florida Statutes. Effective 1/2001 ~~1/2000~~.

(n) Form 10, Annual Disclosure of Gifts from Governmental Entities and Direct Support Organizations and Honorarium Event Related Expenses. To be utilized by persons who are required to file Form 1 or Form 6 and by State procurement employees for compliance with the gift disclosure requirements of Section 112.3148(6), Florida Statutes, and the honorarium disclosure requirements of Section 112.3149(6), Florida Statutes. Effective 1/2001 ~~1/2000~~.

(o) Form 30, Donor's Quarterly Gift Disclosure. To be utilized by political committees, committees of continuous existence, lobbyists (persons who for compensation sought to influence the governmental decisionmaking, proposal, or recommendation of an agency), and the partners, firms, principals, and employers of lobbyists for compliance with the gift disclosure requirements of Section 112.3148(5), Florida Statutes. Effective 1/2001 ~~1/2000~~.

(p) Form 1F-2000, Final Statement of Financial Interests. To be filed within 60 days of leaving public office or employment. Effective 11/2000.

(q) Form 6F-2000, Final Full and Public Disclosure of Financial Interests. To be filed within 60 days of leaving public office. Effective 11/2000.

(r) Form 1F-2001, Final Statement of Financial Interests. To be filed within 60 days of leaving public office or employment. Effective 1/2001.

(s) Form 6F-2001, Final Full and Public Disclosure of Financial Interests. To be filed within 60 days of leaving public office. Effective 1/2001.

(2) No change.

Specific Authority Art. II, Sec. 8(f),(h), Fla. Const., 112.3147, 112.3215(13), 112.322(7),(10), 112.324 FS., Chapters 2000-232, 2000-243, and 2000-258, LOF. Law Implemented 112.313(9),(12), 112.3143, 112.3144, 112.3145, 112.3148, 112.3149, 112.3215 FS., Art. II, Sec. 8(a),(f),(h), Fla. Const., Chapters 2000-232, 2000-243, and 2000-258, LOF. History–New 4-11-76, Formerly 34-7.10 through 7.22, 8.10, Amended 2-23-77, 4-7-77, 5-17-77, 10-20-77, 2-25-79, 1-29-80, 4-29-81, 1-12-82, 3-25-82, 2-21-83, Formerly 34-7.10, Amended 7-10-88, 3-4-91, 10-6-91, 10-29-91, 12-22-91, 7-5-92, 10-15-92, 12-6-92, 11-10-93, 12-27-93, 11-21-94, 2-16-95, 12-26-95, 1-27-97, 1-1-98, 11-19-98, 12-28-99, 1-1-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Julia Cobb Costas, Staff Attorney

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ethics Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 24, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 4, 2000

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Procedural	40D-1
RULE TITLES:	RULE NOS.:
Permit Processing Fee	40D-1.607
Forms and Instructions	40D-1.659

PURPOSE AND EFFECT: The purpose of the proposed revisions is to adopt a permit processing fee for Works of the District permit applications and the incorporation by reference of the District's Works of the District permit application form.

SUMMARY: The proposed revisions will adopt a permit application processing fee for Works of the District permits and adopt the permit application form for Works of the District permits under Chapter 40D-6, F.A.C.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A Statement of Estimated Regulatory Cost is not being prepared based on the District's determination that the proposed revisions to Rules 40D-1.607 and 40D-1.659, F.A.C., will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

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: 373.044, 373.113, 373.116, 373.149, 373.171 FS.

LAW IMPLEMENTED: 373.109, 373.113, 373.216, 373.219, 373.229, 373.239, 373.413, 373.414, 373.416, 373.419, 373.421, 373.421(2) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Karen E. West, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34609-6899, (352)796-7211, Extension 4651

THE FULL TEXT OF THE PROPOSED RULES IS:

40D-1.607 Permit Processing Fee.

A permit application processing fee is required and shall be paid to the District when certain applications are filed pursuant to District rules. These fees are assessed in order to defray the cost of evaluating, processing, advertising, mailing, compliance monitoring and inspection, required in connection with consideration of such applications. Fees are non-refundable in whole or part unless the activity for which an application is filed is determined by the District to be exempt or the fee submitted is determined by the District to be incorrect. Failure to pay the application fees established herein is grounds for the denial of an application or revocation of a permit. The District's permit application processing fees are as follows:

(1) through (11) No change.

(12) The fee for a Works of the District permit application for activities reviewed pursuant to Chapter 40D-6 is.....$1600.00

Specific Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.109, 373.421(2) FS. History–Readopted 10-5-74, Amended 12-31-74, 10-24-76, 7-21-77, Formerly 16J-0.111, Amended 10-1-88, 1-22-90, 12-27-90, 11-16-92, 1-11-93, 3-23-94, Formerly 40D-0.201, Amended 12-22-94, 10-19-95, 3-31-96, 7-23-96, 10-16-96, _____.

40D-1.659 Forms and Instructions.

The following forms and instructions have been approved by the Governing Board and are incorporated by reference into this Chapter. Copies of these forms may be obtained from the District.

GROUND WATER

(1) through (18) No change.

SURFACE WATER

Application for Permit – Used for Docks or Piers and Bulkheads

(1) through (12) No change.

(13) WORKS OF THE DISTRICT APPLICATION FOR PERMIT FORM 44.00-082 (6/00).

Specific Authority 373.044, 373.113, 373.116, 373.149, 373.171 FS. Law Implemented 373.113, 373.216, 373.219, 373.229, 373.239, 373.413, 373.414, 373.416, 373.419, 373.421 FS. History–New 12-31-74, Amended 10-24-76, Formerly 16J-0.40, 40D-1.1.901, 40D-1.901, Amended 12-22-94, 5-10-95, 10-19-95, 5-26-95, 7-23-96, 2-16-99, 7-12-99, 7-15-99, 12-2-99, 5-31-00, 9-3-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Karen E. West, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34609-6899, (352)796-7211, Extension 4651

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Governing Board of the Southwest Florida Water Management District

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 25, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 18, 2000

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Procedural	40D-1
RULE TITLE:	RULE NO.:
Forms and Instructions	40D-1.659

PURPOSE AND EFFECT: The purpose of the proposed amendment is to adopt revisions to the District's Form entitled, Statement of Completion and Request for Transfer to Operation Entity, Form 547.27/SOC.

SUMMARY: The proposed amendment will adopt revisions to the District's form entitled; Statement of Completion and Request for Transfer to Operation Entity, Form 547.27/SOC. The revisions include the addition of a reference to Chapter 40D-6, F.A.C. in Section 2.A of the form and clarification of the provisions in Section 2.B of the form. The revisions also include the adoption of a checklist of items that must be submitted with the form in accordance with District rules.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A Statement of Estimated Regulatory Cost is not being prepared based on the District's determination that the proposed revisions to Rules 40D-1.659, F.A.C., will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

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.

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: Karen E. West, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34609-6899, (352)796-7211, Extension 4651

THE FULL TEXT OF THE PROPOSED RULE IS:

40D-1.659 Forms and Instructions.

The following forms and instructions have been approved by the Governing Board and are incorporated by reference into this Chapter. Copies of these forms may be obtained from the District.

GROUND WATER

(1) through (18) No change.

SURFACE WATER

Application for Permit – Used for Docks or Piers and Bulkheads

(1) No change.

(2) STATEMENT OF COMPLETION AND REQUEST FOR TRANSFER TO OPERATION ENTITY

FORM 547.27/SOC (06/00) ~~(8/94)~~

(3) through (12) No change.

Specific Authority 373.044, 373.113, 373.116, 373.149, 373.171 FS. Law Implemented 373.113, 373.216, 373.219, 373.229, 373.239, 373.413, 373.414, 373.416, 373.419, 373.421 FS. History–New 12-31-74, Amended 10-24-76, Formerly 16J-0.40, 40D-1.1.901, 40D-1.901, Amended 12-22-94, 5-10-95, 10-19-95, 5-26-95, 7-23-96, 2-16-99, 7-12-99, 7-15-99, 12-2-99, 5-31-00, 9-3-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Karen E. West, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34609-6899, (352)796-7211, Extension 4651

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Governing Board of the Southwest Florida Water Management District

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 25, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 18, 2000

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Works of the District	40D-6
RULE TITLES:	RULE NOS.:
Exemptions	40D-6.051
Permit Processing Fee	40D-6.201
Duration of Permits	40D-6.321
Completion Report	40D-6.411

PURPOSE AND EFFECT: The proposed amendments will revise the Exemption, Fee and Completion Report Sections of Chapter 40D-6, F.A.C. Works of the District. The proposed revisions will also add a section to Chapter 40D-6, on Permit Duration.

SUMMARY: The purpose of the proposed rules is to correct deficiencies in the District's Works of the District permitting rules. The amendment to 40D-6.051 will provide an exemption from the requirements of Chapter 40D-6 for projects that receive an Environmental Resource Permit under Chapters 40D-4, 40D-40, 40D-400, F.A.C. This provision will avoid the unnecessary duplication of permitting with respect to certain activities.

The amendment to 40D-6.201 will reference the fee charged for a Works of the District permit, which is set forth in Chapter 40D-1.607, F.A.C. The proposed amendment to 40D-6.411 will specifically reference the form that must be filed with the District upon completion of the construction authorized by a Works of the District permit. The proposed amendments also add Section 40D-6.321, F.A.C. to provide a duration for the Works of the District permits.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A Statement of Estimated Regulatory Cost is not being prepared based on the District's determination that the proposed revisions to Rules 40D-6.051, 40D-6.201, 40D-6.321, 40D-6.411, F.A.C., will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

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: 373.044, 373.113, 373.149, 373.171 FS.

LAW IMPLEMENTED: 373.084, 373.085, 373.086, 373.109, 403.813 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Karen E. West, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34609-6899, (352)796-7211, Extension 4651

THE FULL TEXT OF THE PROPOSED RULES IS:

40D-6.051 Exemptions.

A permit shall not be required:

(1) through (4) No change.

(5) For activities which receive an Environmental Resource Permit from the District under Chapters 40D-4, 40D-40 or 40D-400, F.A.C.

Specific Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.084, 373.085, 373.086, 403.813 FS. History–Readopted 10-5-74, Amended 12-31-74, 8-2-78, Formerly 16J-1.051(2), Amended _____.

40D-6.201 Permit Processing Fee.

A permit processing fee shall be paid to the District at the time a permit application is filed in the amount prescribed in the schedule set forth in Rule 40D-1.607(12), F.A.C. ~~40D-0.201.~~

Specific Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.109 FS. History–Readopted 10-5-74, Formerly 16J-1.061, Amended _____.

40D-6.321 Duration of Permits.

Unless revoked or otherwise modified, the duration of a Works of the District Permit issued pursuant to this chapter is:

(1) Five years from the date of issuance to the completion of construction and submittal of the Statement of Completion and Request for Transfer to Operation Entity, including the supporting as-built documents;

(2) Perpetual from the date of authorization by the District for operation by the entity identified in the permit.

Specific Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.084, 373.085, 373.086, 373.103 FS. History–New _____.

40D-6.411 Completion Report.

Within thirty (30) days after the completion of construction or alteration for which a permit was granted by the District ~~Board~~, the permittee shall file with the District a Statement of Completion and Request for Transfer to Operation Entity, as identified in Rule 40D-1.659, F.A.C. ~~written statement of completion on the appropriate form provided by the Board~~.

Specific Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.084, 373.085, 373.086 FS. History–Readopted 10-5-74, Formerly 16J-1.10, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Karen E. West, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34609-6899, (352)796-7211, Extension 4651

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Governing Board of the Southwest Florida Water Management District

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 27, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 18, 2000

AGENCY FOR HEALTH CARE ADMINISTRATION

Certificate of Need

RULE TITLES:	RULE NOS.:
Definitions	59C-1.002
Projects Subject to Review	59C-1.004
Exemptions	59C-1.005
Certificate of Need Application Procedures	59C-1.008
Project Specific Certificate of Need Application Procedures	59C-1.0085
Certificate of Need Application Review Procedures	59C-1.010
Monitoring Procedures	59C-1.013
Termination of Certificate of Need	59C-1.018
Modification of Certificate of Need	59C-1.019
Effect on Licensure	59C-1.020

PURPOSE AND EFFECT: The agency is proposing to amend several certificate of need (CON) rules to reflect statutory changes that were effective July 1, 2000. Other proposed changes add policy in response to agency experience with recent reviews. There are also technical or editorial changes with no effect on current promulgated policies.

The principal rule changes are as follows:

Medicare certified home health agencies: Elimination of Medicare certified home health agencies from CON review and exemptions.

Exemptions: Addition of project-specific requirements for termination of an inpatient service, delicensure of beds, combination of nursing home CONs, division of a nursing home CON, addition of hospital beds, temporary addition of acute care beds, and addition of nursing home beds. There is also an amendment to the current requirements for exemption of adult inpatient diagnostic cardiac catheterization, to conform the reporting requirements to those in hospital licensure rules.

Expedited reviews: Addition of a new section for conversion of hospital beds; consolidation of various current requirements for transfer of a CON; deletion of projects that became exempt under the amended statutes.

In a separate action, the agency will repeal rule 59C-1.023, Acquisition of Health Care Facilities, and rule 59C-1.031, Medicare certified home health agencies.

In the following list, which summarizes the basis for the proposed rule amendments that follow this notice, "Statutory change" refers to underlined rule sections that are proposed in direct response to the statutory changes; and "Other policy" refers to other proposed policies, not explicit in current rules, that are not directly related to statutory change.

Definitions

59C-1.002(17)	"Exemption"	Statutory change
59C-1.002(29)	"Mental health services"	Statutory change

Projects Subject to Review

59C-1.004(2)(f)	Hospital bed conversion	Statutory change

Exemptions

59C-1.005(2)(a)	Exemption request	Other policy
59C-1.005(2)(e)	Exemption request	Other policy
59C-1.005(2)(g)	Exemption request	Statutory change
59C-1.005(6)(a)1.	Termination of service	Other policy
59C-1.005(6)(a)2.	Termination of service	Other policy
59C-1.005(6)(b)2.	Delicensure	Other policy
59C-1.005(6)(b)3.	Delicensure	Other policy
59C-1.005(6)(c)	Combinations	Statutory change
59C-1.005(6)(d)	Divisions	Statutory change
59C-1.005(6)(e)	Hospital bed addition	Statutory change
59C-1.005(6)(f)	Temporary addition	Statutory change
59C-1.005(6)(g)	Nursing home addition	Statutory change

Project Specific Certificate of Need Application Procedures

59C-1.0085(1)	Transfer of CON	Other policy
59C-1.0085(1)(b)	Transfer of CON	Other policy
59C-1.0085(1)(g)	Transfer of CON	Other policy
59C-1.0085(1)(h)	Transfer of CON	Other policy
59C-1.0085(2)	Hospital bed conversion	Statutory change
59C-1.0085(3) part	Shared service	Other policy

Certificate of Need Application Review Procedures

59C-1.010(4) (a) part	Transfer of CON	other policy

Monitoring Procedures

59C-1.013(4)(b)	Condition compliance	Other policy

Termination of a Certificate of Need

59C-1.018(3)(c)	Termination of CON	Other policy

The remaining underlined sections of the preliminary rule amendments reflect a relocation or repetition of existing rule language currently found elsewhere within Rules 59C-1.002 through 59C-1.020. Other changes are editorial, including deletions of sections or parts of sections that are relocated, or are no longer valid or necessary because of the proposed new language cited above.

Additional information about these and other statutory changes is available from the certificate of need office.

SUMMARY: The agency proposes to revise certain rules pertaining to the certificate of need program, reflecting changes in the CON statutes and other necessary actions.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None 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: 408.15(8), 408.034(5) FS.

LAW IMPLEMENTED: 408.035, 408.036, 408.037, 408.039, 408.040 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: 2:00 p.m., September 26, 2000
PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Tallahassee, Florida
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Davis, Certificate of Need Office, 2727 Mahan Drive, Tallahassee, Florida

THE FULL TEXT OF THE PROPOSED RULES IS:

59C-1.002 Definitions.

~~(1) "Acquisition" means the act of possessing or controlling, in any manner or by any means, a health care facility or an institutional health service as one's own.~~

(2) through (7) renumbered (1) through (6) No change.

(7)~~(8)~~ "Capital project" means a project, whether subject to or not subject to certificate of need review, which involves a capital expenditure as defined in subsection 408.032(2)~~(1)~~, Florida Statutes, and which the applicant has approved via authorization to execute. For projects subject to certificate of need review, a capital project approved by the applicant also means:

(a) through (b) No change.

(9) through (14) renumbered (8) through (13) No change.

(14)~~(15)~~ "Conversion of beds" means the reclassification of licensed beds from one category to another ~~including~~, for facilities licensed under Chapter 395, F.S., including conversion to or from acute care beds, neonatal intensive care beds, hospital inpatient psychiatric beds, comprehensive medical rehabilitation beds, hospital inpatient substance abuse beds, distinct part skilled nursing facility beds, or beds in a long term care hospital; and, for facilities licensed under Chapter 400, Part I, F.S., ~~conversion to or from skilled beds and intermediate care beds in a facility that is not certified for both skilled and intermediate nursing care if such conversion effects a change in the level of care of 10 beds or 10 percent of the total bed capacity of the facility within a 2-year period, or~~ conversion to or from sheltered beds and community beds.

~~(16) "Cost overrun" means the actual or anticipated project cost, incurred while implementing a certificate of need, which exceeds the approved project cost as stated in the certificate of need. The anticipated project costs are determined prior to commencing construction when the applicant determines that the approved project cost will be exceeded, applying wage and price level indices. The actual project costs are determined when the applicant submits the final architectural certification of payment or a suitable substitute and a final project cost report to the agency.~~

(17) through (18) renumbered (15) through (16) No change.

(17) "Exemption" means the process by which a proposal that would otherwise require a certificate of need may proceed without a certificate of need.

(19) through (22) renumbered (18) through (21) No change.

(22) "Hospital inpatient psychiatric beds" means beds designated for the exclusive use of hospital inpatient psychiatric services regulated under Rule 59C-1.040, F.A.C.

(23) "Hospital inpatient substance abuse beds" means beds designated for the exclusive use of hospital inpatient substance abuse services regulated under Rule 59C-1.041, F.A.C. ~~"Home health agency" means an agency that is certified or seeks certification as a Medicare home health service provider as defined in part IV of Chapter 400, F.S.~~

~~(24) "Hospital outpatient service" means a service which is provided to a patient who is not a hospital inpatient when receiving health services.~~

(25) through (27) renumbered (24) through (26) No change.

(27)~~(28)~~ "Local H~~h~~ealth C~~c~~ouncil" means a public or private nonprofit health planning agency established consistent with s. 408.033, F.S., ~~under contract with the agency,~~ which serves the counties of a district "~~service district~~" of the agency as defined ~~set forth~~ in 408.032(5), F.S.

(28)~~(29)~~ No change.

(29) "Mental health services" means inpatient services provided in a hospital licensed under chapter 395, F.S., and listed on the hospital license as psychiatric beds for adults; psychiatric beds for children and adolescents; intensive residential treatment beds for children and adolescents; substance abuse beds for adults; or substance abuse beds for children and adolescents.

(30) "Mobile unit" means an object with the ability by structure, function or design to move or be moved from one health care facility ~~location~~ to another, such that upon arriving at a facility ~~location~~ the object is not permanently fixed but is temporarily secured for the purpose of providing a health service to inpatients ~~provided that such an object is limited to equipment or major medical equipment~~.

(31) "Nongovernmental health care consumer" means an individual who is not a health care provider or a health care purchaser as defined in Subsections (20)~~(22)~~ and (21)~~(23)~~ of this section. Nongovernmental health care consumers include but are not limited to elected government officials, members of the general public and representatives of consumer organizations.

(32) No change.

(33) "Operate" means to have the legal responsibility, pursuant to the appropriate licensure statute where licensure is required, for the proper functioning of all aspects of a health care facility~~,~~ or service~~, major medical equipment or equipment~~.

(34) through (36) No change.

~~(37) "Hospital inpatient psychiatric beds" mean beds designated for the exclusive use of hospital inpatient psychiatric services regulated under Rule 59C-1.040, F.A.C.~~

~~(38) "Hospital inpatient substance abuse beds" mean beds designated for the exclusive use of hospital inpatient substance abuse services regulated under Rule 59C-1.041, F.A.C.~~

(39) through (41) renumbered (37) through (39) No change.

(40)~~(42)~~ "Termination of an inpatient ~~a~~ health service" means the cessation of a health service~~, excluding emergency services in a hospital,~~ which currently requires a certificate of need ~~and results in no change in the type or number of licensed beds of a health care facility~~. It does not include the temporary cessation of a service lasting 6 months or less.

(43) through (45) renumbered (41) through (43) No change.

Specific Authority 408.15(8), 408.034(5) FS. Law Implemented ~~408.031, 408.032,~~ 408.033(1)(a), ~~408.033(2),~~ 408.036(1),(2)~~(d)~~, ~~408.036(1)(h),~~ 408.037(1)(2)~~(a)~~, 408.039(1)(2), ~~400.6015,~~ 651.118~~(2)(3)~~ FS. History–New 1-1-77, Joint Administrative Procedures Committee Objection Filed See FAW. Volume 3 No. 10 March 11, 1977, Amended 11-1-77, 9-1-78, 6-5-79, 4-25-80, 2-1-81, 3-31-82,7-29-82, 12-23-82, Formerly 10-5.02, Amended 11-17-87, 12-5-90, 1-31-91, 1-1-92, Formerly 10-5.002, Amended 12-14-92, 2-27-94,6-23-94, 10-18-95, 10-8-97, _____.

59C-1.004 Projects Subject to Review.

(1) Projects Subject to a Comparative ~~Batched~~ Review. Unless subject to expedited review under subsection 408.036(2), F.S., and subsection (2) of this rule, or exempted under subsection 408.036(3), F.S., and Rule 59C-1.005, F.A.C., the following p~~P~~rojects are subject to comparative review ~~pursuant to section 408.036(1), F.S., and are subject to~~ and the batching cycle procedures specified in Rule 59C-1.008, F.A.C., and will be reviewed in accordance with procedures set forth in subsection 59C-1.010(3), F.A.C.: ~~unless exempted under subsection 408.036(3), F.S., or expedited under subsection 408.036(2), F.S. and subsection (2) of this rule.~~

(a) The addition of beds by new construction or alteration.

(b) The new construction or establishment of additional health care facilities, including a replacement health care facility when the proposed project site is not located on the same site as the existing health care facility.

(c) The conversion from one type of health care facility to another.

(d) An increase in the total licensed bed capacity of a health care facility.

(e) The establishment of a hospice or hospice inpatient facility.

(f) The establishment of inpatient health services by a health care facility, or a substantial change in such services.

(g) An increase in the number of beds for acute care, specialty burn units, neonatal intensive care units, comprehensive rehabilitation, mental health services, hospital-based distinct part skilled nursing units, nursing home care, or at a long term care hospital.

(h) The establishment of tertiary health services.

(2) Projects Subject to Expedited Review. The following projects are ~~types of projects shall be~~ subject to expedited review, and will be reviewed ~~which shall be conducted~~ in accordance with procedures set forth in subsection 59C-1.010(4)~~(3)~~ F.A.C.:

(a) Sheltered nursing home beds.

~~(b) Combination within one nursing home facility of the beds or services authorized by two or more certificates of need issued in the same planning subdistrict.~~

~~(c) Division into two or more nursing facilities of beds or services authorized by one certificate of need issued in the same planning subdistrict. Such division shall not be approved if it would adversely affect the original certificate's approved cost.~~

~~(d) Cost overruns which exceed the limits set forth in s. 408.036(1)(i), except that no cost overrun review is necessary when the cost overrun is less than $20,000. Anticipated cost overruns may be filed at the applicant's discretion.~~

(b)~~(e)~~ Replacement of a health care facility at a site different from the existing facility, provided the site is located in the same district and within a 1-mile radius of the existing facility.

(c)~~(f)~~ Research, education and training programs.

(d)~~(g)~~ Shared services contracts or projects.

(e)~~(h)~~ Transfer of a certificate of need.

(f) Conversion of hospital beds licensed for mental health services, a distinct part skilled nursing unit, or general acute care, as described in s. 408.036(2)(f), F.S.

Specific Authority 408.15(8), 408.034(5) FS. Law Implemented 408.036(1),(2) FS. History–New 1-1-77, Amended 11-1-77, 9-1-78, 6-5-79, 4-25-80, 2-1-81, Formerly 10-5.04, Amended 11-24-86, 11-17-87,1-31-91, 1-1-92, Formerly 10-5.004, Amended 9-9-92, 1-9-95, 11-4-97, _____.

59C-1.005 Exemptions.

(1) Request for Exemption. Certain projects are subject to exemption ~~exempted~~ from certificate of need review pursuant to subsections 408.036(3) and 408.036(4), F.S., provided the ~~following~~ conditions specified in this rule are met. To receive an exemption, the applicant shall file a request for exemption with the agency and provide documentation to justify the request. A request for exemption ~~is not subject to the batching requirements specified under Rule 59C-1.008, F.A.C., and~~ may be submitted at any time, and must be submitted to:

Agency for Health Care Administration
Certificate of Need
2727 Mahan Drive, Building 3
Tallahassee, Florida 32308

(2) General Requirements. In the case of any applicant applying for an exemption from certificate of need review, ~~the following actions shall be accomplished:~~

~~(a) The applicant's~~ the request shall include:

(a) The type of exemption requested, with reference to the authorizing paragraph in s. 408.036(3), F.S. Except as provided in paragraphs (6)(a) or (b) of this rule, an exemption request must be limited to a single type of exemption.

(b) T~~t~~he name of the health care facility~~, home health agency~~ or hospice involved, and the name of the licensee. A request for exemption affecting an existing licensed health care facility or hospice must be submitted by the current licensee.~~, the legal name of the license holder, a statement of the services to be provided,~~

(c) T~~t~~he location of the project.~~,~~

(d) T~~t~~he costs of the project.~~,~~

(e) The gross square footage of the project, if applicable.

(f) T~~t~~he proposed licensed bed capacity of the health care facility, if applicable.~~,~~

(g) A non-refundable fee of two hundred and fifty dollars ($250) payable to the Agency for Health Care Administration in accordance with s. 408.036(4), F.S. Exemption requests shall not be accepted by the agency at the time of receipt unless accompanied by the $250 fee. Checks that are returned by the bank for insufficient funds will be processed consistent with the procedures for expedited review applications specified in s. 59C-1.008(3)(c)1., F.A.C.

(h) The applicable project specific information required by subsection (6) of this rule.

(3) Agency Approval Required. No project shall be implemented until the agency's approval has been rendered.

(4) Agency Action. The agency shall determine if a proposed project is exempted from certificate of need review within 30 days of receipt of all documentation required by this rule. The agency shall forward its written decision to the applicant, and shall provide the applicant with specific reasons in the event that the request is denied. The agency shall publish its notice of exemptions in the F.A.W. within 30 days of the decision date.

(5) Limitation on Validity. An exemption, when granted, is valid only for the project for which it was issued and for the health care facility or hospice on whose behalf the exemption was granted.

(6) Project Specific Exemption Requests. In addition to meeting the requirements of subsections (1) and (2) of this rule, requests for exemption of certain projects must meet the additional requirements specified below:

(a) Termination of an inpatient health care service. A request for exemption of a proposed termination of an inpatient health care service is required only for the types of services whose establishment would be subject to certificate of need review under s. 408.036(1) or (2), F.S. Temporary cessation of an inpatient service, lasting 6 months or less, is not a termination of that service and does not require an exemption.

1. A request for termination of a service must acknowledge that a service continuously inactive for more than 12 months cannot be reestablished at the facility unless authorized by a new certificate of need.

2. A request for termination may be combined with a hospital bed increase exemption requested under paragraph (6)(e), provided the termination will occur at the same facility.

(b) Delicensure of beds. A request for exemption of a proposed delicensure of beds must comply with the following:

1. The request must identify the facility where the delicensure will occur, the current licensed capacity of each category of beds licensed at the facility, the category of beds where delicensure will occur, and the exact number of beds being delicensed.

2. The request must acknowledge that the delicensed beds cannot be reactivated in any licensed bed category at the facility without a certificate of need or, if applicable, an exemption letter.

3. A request for delicensure of beds may be combined with a hospital bed increase exemption requested under paragraph (6)(e), provided the delicensed beds will occur at the same facility.

(c) Combination within one nursing home facility of the beds authorized by two or more certificates of need issued in the same planning subdistrict. A request for exemption of a proposed combination of authorized nursing home beds shall specify:

1. The number of beds authorized by each certificate of need that is being combined.

2. The current holder of each certificate of need that is being combined.

3. The financial impact of combining the certificates of need.

4. The intended licensee for the beds included in the combined certificates of need.

5. An exemption granted under this paragraph extends the validity period of the certificates to be combined by the length of the period starting with submission of the exemption request and ending with issuance of the exemption.

6. The longest validity period among the certificates that are combined will be the validity period for the combined certificates.

7. An exemption granted under this paragraph does not authorize transfer of the combined certificates of need to another entity. Such transfer requires a certificate of need consistent with the provisions of ss. 408.036(2)(c) and 408.042, F.S., and rule 59C-1.0085, F.A.C.

(d) Division into two or more nursing home facilities of the beds authorized by one certificate of need issued in the same planning subdistrict. A request for exemption of a proposed division of authorized nursing home beds shall specify:

1. The number of beds to be included in each component of of the divided certificate of need.

2. The financial impact of dividing the certificate of need.

3. The intended licensee for the beds included in each component of a divided certificate of need, if known.

4. An exemption granted under this paragraph extends the validity period of the certificate to be divided by the length of the period starting with submission of the exemption request and ending with issuance of the exemption. The extension is applicable to each component of the divided certificate of need.

5. An exemption granted under this paragraph does not authorize transfer of the component or components of a divided certificate of need to another entity. Such transfer requires a certificate of need consistent with the provisions of ss. 408.036(2)(c) and 408.042, F.S., and rule 59C-1.0085, F.A.C.

(e) Addition of hospital beds in a number not exceeding 10 beds or 10 percent of the licensed capacity of the bed category being expanded, whichever is greater, except for the tertiary services beds and long term care hospital beds excluded under s. 408.036(3)(n), F.S. A request for exemption of a proposed addition of hospital beds shall specify:

1. The current number of licensed beds in the category of beds proposed to be expanded.

2. The exact number of beds proposed to be added.

3. Any inpatient beds of another type proposed to be delicensed or terminated in conjunction with the proposed increase.

4. The request shall certify that:

a. The average occupancy rate for the 12-month period ending 1 month prior to the exemption request, in the category of licensed beds being expanded at the facility, meets or exceeds 80 percent; or, for a distinct part skilled nursing unit, the 12-month average occupancy rate meets or exceeds 96 percent. For the purpose of calculating average occupancy under this sub-subparagraph, the 12-month total of patient days shall be divided by 365 to determine an average daily census, and the average daily census shall then be divided by the total of licensed and approved beds as of the end of the 12-month period. Approved beds are beds authorized for the facility consistent with the provisions of rule 59C-1.008(2)(b).

b. Any beds of the same type previously authorized for the facility by an exemption under this paragraph have been licensed and operational for at least 12 months.

5. An exemption granted under this paragraph is subject to the project monitoring requirements of s. 408.040(2)(a)-(c), F.S., and rule 59C-1.013(2) and (3), F.A.C., including project progress reports, an 18-month validity period for the exemption, and the circumstances for extension of the validity period.

6. Beds authorized under this paragraph shall be inventoried as approved beds until the beds are licensed.

(f)1. Temporary addition of acute care hospital beds in a number not exceeding 10 beds or 10 percent of the licensed acute care bed capacity, whichever is greater. An exemption may be granted to a hospital which has previously experienced high seasonal occupancy or to a hospital that must respond to emergency circumstances. For purposes of this paragraph, "high seasonal occupancy" means that the average occupancy for a period of at least 3 consecutive months but not more than 6 consecutive months, during the 12-month period ending one month prior to the exemption request, was at least 85 percent. An exemption may be requested based upon the hospital's expectation that it will experience a comparable period of high seasonal occupancy during the 12 months following the exemption request.

2. A request for exemption of a proposed temporary addition of acute care beds shall:

a. Indicate the exact number of acute care beds to be added, the reason for the temporary addition, and the proposed beginning and ending dates of the temporary addition.

b. Certify that the applicant will comply with the provisions of s. 395.003(4), F.S.,which requires approval from the hospital licensure unit within the agency's Bureau of Health Facility Regulation before operation of a number of beds that is greater than the number indicated on the hospital license.

(g) Addition of nursing home beds in a number not exceeding 10 beds or 10 percent of the licensed capacity of the nursing home being expanded, whichever is greater. A request for exemption of a proposed addition of nursing home beds shall specify:

1. The licensed bed capacity of the nursing home proposed to be expanded.

2. The current number of sheltered beds, if any, included within the licensed bed capacity.

3. The exact number of beds proposed to be added.

4. The number of sheltered beds, if any, proposed to be included within the total to be added.

5. The request shall certify that:

a. The facility has not had any class I or class II deficiencies within the 30 months preceding the request for an addition. Effective beginning July 1, 2001, the facility must be designated as a Gold Seal nursing home.

b. The average occupancy rate for the nursing home beds at the facility, for the 12-month period ending 1 month prior to the exemption request, meets or exceeds 96 percent. For the purpose of calculating average occupancy under this sub-subparagraph, the 12-month total of patient days shall be divided by 365 to determine an average daily census, and the average daily census shall then be divided by the total of licensed and approved beds as of the end of the 12-month period. Approved beds are beds authorized for the facility consistent with the provisions of rule 59C-1.008(2)(b).

c. Any beds previously authorized for the facility by an exemption under this paragraph have been licensed and operational for at least 12 months.

6. An exemption granted under this paragraph is subject to the project monitoring requirements of s. 408.040(2)(a)-(c), F.S., and rule 59C-1.013(2) and (3), F.A.C., including project progress reports, an 18-month validity period for the exemption, and the circumstances for extension of the validity period.

7. Beds authorized under this paragraph shall be inventoried as approved beds until the beds are licensed.

(h)~~(b)~~ Provision of adult inpatient diagnostic cardiac catheterization services. ~~In addition to meeting the requirements of paragraph (a),~~

1. A~~a~~ request for exemption of a proposed adult inpatient diagnostic cardiac catheterization program shall include certifications by the applicant that:

a.~~1.~~ The applicant will not provide therapeutic cardiac catheterization pursuant to the grant of the exemption;

b.~~2.~~ The applicant will meet and continuously maintain the minimum licensure requirements specified in rule 59A-3.2085(13), F.A.C.; and,

c.~~3.~~ At least 2 percent of the applicant's annual adult diagnostic cardiac catheterization admissions will be charity and Medicaid patients.

~~(c) Within 30 days of receipt of all documentation required by this rule, the agency shall determine if the proposed project is exempted from certificate of need review. The agency shall forward its written decision to the applicant, and shall provide the applicant with specific reasons in the event that the request is denied. The agency shall publish its notice of exemptions in the F.A.W. within 30 days of the decision date.~~

~~(d) No project shall be implemented until the agency's approval has been rendered.~~

~~(e) An exemption, when granted, is valid only for the project for which it was issued and for the health care facility on whose behalf the exemption was granted.~~

2.~~(f)1.~~ An exemption granted for provision of adult inpatient diagnostic catheterization services remains in effect while the requirements specified in s. 408.036(3)(i)~~(n)~~, F.S., and rule 59A-3.2085(13), F.A.C., are met.

3.~~2.~~ Annual reports of compliance with standards for minimum program volume and minimum services to charity and Medicaid patients, as specified in rule 59A-3.2085(13)(d) and (i), F.A.C., shall be forwarded to the agency's Certificate of Need Office. The total volume reported shall include both inpatient and outpatient admissions to the adult diagnostic cardiac catheterization program. A single admission is equal to one patient visit to the cardiac catheterization program. The first annual report for the exempted program shall be forwarded within 30 days of the end of ~~by February 1 of the year following~~ the first 12 month period ~~calendar year~~ completed subsequent to the 18th month of operation. Annual reports thereafter shall be forwarded within 30 days after the anniversary of the first annual report ~~by February 1 of each subsequent calendar year~~. The reports should be submitted to the address shown in subsection (1) of this rule.~~:~~

~~Agency for Health Care Administration~~
~~Certificate of Need/Financial Analysis~~
~~2727 Mahan Drive, Building 3~~
~~Tallahassee, Florida 32308~~

4.~~3.~~ The agency shall provide written notification to the exempted hospital of a determination of non-compliance with the annual compliance requirements of subparagraph (h)3.~~(f)2.~~ of this rule. Action upon a finding of non-compliance shall be consistent with the provisions of s. 408.036(3)(i)~~(n)~~3.b., F.S.

Specific Authority 408.15(8), 408.034(5) FS. Law Implemented 408.036(3), 408.036(4) FS. History–New 1-1-77, Amended 6-5-79, 2-1-81, Formerly 10-5.05, Amended 11-17-87, 3-23-88, 1-31-91, Formerly 10-5.005, Amended 7-13-98, _____.

59C-1.008 Certificate of Need Application Procedures.

(1) Letters of Intent and applications subject to comparative ~~competitive~~ review shall be accepted in two batching cycles annually each for hospital projects, and for nursing facility projects, as specified in paragraph (g) of this subsection. All other projects subject to comparative ~~competitive~~ review shall be reviewed in the hospital batching cycle. “All other projects” include projects by or for ~~home health agencies,~~ hospices~~,~~ and intermediate care facilities for the developmentally disabled.

(a) through (b) No change.

(c) As to content, the letter of intent shall describe the proposal with specificity by indicating clearly and unequivocally the following information:

1. Identification of the applicant means the legal name, mailing address, and telephone number of the applicant.

a. If an existing health care facility~~, home health agency, HMO~~ or hospice seeks to undertake a project subject to a comparative ~~batched~~ review, then the legal name of the license holder must be stated and the license holder must be the applicant except when the applicant has a pending application to become the new licensee ~~for transfer of ownership~~ of the existing health care facility or hospice filed with the applicable licensure unit within the agency’s Bureau of Health Facility Regulation ~~agency's licensure and certification office~~. In addition, the license number and date of expiration must be stated. It is the responsibility of the person issued a license to keep licensure information current. If agency records indicate information different from that presented in the letter of intent with respect to the identification of the holder of the license and the licensure status, then the agency records create a rebuttable presumption as to the correctness of those records and therefore the letter of intent is not valid.

b. If the proposal is for a project which will result in licensure of a new ~~a new license being issued, as for~~ a health care facility~~,~~ or hospice, ~~or Medicare certification for a home health agency,~~ the applicant seeking the certificate of need must be in existence at the time the letter of intent is submitted.

2. The letter of intent must identify the type of project proposed and shall contain only one project type as described in Section 408.036(1), F.S.

3. The number of beds sought is indicated by the numerical representation of how many beds of a specific type will compose the proposed project.

4. Services is the type of health care service sought and shall be indicated by describing the specific service requested.

5. Location refers to the health planning subdistricts adopted in Chapter ~~Rule~~ 59C-2, F.A.C., or the service~~s~~ districts. The applicant must indicate the subdistrict by name or number, as provided in Chapter ~~Rule~~ 59C-2, F.A.C., and give the name of the county where the proposed project will be located.

(d) through (e) No change.

(f) Certificate of Need Application Submission. An application for a certificate of need shall be submitted on AHCA Form CON-1, July 2000 ~~1997~~, which includes Schedules A or A-Trn, B or B-Trn, C, D, D-1, 1 or 1-Trn, 2, 3, 4, 5, 6, 6A, 7, 7A, 7B, 8, 8A, 9, 10, and 11-Trn ~~11, 11A, and 11B~~ which are incorporated by reference herein. A copy of Form CON-1 and the Schedules may be obtained from:

Agency for Health Care Administration
Certificate of Need
2727 Mahan Drive, Building 3
Tallahassee, FL 32308
~~Agency for Health Care Administration~~
~~Certificate of Need Office~~
~~Fort Knox Executive Center~~
~~2727 Mahan Drive, Building 3~~
~~Tallahassee, FL 32308~~

1. through (g) No change.

(h) An applicant for a project subject to Certificate of Need review which affects an existing licensed health care facility, ~~an existing licensed home health agency,~~ an existing licensed hospice, ~~an existing licensed health maintenance organization,~~ or an existing licensed intermediate care facility for the mentally retarded must be the license holder. The legal name of the license holder must be stated. In addition, the license number and date of expiration must be stated. It is the responsibility of the person issued a license to keep licensure information current. If agency records indicate information different from that presented in the letter of intent with respect to the identification of the holder of the license and the licensure status, then the agency records create a rebuttable presumption as to the correctness of those records and therefore the application will be rejected.

(i) No change.

(j) Persons applying under a shared services ~~joint venture~~ agreement must each be named as an applicant~~s~~ for the Certificate of Need, with each separately meeting all requirements for application.

(2) No change.

(3) Filing Fees. Certificate of need applications shall not be accepted by the agency at the time of filing unless accompanied by the minimum base certificate of need application filing fee in accordance with s. 408.038, F.S. The minimum base fee shall be $5,000. In addition to the base fee of $5,000, the fee shall be 0.015 of each dollar of the proposed expenditure, except that no fee shall exceed $22,000.

(a) For the sole purpose of calculating the application fee, the proposed expenditure includes only the items of cost contributing to the capital expenditures of the proposed project. An application filing fee is non-refundable, unless the application is not accepted by the agency; or unless an accepted application is deemed incomplete and withdrawn by the agency as a result of the omissions review, and the withdrawal is not challenged by the applicant, in which case all but the $5,000 base fee shall be refunded. No fees shall be refunded for applications deemed complete by the agency but subsequently voluntarily withdrawn by the applicant, or for applications deemed incomplete as a result of a legal challenge. ~~The application fee for the transfer of a Certificate of Need is $5,000 provided there is no increase in the project cost approved for the original Certificate of Need. The filing fee for a transfer of a Certificate of Need involving an increase in the project cost shall be calculated based upon the amount of increase in accordance with s. 408.038, F.S. and subsection (3) above.~~

(b) through (4) No change.

(5) Certificate of Need Application Contents. An application for a certificate of need shall contain the following items:

(a) through (c) No change.

(d) To comply with section 408.037(1)(b)1., F.S., which requires a listing of all capital projects, the applicant shall provide the total approximate amount of anticipated expenditures for capital projects which meet the definition in s. 59C-1.002(7)~~(8)~~, F.A.C., at the time of initial application submission, or state that there are none. An itemized list or grouping of capital projects is not required, although an applicant may choose to itemize or group its capital projects. The applicant shall also indicate the actual or proposed financial commitment to those projects, and include an assessment of the impact of those projects on the applicant's ability to provide the proposed project; and

(e) through (6) No change.

Specific Authority 408.15(8), 408.034(5) FS. Law Implemented 408.037, 408.038, 408.039 FS. History–New 1-1-77, Amended 11-1-77, 9-1-78, 6-5-79, 2-1-81, 4-1-82, 7-29-82, 9-6-84, Formerly 10-5.08, Amended 11-24-86, 3-2-87, 6-11-87, 11-17-87, 3-23-88, 5-30-90, 12-20-90, 1-31-91, 9-9-91, 5-12-92, 7-1-92, 8-10-92, Formerly 10-5.008, Amended 4-19-93, 6-23-94, 10-12-94, 10-18-95, 2-12-96, 7-18-96, 9-16-96, 11-4-97, 7-21-98, _____.

59C-1.0085 Project Specific Certificate of Need Application Procedures.

In addition to the requirements set forth in Rule 59C-1.008, F.A.C., the following requirements apply to the projects described below:

(1) Transfer of a certificate of need. As provided in ss. 408.037(2) and 408.034(2), F.S., an applicant for a certificate of need must certify that it will license and operate the health care facility or service authorized by the certificate of need; and the agency will not issue a license to any health care facility, part of a health care facility, hospice, or health care service described in ss. 408.036(1) or (2), F.S., which fails to receive a required certificate of need. This subsection applies to circumstances where the certificate holder will not be the initial licensee or operator of the authorized project. Such circumstances include, for example, a change in the ownership or licensed operator of the certificate holder. Except as provided in this subsection, such changed circumstances require a certificate of need that transfers the authorized project to the intended initial licensee or operator ~~Combinations~~.

(a) An application to transfer a certificate of need is subject to an expedited review, as specified in 408.036(2)(c), F.S. ~~An application to combine two or more Certificates of Need and the transfer of one or more such Certificate of Need to another legal entity may be submitted in a single application and must be submitted by the transferee if a single application is opted for~~.

(b) The proposed transferee is the applicant for the transfer. The transferor is subject to the limitations on transfer costs specified in s. 408.042, F.S., which must be identified in the application for a transfer. ~~All applications for combinations will be reviewed in accordance with the review criteria in Section 408.035, F.S.~~

(c) The application fee for transfer of a certificate of need is $5,000 provided there is no increase in the project cost approved for the certificate of need that is being transferred. The filing fee for a transfer involving an increase in the project cost shall be calculated based on the amount of increase in accordance with s. 408.038, F.S., and rule 59C-1.008(3)(a), F.A.C. ~~If an application is filed to combine two or more certificates, the validity period of the Certificate or Certificates of Need to be consolidated will be extended for the time beginning upon submission of the application and ending when final agency action and any appeal from such action has been concluded. However, no such extension will be effected if the application is withdrawn by the applicant.~~

(d) A transfer application is required if the intended licensee or operator for approved nursing home beds in a combined certificate of need, as authorized by an exemption under s. 408.036(3)(l), F.S., will be an entity other than the holder of any of the uncombined certificates of need. ~~For any certificate of need issued pursuant to paragraph 408.036(2)(f), F.S., the validity period will be that of the certificate of need issued first plus the extension as described above in paragraph (c).~~

(e) A transfer application is required if the intended licensee or operator for the approved nursing home beds included in a component or components of a divided certificate of need, as authorized by an exemption under s. 408.036(3)(m), F.S., will be an entity other than the holder of the undivided certificate of need. ~~For any certificate of need issued pursuant to paragraph 408.036(2)(f), F.S., where any part of the certificate of need has commenced construction, all parts are deemed to have commenced construction upon issuance of the combined certificate of need.~~

(f) A transfer application will be reviewed in accordance with the review criteria in s. 408.035, F.S.

(g) Upon written request from the transferor received at least 15 days prior to the termination date of the certificate of need, and receipt of a transfer application, the agency will extend the validity period of the proposed transferred certificate of need for a period of 60 days, consistent with s. 59C-1.018(3)(c), F.A.C.

(h) No transfer application is required if a change in the intended initial licensee or operator of an authorized project occurs because of a corporate merger or a change in the corporate name.

(2) Conversion of licensed hospital beds. As provided in s. 408.036(2)(f), F.S., an expedited review is applicable for hospital projects proposing to increase the licensed capacity of acute care beds or the licensed capacity of a category of mental health services beds through conversion of other specified beds at the same hospital ~~Divisions~~.

(a) Conversion under this subsection may not establish a new licensed bed category at the hospital. ~~A separate application to divide each Certificate of Need must be filed. A transfer of one or both of the Certificates of Need which result from the division must be requested in a separate Certificate of Need application. Such applications will be reviewed simultaneously by the agency if submitted simultaneously and if a request is made to consider them simultaneously. A combination of one or both of the certificates which result from the division Certificate of Need application must be filed in a separate application, but may be filed concurrently.~~

(b) Licensed acute care bed capacity may be increased under this subsection through: ~~All applications for divisions will be reviewed in accordance with the review criteria in Section 408.035, F.S.~~

1. Conversion of beds in one or more of the categories of licensed mental health services beds; or

2. Conversion of distinct-part skilled nursing unit (SNU) beds.

(c) Licensed bed capacity in a category of mental health services beds may be increased under this subsection through: ~~If an application is filed to divide a certificate, the validity period of the Certificates of Need resulting from the division will be extended for the time beginning upon submission of the application and ending when final agency action and any appeal from such action has been concluded. However, no such extension will be effected if the application is withdrawn by the applicant.~~

1. Conversion of beds in one or more of the other categories of licensed mental health services beds; or

2. Conversion of acute care beds.

(d) Conversions under this subsection shall not increase the total licensed bed capacity of the hospital. ~~For any certificate of need issued pursuant to paragraph 408.036(2)(g), F.S., the validity period will be that of the oldest Certificate of Need involved in the transaction plus the extension as described in paragraph (c) above.~~

(e) Beds added by conversion under this subsection must be licensed and operational for at least 12 months before the hospital may apply for additional conversion affecting beds of the same type.

~~(3) The addition of beds to a licensed nursing home by transfer of a valid certificate of need.~~

~~(a) All applications for a transfer or the addition of beds to a licensed nursing home by transfer will be reviewed in accordance with the review criteria in Section 408.035, F.S.~~

~~(b) The validity period of a Certificate of Need transferred directly to another holder or transferred to be added to an existing licensed nursing home facility does not change as a result of the transfer. A transfer does not extend the validity period of a Certificate of Need.~~

(3)~~(4)~~ Shared service arrangement. Any application for a project involving a shared service arrangement is subject to a comparative ~~batched~~ review when ~~where~~ the health service being proposed is not currently provided by any of the applicants, or an expedited review when ~~where~~ the health service being proposed is currently provided by one of the applicants. Proposals for a shared service arrangement must be limited to hospitals located in the same service planning area, as defined by the agency and applicable for the service being proposed.

(a) through (b) No change.

(4)~~(5)~~ Mobile Units.

(a) Any health care facility~~, health maintenance organization, or home health agency~~ which intends to utilize a mobile unit must apply for a certificate of need prior to utilization of the mobile unit if the project has been determined subject to review by the agency.

(b) Only a health care facility~~, health maintenance organization, or home health agency~~ which intends to utilize a mobile unit may apply for a certificate of need for a mobile unit.

(5)~~(6)~~ Reestablishment of an inpatient health service ~~Termination of a health service~~. ~~Any person who terminates a health service must be granted a certificate of need to reinstitute the health service.~~ Reestablishment of a health service which was not offered continuously at a health care facility for the 12-month period prior to the proposed reestablishment is a substantial change in health services, and requires a certificate of need.

Specific Authority 408.15(8), 408.034(5) FS. Law Implemented 408.034(2), 408.036(2)(b)(c)(f), 408.037(2), 408.042 FS. History–New 1-31-91, Formerly 10-5.0085, Amended 10-18-95, 10-8-97, _____.

59C-1.010 Certificate of Need Application Review Procedures.

(1) The agency shall review all applications in the context of the review criteria specified in Section 408.035, F.S., Chapters ~~Rules~~ 59C-1 and 59C-2, F.A.C., ~~which are in accordance with section 408.035, F.S.,~~ and all information relevant to the criteria contained therein.

(2) General Provisions

(a) Applications subject to comparative or expedited review shall be submitted to the agency and the appropriate Local Health Council on AHCA Form CON-1, as referenced in Rule 59C-1.008(1)(f), F.A.C.

(b) Applications for projects involving an existing health care facility shall be filed by the current license holder as listed on the current agency license in effect at the time of the applicant omission deadline specified in subparagraph (3)(a)3. or (4)(a)3. of this rule, or the application shall be withdrawn from consideration.

(c) An application shall not be deemed complete by the agency unless all information required by statute and rule has been submitted by the applicant.

(3) Comparative Review. Applications subject to comparative review shall be reviewed according to the following timetable:

(a) Completeness Review.

1. Within 15 calendar days after the application submission deadline promulgated under rule 59C-1.008(1)(g), F.A.C., the agency shall determine whether the application is complete.

~~2. An application shall not be deemed complete by the agency unless all information required by statute and rule has been submitted by the applicant.~~

2.~~3.~~ If the application is deemed incomplete by the agency, the agency shall request in writing from the applicant specific information necessary for the application to be deemed complete.

3.~~4.~~ If an applicant does not provide the specific additional information required by statute and rule in writing ~~requested~~ to the agency and the appropriate L~~l~~ocal H~~h~~ealth C~~c~~ouncil within 21 calendar days of the receipt of the agency's request, the application shall be deemed withdrawn from consideration. The applicant's response must be received by the agency and the L~~l~~ocal H~~h~~ealth C~~c~~ouncil no later than 5 p.m. local time on or before the omissions due date promulgated under Rule 59C-1.008(1)(g)~~(l)~~, F.A.C.

~~5. The applicant submitting an application involving an existing health care facility must be the current license holder as listed on the current agency license in effect at the time of the promulgated applicant omission deadline under Rule 59C-1.008(1)(l), or the application shall be withdrawn from consideration.~~

(b) The agency shall deem the application complete or withdrawn within 7 calendar days of the receipt of the requested information. Subsequent to an application being deemed complete by the agency, no further application information or amendment will be accepted by the agency.

(c) The agency shall conduct public hearings in accordance with the provisions in subsection 408.039(3)(b), F.S. The presiding officer at the hearing will be assigned by the agency, or the L~~l~~ocal H~~h~~ealth C~~c~~ouncil. Unless otherwise ordered by the presiding officer, the applicant and those in support of the proposal will speak followed by those opposing the proposal, and the applicant may then present rebuttal information. The agency will preserve the proceedings at the hearing.

(d) The agency shall issue a State Agency Action Report within 60 calendar days from the date ~~day~~ the application is deemed complete unless the review period is extended pursuant to subsection (6)~~(5)~~ of this rule.

(4)~~(3)~~ Expedited Review ~~Process~~. Applications subject to ~~for~~ expedited review shall be reviewed according to the following timetable: ~~submitted to the agency and the appropriate Local Health Council on AHCA Form CON-1, as referenced in Rule 59C-1.008(1)(f), at least 90 days prior to the implementation of the project~~.

(a) Applications shall not be accepted for an expedited review unless they are ~~if they are not~~ submitted at least 90 days prior to the implementation of the project. Transfer applications shall be accepted consistent with the provisions of 59C-1.0085(1)(g), F.A.C. (~~or, for a transfer, at least 90 days prior to the termination date of the Certificate of Need. Applications for projects involving an existing health care facility must be filed by the current license holder except where the applicant has a pending application for transfer of ownership filed with the agency and shall be processed in the following manner:~~

(b)~~(a)~~ All such applications shall be exempt from the batching requirements set forth in Rule 59C-1.008(1)(g).

(c)~~(b)~~ No letter of intent or letter of intent publication, as prescribed by subsection 59C-1.008(1), shall be required.

(d)~~(c)~~ Completeness Review.

1. Within 15 calendar days of receipt of an application by the agency, the agency shall determine whether the application is complete.

2. If the application is deemed incomplete by the agency, the agency shall request in writing from the applicant specific information necessary for the application to be deemed complete.

3. If an ~~the~~ applicant does not provide the specific additional information required by statute and rule in writing to the agency and the appropriate L~~l~~ocal H~~h~~ealth C~~c~~ouncil within 21 calendar days of the receipt of the agency's request, the application shall be ~~is~~ deemed withdrawn from consideration.

~~4. The applicant submitting an application involving an existing health care facility must be the current license holder as indicated on the current agency license in effect at the time of the applicant omission deadline or the application shall be withdrawn from consideration.~~

(e)~~(d)~~ The agency shall deem the application complete or withdrawn within 7 calendar days of the receipt of the requested information. Subsequent to an application being deemed complete by the agency, no further application information or amendment will be accepted by the agency, unless a statutorily required item was omitted and the agency failed to clearly ~~did not~~ request the specific item in its omissions request. In the later case, the application may be supplemented only with the omitted item.

(f) A public hearing shall be held only if the agency determines there are issues of significant public interest related to the proposed project.

~~(g)(e) If the application is deemed complete,~~ T~~t~~he agency shall issue a ~~its~~ State Agency Action Report ~~describing the agency's findings with regard to the proposed project~~ within 45 calendar days from the date the application is deemed complete unless the review period is extended pursuant to subsection (6)~~(5)~~ of this rule.

~~(f) A public hearing shall be held only if the agency determines there are issues of significant public interest.~~

(5)~~(4)~~ Issuance of State Agency Action Report.

(a) The agency shall issue a ~~its~~ State Agency Action Report describing the agency's findings for each application deemed complete. All applications that were comparatively reviewed shall be described in a single State Agency Action Report ~~describing the agency's findings with regard to the applications in the batch, or subject to expedited revie~~w. The report shall state the agency's ~~its~~ intent to grant or deny certificates of need for projects in their entirety or for ~~valid~~ identifiable portions thereof, and state the conditions required of the certificate of need holder, if any. The agency Secretary ~~Director~~ or his designee shall sign State Agency Action Reports. The agency shall publish its notice of intent, as set

forth in the State Agency Action Report, in the F.A.W. within 14 calendar days after the State Agency Action Report is issued. A notice of intent and State Agency Action Report shall be mailed to each applicant. The agency decision embodied in the State Agency Action Report to grant additional beds, services, or programs will be reflected in the agency's inventories.

(b) through (c) No change.

(d) The agency shall issue a certificate of need according to the timeframes specified in subsection (3) or (4)~~(2)~~ of this rule, specifying the scope of the project, any conditions placed on the certificate of need, and an approved dollar amount for the project in its entirety or for identifiable portions of the total project~~;~~, or the agency shall deny a certificate of need for the project in its entirety. ~~When the agency has determined that it is necessary to insure that the intent of the statute is carried out, conditions shall be placed upon the certificate of need.~~ The agency may impose conditions on ~~shall condition~~ a certificate of need predicated upon statements of intent expressed by an applicant in the certificate of need application, which the agency relied upon in its decision to issue the certificate of need, and which relate to the criteria set forth in section 408.035, F.S., and in Chapters 59C-1 ~~Rules 59C-1.030-.044~~ and ~~Rule~~ 59C-2, F.A.C.

(6)~~(5)~~ Review period extension. The agency shall issue a State Agency Action Report pursuant to the timeframes specified in subsections 408.039(4), F.S., and this rule unless an extension is granted by written mutual agreement of all applicants~~,~~ which are subject to comparative ~~competitive~~ review in the applicable batching cycle, or an applicant subject to expedited review, and the agency.

(7)~~(6)~~ For purposes of the administration of the Health Facility and Services Development Act, any oral or written communication, regarding the merits of a specific application, between the applicant, any person acting on behalf of the applicant, or any person opposing the application and any person in the agency who exercises any responsibility respecting the application, subsequent to an application being deemed complete pursuant to paragraphs (3)(b) or (4)(e) of this rule ~~the schedule in Rule 59C-1.008(1)(g), F.A.C.~~, and prior to the time of the agency's determination pursuant to paragraphs (3)(d) or (4)(g) of this rule, ~~the schedule in Rule 59C-1.008(1)(g), F.A.C.~~, is prohibited.

Specific Authority 408.15(8), 408.034(5) FS. Law Implemented ~~408.035,~~ 408.036(2), 408.039(3),(4)~~,(5)(d)~~ FS. History–New 1-1-77, Amended 11-1-77, 9-1-78, 6-5-79, 4-25-80, 2-1-81, 3-31-82, 12-23-82, Formerly 10-5.10, Amended 11-24-86, 11-17-87, 3-23-88, 8-28-88, 1-31-91, 7-1-92, 7-14-92, Formerly 10-5.010, Amended 10-8-97, _____.

59C-1.013 Monitoring Procedures.

(1) No change.

(2) Project Status Reports.

(a) No change.

(b) The status reports shall be submitted on AHCA Form CON-2, Revised July 1997, and incorporated by reference herein. A copy of Form CON-2 may be obtained from:

Agency for Health Care Administration
Certificate of Need
2727 Mahan Drive, Building 3
Tallahassee, Florida 32308
~~Agency for Health Care Administration~~
~~Certificate of Need Office~~
~~Fort Knox Executive Center~~
~~2727 Mahan Drive, Building 3~~
~~Tallahassee, FL 32308.~~

(c)~~1. For a certificate of need other than one designated as a multifacility project,~~ A~~a~~ status report covering the first 15 months from the date of issuance of a ~~the~~ certificate of need shall be received by the agency no later than 14 calendar days after the end of the reporting period.

~~2. For a certificate of need designated as a multifacility project, as defined in subsection 408.032(16), F.S., a status report covering the first 20 months from the date of issuance of the certificate of need shall be received by the agency no later than 14 calendar days after the end of the reporting period.~~

(3) Documentation. The following is a listing of all reports required for monitoring compliance with this rule ~~section 59C-1.013~~ and rule 59C-1.018, F.A.C.

(a) through (b) No change.

(4)~~(c)~~ Reporting Requirements Subsequent to Licensure or Commencement of Services. All holders of a certificate of need that was issued ~~have been granted a certificate of need~~ predicated upon conditions expressed on the face of the certificate of need shall provide annual ~~to the agency a~~ compliance report~~s to the agency~~. The reporting period shall be January 1 through December 31 of each year. The holder ~~All holders~~ of a certificate of need who began operation after January 1 will report from the date operation began through December 31. The compliance report shall be submitted no later than ~~will be due into the agency on~~ April 1 of the subsequent year.

(a) The compliance report will contain ~~the~~ information necessary for an assessment of ~~to assess~~ compliance with conditions on the certificate of need, utilizing measures, such as a percentage of patient days, that are consistent with the stated condition. ~~This requires that a measure or set of measures be developed which can be used to assess compliance with conditions. "Measure" means the act of ascertaining extent, dimension, quality or quantity of something in by comparison with the condition. The certificate of need holder is responsible for identifying the measures to be used in assessing his or her compliance with the conditions.~~ The following ~~type of~~ information shall be provided in the holder's annual compliance report ~~assessment of compliance with the condition~~:

1. The time period covered by the measures;

2. The measure for assessing compliance with each of the conditions identified and described on the face of the certificate of need;

3. The way in which the conditions were evaluated by applying the measures;

4. The ~~actual~~ data sources used to generate ~~the~~ information about ~~on~~ the conditions that were measured;

~~5. The source of the data for the measure;~~

~~6. The reasonableness of the measures and the confidence in the measures;~~

5.~~7.~~ The person and position responsible for ~~defining the measures and~~ supplying the compliance report;

6.~~8.~~ Any other information necessary for the agency to determine compliance with conditions; and,

7.~~9.~~ If applicable, the reason or reasons, with supporting data, why the certificate of need holder was unable to meet the conditions set forth on the face of the certificate of need.

(b) A change in the licensee for a facility or service does not affect the obligation for that facility or service to continue to meet conditions imposed on a certificate of need and to provide annual condition compliance reports.

(c) Conditions imposed on a certificate of need may be modified consistent with rule 59C-1.019, F.A.C.

(5)~~(4)~~ Violation of Certificate of Need Conditions. Health care providers found by the agency to be in noncompliance with conditions set forth in their certificate of need shall be fined as defined in section 59C-1.021, F.A.C.

Specific Authority 408.15(8), 408.034(5) FS. Law Implemented ~~408.033(1)(b),~~ 408.040(1),(2),(3)~~, 408.032(16), 408.044~~ FS. History–New 1-1-77, Amended 11-1-77, 9-1-78, 6-5-79, 2-1-81, 3-31-82, Formerly 10-5.13, Amended 11-24-86, 7-25-89, Formerly 10-5.013, Amended 10-18-95, 11-4-97, _____.

59C-1.018 Termination of Certificate of Need.

(1) Validity Period of Certificate of Need. A certificate of need shall terminate 18 months from the date of issuance unless the holder meets the applicable conditions for an extension set forth in subsection 408.040(2), Florida Statutes, and this rule~~, or 2 years from the date of issuance if the certificate of need has been designated by the agency as a multifacility project as defined in subsection 408.032(16), Florida Statutes~~.

(2) Undertaking a Project Authorized by a Certificate of Need. A certificate of need will terminate after the 18-month ~~or 2-year~~ time frame set forth in subsection (1) unless the applicant meets one of the minimum requirements described below:

(a) Certificates of Need for New Construction or Renovation Projects.

1. A holder of a certificate of need with a project for new construction must, by the date of termination of the certificate of need, be deemed to have commenced continuous construction as defined in subsection 408.032(4)~~(3)~~, Florida Statutes. For purposes of compliance, site preparation must be completed as defined below:

a. through 3. No change.

(b) Certificates of Need for Non-construction Projects.

1. A holder of a certificate of need for a non-construction project including ~~home health agencies,~~ hospice, bed conversions and establishment of new health services, or a substantial change in such services, must provide proof of having made an enforceable capital expenditure greater than 10 percent of the total project cost, or have received appropriate licensure and certification by the date of termination of the certificate of need.

2. No change.

(3) Extension of Validity Period.

(a) through (b) No change.

(c) Upon written request from the holder of a certificate of need received at least 15 days prior to the termination date of the certificate of need, and upon submission of a transfer application by the proposed transferee, the agency will extend the validity period of the proposed transferred certificate of need for a period of 60 days to ensure that the certificate of need remains valid throughout the agency's timetable for review of the transfer application. Only one such request for a 60 day extension will be granted under the provisions of this subsection.

Specific Authority 408.15(8), 408.034(5) FS. Law Implemented 408.040(2)~~(a)(b)(c)~~ FS.~~, Section 14, Chapter 97-270, Laws of Florida~~ History–New 11-24-86, Amended 7-25-89, Formerly 10-5.018, Amended 10-8-97, _____.

59C-1.019 Modification of Certificate of Need.

(1) through (2) No change.

(3) Good cause includes, for example:

(a) Changes in the adequacy of reimbursement; or

(b) Changes in the overall ability of the health care facility~~, home health agency,~~ or hospice for which the certificate of need was issued to cover its costs if such changes are of such a degree that the continued viability of the health care facility~~, home health agency,~~ or hospice is seriously threatened; or

(c) Changes in agency rules and regulations substantially affecting the project.

(4) No change.

Specific Authority 408.15(8), 408.034(5) FS. Law Implemented 408.040(1)(c)~~(a)~~ FS. History–New 11-24-86, Amended 7-25-89 Formerly 10-5.019, Amended 2-5-98, _____

59C-1.020 Effect on Licensure.

In the exercise of its authority to issue licenses to health care facilities~~, home health agencies~~ and hospices, as provided by Chapters 395 and 400, Florida Statutes, the agency shall duly consider the certificate of need required by the Health Facility and Services Development Act, and shall not issue a license to

a health care facility~~, home health agency,~~ or hospice which fails to receive a certificate of need or an exemption where required. The agency will only issue a license to a holder of a certificate of need for a health care facility~~, home health agency~~ or hospice in accordance with the certificate of need, and no license will be issued for a number of beds less than the total on a certificate of need.

Specific Authority 408.15(8), 408.034~~(5)(2)(4)~~ FS. Law Implemented 408.034(2) ~~408.035, 408.036, 408.040~~ FS. History–New 11-24-86, Amended 7-25-89, 1-31-91, Formerly 10-5.020, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jeff Gregg, Chief, Health Facility Regulation

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Liz Dudek, Assistant Deputy Director, Managed Care and Health Quality

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 18, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 7, 2000

DEPARTMENT OF MANAGEMENT SERVICES

Division of Retirement

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Approved Forms	60S-9
RULE TITLE:	RULE NO.:
Approved Forms	60S-9.001

PURPOSE AND EFFECT: The purpose of this proposed rule is to adopt two new forms and eight revised forms related to Florida Retirement System participation, service credit, and benefits. The forms are being amended to accommodate recommendations of the Division of Retirement's Reengineering Improvement and Modernization project, and to implement Chapters 98-413 and 95-338, Laws of Florida.

SUMMARY: Form DP-12, Beneficiary Designation Form for the Alternate Payee of a DROP Participant, is being adopted as a new form, in compliance with Chapter 98-413, Laws of Florida, to allow the QDRO approved alternate payee of a member's Deferred Retirement Option Program (DROP) benefit to designate a beneficiary. Form SB-13b is a Physician's Report to be used for the determination of disability of a joint annuitant in order to allow a joint annuitant over age 25 to receive benefits for the duration of the disability, and is being adopted as a new form, in compliance with Chapter 95-338, Laws of Florida. Form BEN-001 is being revised because the member's birthdate, and the employer's agency name and number are being requested, and the retirement section to which questions regarding the designation of beneficiaries are to be directed has changed. Forms FRS-400 and FRS-405 are being revised for clarity to include the member's class code used on payroll reports. Form MF-1 is being revised because of a change in the U. S. Code chapter reference. Form DIS-1 is being revised to shorten the title, remove the barcode and make it a jet form, and Forms FRS-M81, DP-TERM, and the Rollover form are being revised because the return mail address has changed.

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 within 21 days of this notice.

SPECIFIC AUTHORITY: 121.031 FS.

LAW IMPLEMENTED: 121.051, 121.071, 121.091 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: 10:00 a.m., September 25, 2000

PLACE: 2nd Floor Conference Room, Cedars Executive Center, Building C, 2639 North Monroe Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mary Beth Brewer, Senior Benefits Analyst, Division of Retirement, Cedars Executive Center, Building C, 2639 North Monroe Street, Tallahassee, Florida 32399-1560

THE FULL TEXT OF THE PROPOSED RULE IS:

60S-9.001 Approved Forms.

The following is a list of the forms utilized by the Division of Retirement in its dealings with the public, which are hereby incorporated by reference into these rules. A copy of these forms may be obtained by writing to the Division of Retirement, Cedars Executive Center, Bldg. C, 2639 N. Monroe Street, Tallahassee, Florida 32399-1560.

(1) Bureau of Enrollment and Contributions

FORM NO./REVISION DATE	TITLE
(a) BEN-001 (Rev. 7/00 ~~10/99~~)	Beneficiary Designation Form Active Members Only
(b) FRS-400 (Rev. 4/00 ~~8/99~~)	Application for Special Risk Membership Law Enforcement/ Correctional Officers
(c) through (e) No change.	
(f) FRS-405 (Rev. 4/00 ~~10/99~~)	Application for Special Risk Membership Firefighters / Paramedics/EMTs
(g) through (l) No change.	

(2) Bureau of Retirement Calculations

(a) through (e) No change.	
(f) MF-1 (Rev. 7/00 ~~7/99~~)	Statement of Military Eligibility

(g) through (u) No change.	
(3) Bureau of Benefit Payments	
(a) through (o) No change.	
(p) FRS-M81 (Rev. 7/00 ~~1/99~~)	Request for Refund
(q) through (aa) No change.	
(bb) DIS-1 (Rev. 5/00 ~~7/99~~)	Disclaimer of Benefits ~~Under the Florida Retirement System~~
(cc) through (dd) No change.	
(ee) DP-TERM (Rev. 7/00 ~~7/99~~)	Deferred Retirement Option Program (DROP) Termination Notification
(ff) through (gg) No change.	
(hh) Rollover (Rev. 7/00 ~~7/99~~)	Florida Retirement System Direct Rollover Election Form
(ii) DP-12 (5/00)	Beneficiary Designation Form for the Alternate Payee of a DROP Participant
(jj) SB-13b (5/00)	Physician's Report

Specific Authority 121.031 FS. Law Implemented 112.361, 112.363, 120.55, 121.011, 121.031(2), 121.051, 121.0515, 121.081, 121.091, 121.111, 121.121, 121.125, 122.08, 122.09, 215.28, 238.05, 238.06, 238.07 FS. History–New 9-9-82, Amended 2-6-84, 11-6-84, 4-17-85, Formerly 22B-9.01, Amended 6-4-86, 12-5-90, Formerly 22B-9.001, Amended 1-4-93, 1-18-94, 4-26-94, 1-10-95, 11-2-95, 12-28-95, 3-12-96, 12-16-97, 10-14-98, 4-26-99, 1-24-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ron Poppell, Interim Director, Division of Retirement

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael Cochran, Deputy Secretary, Department of Management Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 21, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 18, 2000

DEPARTMENT OF MANAGEMENT SERVICES

Division of Retirement – Optional Retirement Program

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Optional Retirement Program Participation 60U-1

RULE TITLE: RULE NO.:
Approved Forms 60U-1.006

PURPOSE AND EFFECT: The purpose of this proposed rule is to adopt one revised form. The form is being amended to implement Chapter 00-169, Laws of Florida.

SUMMARY: Form ORP-16 is being revised to show the new retirement contribution rates effective July 1, 2000 in compliance with Chapter 00-169, Laws of Florida. These contributions are required for employers of State University System Optional Retirement Program participants and are optional for the participants.

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 within 21 days of this notice.

SPECIFIC AUTHORITY: 121.031 FS.

LAW IMPLEMENTED: 121.071 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: 10:00 a.m., September 25, 2000

PLACE: 2nd Floor Conference Room, Cedars Executive Center, Building C, 2639 North Monroe Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mary Beth Brewer, Senior Benefits Analyst, Division of Retirement, Cedars Executive Center, Building C, 2639 North Monroe Street, Tallahassee, Florida 32399-1560

THE FULL TEXT OF THE PROPOSED RULE IS:

60U-1.006 Approved Forms.

The following is a list of the forms utilized by the Division of Retirement in its dealings with the public in administering the Optional Retirement Program, which are hereby incorporated by reference into these rules. A copy of these forms may be obtained through the Board of Regents and State University System Personnel Offices or by writing to the Division of Retirement, Cedars Executive Center, Bldg. C, 2639 N. Monroe Street. Tallahassee, Florida 32399-1560.

FORM NO./REVISION DATE	TITLE
(1) No change.	
(2) ORP-16 (Rev. 7/00 ~~07/99~~)	State University System Optional Retirement Program (SUSORP)/FRS Ballot

Specific Authority 121.031 FS. Law Implemented 121.051(1)(a), 121.35 FS. History—New 2-28-84, Amended 9-5-84, Formerly 22U-1.06, Amended 12-5-90, Formerly 22U-1.006, Amended 1-4-93, 10-20-93, 1-10-95, 5-14-95, 9-18-96, 10-14-98, 1-24-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ron Poppell, Interim Director, Division of Retirement

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael Cochran, Deputy Secretary, Department of Management Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 21, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 18, 2000

DEPARTMENT OF MANAGEMENT SERVICES

Senior Management Service Optional Annuity Program

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Participation 60V-1

RULE TITLE: RULE NO.:
Approved Forms 60V-1.007

PURPOSE AND EFFECT: This purpose of this proposed rule is to adopt one revised form to implement Chapter 00-169, Laws of Florida.

SUMMARY: Form SMS-1 is being revised to show the new retirement contribution rates effective July 1, 2000 in compliance with Chapter 00-169, Laws of Florida. These contributions are required for employers of Senior Management Service Optional Annuity Program participants and are optional for the participants.

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 within 21 days of this notice.

SPECIFIC AUTHORITY: 121.031 FS.

LAW IMPLEMENTED: 121.055 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: 10:00 a.m., September 25, 2000

PLACE: 2nd Floor Conference Room, Cedars Executive Center, Building C, 2639 North Monroe Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mary Beth Brewer, Senior Benefit Analyst, Division of Retirement, Cedars Executive Center, Building C, 2639 North Monroe Street, Tallahassee, Florida 32399-1560

THE FULL TEXT OF THE PROPOSED RULE IS:

60V-1.007 Approved Forms.

The following is a list of the forms utilized by the Division of Retirement in its dealings with the participants in the Senior Management Service Optional Annuity Program, which are hereby incorporated by reference into these rules. A copy of these forms may be obtained by writing to the Division of Retirement, Cedars Executive Center, Bldg. C, 2639 N. Monroe Street. Tallahassee, Florida 32399-1560.

FORM NO./REVISION DATE	TITLE
SMS-1 (Rev. 7/00 ~~07/99~~)	Senior Management Service Optional Annuity Program (SMSOAP)/FRS Ballot

Specific Authority 121.031 FS. Law Implemented 121.055 FS. History–New 1-4-93, Amended 1-10-95, 5-14-95, 9-18-96, 10-14-98, 1-24-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ron Poppell, Interim Director, Division of Retirement

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael Cochran, Deputy Secretary, Department of Management Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 21, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 18, 2000

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Veterinary Medicine

RULE TITLE: RULE NO.:
Disciplinary Guidelines 61G18-30.001

PURPOSE AND EFFECT: The purpose of the rule amendments is to update the rule text with regard to the disciplinary guidelines.

SUMMARY: The Board proposes to amend the rule text to increase the administrative fines to be charged for certain acts an applicant or licensee has violated pursuant to Section 474.213(1), Florida Statutes, and the Practice Act. In addition, new rule text is being added to further clarify the acts an applicant or licensee will be responsible for if violated, and rule text that is no longer necessary is being deleted.

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 regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 455.271 FS., as created by Chapter 94-119, Laws of Florida.

LAW IMPLEMENTED: 455.271 FS., as created by Chapter 94-119, Laws of Florida.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Madeline Smith, Executive Director, Board of Veterinary Medicine, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G18-30.001 Disciplinary Guidelines.

(1) When the Board finds an applicant or licensee whom it regulates under Chapter 474, Florida Statutes, has committed any of the acts set forth in Section 474.213(1), Florida Statutes, which are felonies of the third degree as well as violations of the Practice act, it shall issue a final order imposing appropriate penalties, using the following disciplinary guidelines:

(a) Practicing veterinary medicine in this State unless a person holds an active license to practice veterinary medicine pursuant to Chapter 474, Florida Statutes.	In the case of an applicant, the usual action of the Board shall be to request the Department issue a Cease and Desist Order, which will remain in effect until licensure is granted, plus an administrative fine of three thousand dollars ($3,000.00) ~~one thousand dollars ($1,000.00)~~ and, upon eligibility for licensure, imposition of a one year probationary period.

In the case of a non-licensed veterinarian practicing veterinary medicine in the State of Florida the Board shall request that the Department issue a Cease and Desist Order and an administrative fine of three thousand dollars ($3,000.00) ~~one thousand dollars ($1,000.00)~~ plus one year's probation if the subject should become licensed in the State of Florida.

In the case of a non-veterinarian practicing veterinary medicine in the State of Florida the Board shall request that the Department issue a Cease and Desist Order and an administrative fine of three thousand dollars ($3,000.00) ~~one thousand dollars ($1,000.00)~~ for each count.

(b) No change.	
(c) Presenting as one's own license the license of another.	The usual action of the Board shall be to request that the Department issue a Cease and Desist Order, and an administrative fine of five thousand dollars ($5,000.00) ~~one thousand dollars ($1,000.00)~~ and, upon issuance of licensure, imposition of a one year probationary period.
(d) Giving false or forged evidence to the Board or member thereof, for the purpose of obtaining a license.	In the case of an applicant, the usual action of the Board shall be denial of licensure. The usual action of the Board in the case of a licensee shall be to impose a penalty of a five thousand dollar ($5,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine and revocation of any license obtained based on false or forged evidence.
(e) Using or attempting to use a veterinarian's license which has been suspended or revoked.	In the case of an applicant, the usual action shall be denial of licensure and to request the Department issue a Cease and Desist Order. The usual action of the Board in the case of a licensee shall be to impose revocation if the subject's license has been suspended and an administrative fine of five thousand dollars ($5,000.00). ~~one thousand dollars ($1,000.00).~~
(f) Knowingly employing unlicensed persons in the practice of veterinary medicine.	The usual action of the Board shall be to impose a penalty of one (1) year probation and a three thousand dollar ($3,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine.
(g) Knowingly concealing information relative to a violation of Chapter 474, Florida Statutes.	The usual action of the Board shall be to impose a penalty of six (6) months probation and a one thousand dollar ($1,000.00) ~~five hundred dollar ($500.00)~~ administrative fine.
(h) Obtaining or attempting to obtain a license by fraud	Revocation or denial of licensure plus an administrative fine of five thousand dollars ($5,000.00). ~~one thousand dollars ($1,000.00)~~
(i) Selling or offering to sell a diploma conferring a degree in veterinary medicine or a license to practice veterinary medicine in this state.	A fine of five thousand dollars ($5,000.00) ~~one thousand dollars ($1,000.00)~~ and revocation.

(2) When the Board finds an applicant, ~~or~~ licensee, or permittee whom it regulates under Chapter 474, Florida Statutes, has committed any of the acts set forth in Section 474.214(1), Florida Statutes, it shall issue a Final Order imposing appropriate penalties which are set forth in 474.214(2), Florida Statutes, using the following disciplinary guidelines: ~~and include revocation of license and a fine of up to one thousand dollars ($1,000.00) per offense.~~

(a) Attempting to procure, or procuring, a license to practice veterinary medicine or a permit to own and operate a veterinary establishment, by bribery, by fraudulent representation or by error of the Department or the Board.	In the case of an applicant, the usual action of the Board shall be denial of licensure or permit. The usual action of the Board in the case of a licensee or permittee shall be to impose a penalty of revocation and a three thousand dollar ($3,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine.

(b) No change.	
(c) Being convicted or found guilty, regardless of an adjudication, of a crime in any jurisdiction which directly relates to the practice of veterinary medicine or the ability to practice veterinary medicine.	In the case of an applicant, the usual action of the Board shall be denial of licensure. The usual action of the Board in the case of a licensee or permittee shall be to impose a penalty ranging from a two thousand dollar ($2,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine and suspension followed by probation up to revocation.
(d) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to imped or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a licensed veterinarian.	The usual action of the Board shall be to impose a penalty of a one (1) year suspension followed by probation for a period of one year and an administrative fine of three thousand dollars ($3,000.00) ~~one thousand dollars ($1,000.00)~~ per count or violation.
(e) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.	In the case of violations, which are not resolved by the Board's rule concerning minor violations, the usual action of the Board shall be to impose a one thousand dollar ($1,000.00) ~~five hundred dollar ($500.00)~~ administrative fine.
(f) Violating a statute or administrative rule regulating practice under this chapter or chapter 455 or a lawful disciplinary order or subpoena of the Board or the Department.	The usual action of the Board shall be to impose a penalty of one (1) year probation and a two thousand dollar ($2,000.00) ~~one thousand dollar (1,000.00)~~ administrative fine. In the case of a subpoena or disciplinary order, the usual action shall be to impose a period of suspension and a four thousand dollar ($4,000.00 administrative fine.
(g) No change.	In the case of a licensed veterinarian being found late in payment of renewal fees, the veterinarian shall have thirty days from receipt of official notice from the Department of Business and Professional Regulation to become current in payment of fees to the Department and pay an administrative fine of five hundred dollars ($500.00) ~~one hundred dollars ($100.00)~~. If the delinquent veterinarian does not respond to the Department within the above mentioned thirty days, the Board shall request that the Department issue a Cease and Desist Order, which shall remain in effect until license renewal fees and an administrative fine of one thousand dollars ($1,000.00) ~~five hundred dollars ($500.00)~~ are paid.
(h) through (i) No change.	
(j) Knowingly maintaining a professional connection or association with any person who is in violation of the provisions of Chapter 474, Florida Statutes, or the rules of the Board.	The usual action of the Board shall be to impose a penalty of a two thousand dollar ($2,000.00) ~~one thousand dollar ($1,000.00) administrative fine to~~ be followed by probation.
(k) Paying or receiving kickbacks, rebates, bonuses, or other remuneration for receiving a patient or client or for referring a patient or client to another provider of veterinary services or goods. In construing this section, the Board shall deem that a referral to an entity with which the veterinarian has a contractual relationship, for the sale of non-veterinary, non-medical pet foot or pet supplies, does not constitute a kickback, so long as the client is aware of the relationship.	The usual action of the Board for those violations not disposed of by the Board's rule concerning minor violations shall be to impose a penalty of a one (1) year probation and a one thousand dollar ($1,000.00) administrative fine for each count.
(l) Performing or prescribing unnecessary or unauthorized treatment.	The usual action of the Board shall be to impose a penalty ranging from a reprimand to a one year probationary period with a two thousand dollar ($2,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine.
(m) Engaging in fraud in the collection of fees from consumers or any person, agency, or organization paying fees to practitioners.	The usual action of the Board shall be to impose a penalty of a suspension followed by probation for a period of one year and a three thousand dollar ($3,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine.

(n) Attempting to restrict competition in the field of veterinary medicine other than for the protection of the public.	The usual action of the Board shall be to impose a penalty of probation for a period of one year and a two thousand dollar ($2,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine and revocation of the veterinarian's license to practice in the State of Florida if this violation is repeated.
(o) Fraud, deceit, negligence, incompetency, or misconduct in the practice of veterinary medicine.	The usual action of the Board shall be to impose a penalty ranging from probation for a period of one year and a two thousand dollar ($2,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine to revocation of the veterinarian's license to practice in the State of Florida.
(p) Being convicted of a charge of cruelty to animals.	The usual action of the Board shall be to impose a penalty of suspension followed by probation for a period of one year and a four thousand dollar ($4,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine.
(q) Permitting or allowing another to use a veterinarian's license for the purpose of treating or offering to treat sick, injured, or afflicted animals.	The usual action of the Board shall be to impose a penalty of a suspension and a three thousand dollar ($3,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine followed by probation for a period of one year.
(r) Being guilty of incompetence or negligence by failing to practice veterinary medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent veterinarian as being acceptable under similar conditions and circumstances.	The usual action of the Board shall be to impose a penalty of probation for a period of one year and a two thousand dollar ($2,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine.
(s) Willfully making any misrepresentations in connection with the inspection of food for human consumption.	The usual action of the Board shall be to impose a penalty of a suspension followed by probation for a period of one year and a four thousand dollar ($4,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine.
(t) Fraudulently issuing or using any false health certificate, vaccination certificate, test chart, or other blank form used in the practice of veterinary medicine relating to the presence or absence of animal diseases or transporting animals or issuing any false certificate relating to the sale of products of animal origin for human consumption.	The usual action of the Board shall be to impose a penalty of a suspension followed by probation for a period of one year and a three thousand dollar ($3,000.00) ~~one thousand dollar ($1,000.00) administrative fine~~.
(u) Engaging in fraud or dishonesty in applying, treating, or reporting on tuberculin, diagnostic, or other biological tests.	The usual action of the Board shall be to impose a penalty of a suspension followed by probation for a period of one year and a three thousand ($3,000.00) dollar ~~one thousand dollar ($1,000.00)~~ administrative fine.
(v) through (w) No change.	
(x) Refusing to permit the Department to inspect the business premises of the licensee during regular business hours.	The usual action of the Board shall be to impose a penalty of a two thousand dollar ($2,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine, unless circumstances legally justify such action by the veterinarian.
(y) Using the privilege of ordering, prescribing, or making available medicinal drugs or drugs defined in Chapter 465, or controlled substances as defined in Chapter 893, for use other than for the specific treatment of animal patients for which there is a documented veterinarian/client/patient relationship. Pursuant thereto, the veterinarian shall:	For violations involving medicinal drugs or drugs defined in Chapter 465 the usual action of the Board shall be to impose a penalty of suspension followed by probation for a period of one year and a two thousand dollar ($2,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine. For violations involving controlled substances ~~medicinal drugs~~ as defined in Ch. 893, the usual action of the Board shall be to impose a penalty of suspension or revocation and a four thousand dollar ($4,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine.
1. Have sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian is	

personally acquainted with the keeping and the caring of the animal and has recent contact with the animal or has made medically appropriate and timely visits to the premises where the animal is kept. 2. through 3. No change.		(ff) Prescribing or dispensing legend drugs ~~drug~~ as defined in Chapter 465, including any controlled substance, inappropriately or in excessive or inappropriate quantities.	The usual action of the Board shall be to impose a penalty of a two thousand dollar ($2,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine and probation for a period of one year.
(z) Providing, prescribing, ordering, or making available for human use medicinal drugs or drugs as defined in Chapter 465, controlled substances as defined in Chapter 893, or any material, chemical, or substance used exclusively for animal treatment.	For violations involving medicinal drugs or drugs defined in Chapter 465 the usual action of the Board shall be to impose a penalty of a suspension for a period of one year followed by one (1) year probation and a two thousand dollar $2,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine. For violations involving controlled substances as defined in Chapter 893 the usual penalty will be revocation.	(gg) Practicing or offering to practice beyond the scope permitted by law.	The usual action of the Board shall be issuance of a reprimand plus six months probation, a fine of one thousand dollars ($1,000.00), and investigative costs.
		(hh) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.	The usual action of the Board shall be to impose a penalty of a one thousand five hundred dollar ($1,500.00) ~~five hundred dollar ($500.00)~~ administrative fine plus six months probation and investigative costs.
(aa) Failing to report to the Department any person the licensee knows to be in violation of Chapter 474, Florida Statutes, or the rules of the Board or Department.	The usual action of the Board shall be issuance of a reprimand and a fine of five hundred. dollars ($500.00).	(ii) Presigning blank prescription forms.	The usual action of the Board shall be suspension of the veterinarian's license, an administrative fine of two thousand dollars ($2,000.00), ~~one thousand dollars ($1,000.00)~~ and probation for one year plus investigative costs.
(bb) Violating any of the requirements of Chapter 499, F.S., the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., the Comprehensive Drug Abuse Prevention and Control Act of 1970, more commonly known as the Federal Drug Abuse Act; or Chapter 893, F.S.	The usual action of the Board shall be to impose a penalty of probation for a period of one year and an administrative fine of two thousand dollars ($2,000.00) ~~one thousand dollars ($1,000.00)~~.	(jj) through (ll) No change.	
(cc) No change.		(mm) Failing to maintain accurate records or reports as required by this chapter or by federal or state laws or rules pertaining to the storing, labeling, selling, dispensing, prescribing, and administering of controlled substances.	The usual action of the Board shall be an administrative fine of one thousand five hundred dollars ($1,500.00) ~~five hundred dollars ($500.00)~~.
(dd) Failing to perform any statutory or legal obligation placed upon a licensee.	The usual action of the Board shall be issuance of a reprimand, and fine of one thousand dollars ($1,000.00).	(nn) Failing to report a change of address to the Board within 60 days thereof.	The usual action of the Board shall be an administrative fine of five hundred dollars ($500.00).
(ee) Failing to keep contemporaneously written medical records as required by rule of the Board.	The usual action of the Board shall be issuance of a reprimand plus six months probation, a fine of one thousand five hundred dollars ($1,500.00) and investigative costs.	(oo) Failure of the responsible veterinarian or permittee to report a change of premises ownership or responsible veterinarian within 60 days thereof.	The usual action of the Board shall be an administrative fine of five hundred dollars ($500.00).
		(pp) Failing to give the owner of a patient, before dispensing any drug, a written prescription when requested.	The usual action of the Board shall be an administrative fine of one thousand dollars ($1,000.00).

(3) When the Board finds an applicant, ~~or~~ licensee, or permittee whom it regulates under Chapter 474, Florida Statutes, has committed any of the acts set forth in Section 455.227(1), Florida Statutes, it will issue a Final Order imposing appropriate penalties within the ranges recommended in the following disciplinary guidelines:

(a) Misleading, deceptive, untrue, or fraudulent representations in the practice of veterinary medicine.	The usual action of the Board will be to impose a penalty ranging from suspension followed by one (1) year probation and a two thousand dollar ($2,000.00) ~~one thousand dollar ($1,000.00)~~ administrative fine to revocation.
(b) Intentionally violating any rule adopted by the Board or the Department.	The usual action of the Board will be to impose an administrative fine of two thousand dollars ($2,000.00). ~~one thousand dollars ($1,000.00).~~
(c) through (d) No change.	
(e) The license has been obtained by fraud or material misrepresentation of a material fact.	The usual action of the Board will be revocation of the license and an administrative fine of four thousand dollars ($4,000.00). ~~one thousand dollars ($1,000.00).~~
(f) No change.	
(g) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee.	The usual action of the Board will be an administrative fine of two thousand dollars ($2,000.00).
(h) Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.	The usual action of the Board will be to impose a penalty ranging from suspension followed by one year probation and payment of an administrative fine of three thousand dollars ($3,000.00) to revocation.
(i) Exercising influence on the patient or client for the purpose of financial gain of the license or a third party.	The usual action of the Board will be an administrative fine of three thousand dollars ($3,000.00).

(4) No change.

(5) Penalties imposed by the Board pursuant to subsections (1), (2) and (3) above may be imposed in combination or individually, and are as follows:

(a) No change.

(b) imposition of an administrative fine not to exceed five thousand dollars ($5,000.00) ~~one thousand dollars ($1,000)~~ for each count or separate offense;

(c) through (f) No change.

(g) denial of an application for licensure or a permit to own and operate a veterinary establishment; and

(h) No change.

(6) through (7) No change.

Specific Authority 455.2273(1) FS. Law Implemented 455.2273, 474.213, 474.214 FS. History–New 12-8-86, Amended 5-27-91, Formerly 21X-30.001, Amended 8-18-94, 5-13-96, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Veterinary Medicine

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 7, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 28, 2000

DEPARTMENT OF HEALTH

Board of Dentistry

RULE TITLES:	RULE NOS.:
Continuing Education Requirements	64B5-12.013
Subject Area Requirements	64B5-12.016
Application for Providership	64B5-12.017
Standards for Approved Providers	64B5-12.0175
Courses Required for Initial Licensure, Renewal, or Reactivation	64B5-12.019
Courses Required of Dentists for Renewal and Reactivation	64B5-12.020

PURPOSE AND EFFECT: The Board proposes to amend Rule 64B5-12.013 to update the requirements for continuing education requirements. Rule 64B5-12.016 is being amended to update the rule text. The Board proposes to amend Rule 64B5-12.017 to update the rule text regarding domestic violence. The Board proposes to amend Rule 64B5-12.0175 to update the standards for approved providers. The Board proposes to amend Rule 64B5-12.019 in order to update the courses required for initial licensure, renewal, or reactivation. The Board proposes to amend Rule 64B5-12.020 to update the rule text for continuing education for licensed dentists.

SUMMARY: The Board has determined that amendments are necessary to Rule 64B5-12.013 in order to update the rule text to further clarify the continuing education requirements for dentists and dental hygienists. The Board has determined that Rule 64B5-12.016 requires amendments to include the reference “Section 455.597, F.S.”, and to delete unnecessary rule text. The Board proposes to amend Rule 64B5-12.017 to further clarify the qualifications of instructors for the subject area of domestic violence. The Board is amending Rule 64B5-12.0175 to update the qualifications for approved providers of continuing education for the subject area of domestic violence. The Board has determined that amendments are necessary to delete unnecessary rule text in Rule 64B5-12.019 and to update the courses required for initial licensure, renewal, or reactivation. The Board has determined

that Rule 64B5-12.020 should be updated to further clarify continuing education for licensed dentists for renewal and reactivation.

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 regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 455.604, 455.564(8), 455.587(2), 455.597, 466.004(4), 466.0135, 466.014 FS.

LAW IMPLEMENTED: 455.587(2), 455.604, 455.564(8), 455.597, 466.0135, 466.014, 466.017(3),(5) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: William Buckhalt, Executive Director, Board of Dentistry/MQA, 2020 Capital Circle S.E., Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULES IS:

64B5-12.013 Continuing Education Requirements.

(1) Dentists shall complete 30 hours of continuing professional education during each license renewal biennium as a condition of license renewal. No more and no less than one hour shall consist of training in domestic violence as required by Section 455.597, F.S., and described in Rule 64B5-12.019(8). Two of the required hours shall be in law and rules governing the practice of dentistry and dental hygiene ~~ethics and jurisprudence~~ as set forth in Rules 64B5-12.016(1)(d) and ~~Rule~~ 64B5-12.020(2), F.A.C. In addition to the 30 hours required herein, each licensed dentist shall complete the training in cardiopulmonary resuscitation (CPR) required in Rule 64B5-12.020(1), F.A.C.

(2) Dental hygienists shall complete 24 hours of continuing professional education during each license renewal biennium as a condition of license renewal. In addition, during each license renewal biennium licensed dental hygienists shall complete training in cardiopulmonary resuscitation (CPR) at the basic support level, which results in certification or recertification in CPR by the American Heart Association, the American Red Cross or an entity with equivalent requirements. In addition to the 24 hours required herein, each dental hygienist shall complete no more and no less than one ~~1~~ hour of ~~continuing professional education consisting of~~ training in domestic violence as required by Section 455.597, F.S., ~~Ch. 95-187, Laws of Florida,~~ and described in Rule 64B5-12.019(8).

(3) Continuing education credit shall be awarded only for educational experiences that are specifically appropriate for, and contain useful information directly pertinent to, dentistry and only if received through the following methods:

(a) No change.

(b) By participating in courses offered by:

1. The American or National Dental Associations and their constituent and component and affiliate dental associations and societies, including affiliated specialty organizations or a provider organization recognized by either the American or National Dental Associations;

2. through 7. No change.

(c) through (f) No change.

(4) through (6) No change.

Specific Authority 466.004(4), 466.0135, 466.014, 455.564(8), 455.597 FS. Law Implemented 466.0135, 466.014, 466.028(1)(i), (bb), 466.017(3),(5), 455.564(8), 455.597 FS. History–New 4-2-86, Amended 12-31-86, 4-26-87, 7-20-87, 9-16-87, 11-18-89, 7-9-90, Formerly 21G-12.013, Amended 5-19-94, 7-18-94, Formerly 61F5-12.013, Amended 11-15-95, 4-8-96, Formerly 59Q-12.013, Amended 2-17-98, 2-15-99, 3-11-99, _____.

64B5-12.016 Subject Area Requirements.

(1) Regardless of the manner by which a licensee obtains continuing education, no credit will be awarded unless the subject matter falls within the following subject matter categories:

(a) through (c) No change.

(d) Subjects dealing with licensees' legal ~~and ethical~~ responsibilities, including but not limited to the laws and rules governing the practice of dentistry and dental hygiene.

(e) One hour of credit will be awarded for completion of a course on domestic violence as required by Section 455.597, F.S. ~~Ch. 95-187.~~

(2) through (3) No change.

Specific Authority 466.004(4), 466.0135, 466.014 FS. Law Implemented 466.0135, 466.014 FS, Ch. 95-187, Laws of Florida. History–New 4-2-86, Amended 1-18-89, 7-9-90, 2-1-93, Formerly 21G-12.016, 61F5-12.016, Amended 9-27-95, Formerly 59Q-12.016, Amended _____.

64B5-12.017 Application for Providership.

(1) Entities or individuals who wish to become approved providers of continuing education must submit the approval fee set forth in Rule 64B5-15.022(1), Florida Administrative Code, and an application on the appropriate form set forth in Rule 64B5-1.021 which contains the following information and which is accompanied by the following documentation:

(a) No change.

(b) The qualifications of all instructors, which may be evidenced by a curriculum vitae or professional licensure in the subject area taught. Because domestic violence courses must contain information specifically appropriate for, directly pertinent to, and useful in, dentistry, all domestic violence instructors shall identify dental injuries indicative of domestic

violence, mandatory reporting and patient records confidentiality for dentists under Florida and federal law, and incidence statistics in the dental profession.

(2) through (3) No change.

Specific Authority 466.004(4), 466.014, 455.587(2) FS. Law Implemented 466.0135, 466.014, 455.587(2) FS. History–New 4-2-86, Amended 10-26-87, 1-18-89, 7-9-90, 5-2-91, Formerly 21G-12.017, 61F5-12.017, 59Q-12.017, Amended 8-19-97, _____.

64B5-12.0175 Standards for Approved Providers.

Approved continuing professional education providers and providers authorized pursuant to Rule 64B5-12.013(3)(b), shall comply with the following requirements:

(1) No change.

(2) Instructors shall be adequately qualified by training, experience or licensure to teach specified courses. Because domestic violence courses must contain information specifically appropriate for, directly pertinent to, and useful in, dentistry, all domestic violence instructors shall be familiar with dental injuries indicative of domestic violence, reporting obligations under Florida and federal law, and incidence statistics in the dental profession.

(3) through (10) No change.

Specific Authority 466.004(4), 466.014 FS. Law Implemented 466.0135, 466.014 FS. History–New 1-18-89, Amended 7-9-90, Formerly 21G-12.0175, 61F5-12.0175, 59Q-12.0175, Amended 10-3-99, _____.

64B5-12.019 Courses Required for Initial Licensure, Renewal, or Reactivation.

(1) No license shall be granted and no license shall be renewed or reactivated unless the applicant or licensee submits confirmation to the Board that he or she has successfully completed, within 24 months prior to seeking initial licensure, renewal or reactivation, a Board-approved course on Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS), and other infectious diseases pertinent to the practice of dentistry and dental hygiene and a Board-approved course on domestic violence.

(2) To receive Board approval, courses on HIV/AIDS and infectious diseases pertinent to the practice of dentistry and dental hygiene shall consist of instruction which shall include, but need not be limited to, viral counts, hepatitis, sterilization and infection control requirements, identification of oral lesions associated with infectious disease, how the presence of infectious disease directly affects treatment decisions of dentists, and the ~~following~~ subject areas set forth under Section 455.604, F.S.

~~(a) Immunology;~~

~~(b) Pathogenesis;~~

~~(c) Modes of transmission;~~

~~(d) Clinical manifestations;~~

~~(e) Prevention;~~

~~(f) Treatment;~~

~~(g) Infection control procedures and products including barrier techniques, sterilization and disinfection;~~

~~(h) Clinical management of dental patients with communicable disease;~~

~~(i) Handling and disposal of contaminated materials;~~

~~(j) Legal responsibilities and implications; and~~

~~(k) Any other information or recent research relating to HIV/AIDS which is available from the Centers for Disease Control of the United States Public Health Service or the Florida Department of Health.~~

(3) Every such course for the purpose of obtaining initial licensure shall have a minimum of two (2) ~~3~~ hours dedicated to the subject areas set forth ~~in subparagraphs (2)(g) through (k) above and a minimum of 1 hour dedicated to the subject areas set forth in subparagraphs (2)(a) through (f) above~~. Every such course for the purpose of renewal or reactivation of licensure shall have no more and no less than one (1) hour ~~at a minimum 2 hours~~ dedicated to the subject areas set forth ~~in subparagraphs (a) through (k) above~~. Furthermore, every such course shall include information on current Florida law and its impact on testing, confidentiality of test results, and treatment of patients. However, any such course completed outside of Florida, which complies with the criteria set forth in paragraph (2) above shall be approved by the Board if the applicant or licensee submits to the Board a statement that he or she has reviewed and studied current Florida law and its impact on testing, confidentiality of test results, and treatment of patients. To fulfill the requirements of this paragraph every HIV/AIDS course shall include or each applicant or licensee shall review and study Chapters 381 and 384, Florida Statutes.

(4) Only courses on HIV/AIDS and infectious diseases pertinent to the practice of dentistry and dental hygiene that ~~which~~ meet the requirements set forth in rule 64B5-12.019(2) and (3), and that ~~which~~ are offered in compliance with Rule 64B5-12.013(3), shall be and are hereby approved by the Board. Home study courses are permitted for the purpose of meeting the requirements of HIV/AIDS and infectious diseases pertinent to the practice of dentistry and dental hygiene education, provided they comply with the requirements set forth in subsections (2) and (3), above.

(5) through (7) No change.

(8) To receive Board approval, courses on domestic violence must be a minimum of 1 hour long, must cover the substantive areas set forth in Section 455.597, F.S., ~~Ch. 95-187, Laws of Florida,~~ and must be approved by any state or federal government agency or professional association or offered by a Board approved continuing education provider.

Specific Authority 455.604, 455.597 FS. Law Implemented 455.604, 455.597 FS. History–New 1-18-89, Amended 10-28-91, 2-1-93, Formerly 21G-12.019, Amended 6-14-94, Formerly 61F5-12.019, Amended 11-15-95, 2-10-97, Formerly 59Q-12.019, Amended _____.

64B5-12.020 Courses Required of Dentists for Renewal and Reactivation.

Licensed dentists are required to complete the following continuing education during each license renewal biennium.

(1) No change.

(2) Instruction in laws and rules governing the practice of dentistry and dental hygiene ~~ethics and jurisprudence~~ consisting of at least 2 hours of instruction in relevant topics including: professional responsibility and competence; ~~moral and~~ legal standards; confidentiality; professional relationships; recordkeeping; common malpractice complaints; commonly reported violations reported to the Department; and relevant case studies. Because laws and rules courses must contain information specifically appropriate for, directly pertinent to, and useful in, dentistry, all instructors shall be current or former Florida Board of Dentistry members or, in the alternative, attorneys licensed by The Florida Bar with experience in health law or health care risk managers licensed by the Florida Agency for Health Care Administration, Risk Management Office.

(a) through (b) No change.

Specific Authority 466.004 FS. Law Implemented 466.0135 FS. History–New 4-11-94, Amended 7-18-94, Formerly 61F5-12.020, 59Q-12.020, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Dentistry

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 13, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 26, 2000

DEPARTMENT OF HEALTH

Board of Dentistry

RULE TITLE: RULE NO.:

Definitions of Remediable Tasks and Supervision Levels 64B5-16.001

PURPOSE AND EFFECT: The purpose is to amend the rule text to further clarify the definitions of remediable tasks and the levels of supervision for dentists.

SUMMARY: The Board has determined that amendments are necessary to this rule to further clarify the definitions of remediable tasks for licensed dentists and the levels of supervision. Unnecessary rule text is being deleted.

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 regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 466.004(4), 466.024(1), (3) FS.

LAW IMPLEMENTED: 466.024, 466.003(11), (12) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: William Buckhalt, Executive Director, Board of Dentistry/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B5-16.001 Definitions of Remediable Tasks and Supervision Levels.

(1) through (3) No change.

(4) Direct supervision requires that a licensed dentist examine the patient, diagnose a condition to be treated, authorize ~~authorizes~~ the procedure to performed, be ~~remains~~ on the premises while the procedure is performed, and approve ~~inspects and approves~~ the work performed prior to the patient's departure from the premises.

(5) Indirect supervision requires that a licensed dentist examine the patient, diagnose a condition to be treated, authorize the procedure to be performed, and be ~~remain~~ on the premises while the procedure is performed.

(6) General supervision requires that a licensed dentist examine the patient, diagnose a condition to be treated, and authorize the procedure to be performed.

(7) ~~Remediable tasks, to be performed under general supervision in the office of a Florida licensed dentist, can be performed on a patient if the Florida licensed dentist who authorized the procedure has first examined the patient.~~ Any authorization for remediable tasks to be performed under general supervision ~~this rule~~ is valid for a maximum of 13 months; after which, no further treatment under general supervision can be performed without another clinical exam by a Florida licensed dentist.

Specific Authority 466.004(4), 466.024(1),(3) FS. Law Implemented 466.024, 466.003(11),(12) FS. History–New 4-30-80, Amended 8-20-80, 1-28-81, 3-4-81, 10-8-85, Formerly 21G-16.01, Amended 6-30-86, 12-31-86, 7-5-87, 2-21-88, 1-18-89, Formerly 21G-16.001, Amended 3-30-94, Formerly 61F5-16.001, Amended 4-6-97, Formerly 59Q-16.001, Amended 1-6-99, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Dentistry

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 13, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 16, 2000

DEPARTMENT OF HEALTH

Board of Massage Therapy

RULE TITLE: RULE NO.:
Colonic Irrigation Application Deadline 64B7-25.0011

PURPOSE AND EFFECT: The Board proposes this amendent to increase the time for an applicant to have his or her application in the Board office prior to examination or reexamination. Included in this amendment is the incorporation of the licensure application and instructions.

SUMMARY: Per instructions by the Department of Health, the time for applicants to have their application for examination or re-examination is amended from thirty to forty-five days, and the licensure application and instructions are incorporated into this rule.

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 regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 480.041(4)(b) FS.

LAW IMPLEMENTED: 480.041(4)(b) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE NEXT AVAILABLE ISSUE OF THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: William Buckhalt, Executive Director, Board of Massage Therapy/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B7-25.0011 Colonic Irrigation Application Deadline.

An applicant for the colonic irrigation examination or for re-examination must file in the Board office a completed application (incorporated herein by reference and entitled State of Florida Application for Licensure Massage Therapy, form # BMT2, (revised 7/2000), instructions attached and available at the Board office), including proof of completion of an approved course of study or an apprenticeship, at least 45 ~~thirty~~ days prior to the examination date. The examination or re-examination fee must accompany the application.

Specific Authority 480.041(3)(b) FS. Law Implemented 480.041(3)(b) FS. History–New 11-25-80, Amended 7-12-82, Formerly 21L-25.011, Amended 3-12-90, Formerly 21L-25.0011, Amended 9-30-93, 9-15-94, 7-2-96, Formerly 61G11-25.0011, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Massage Therapy

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 23, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 28, 2000

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE TITLE: RULE NO.:
Fees and License Renewal Application 64B16-26.101

PURPOSE AND EFFECT: The purpose is to update the rule text with regard to the $5.00 unlicensed activity fee.

SUMMARY: The Board proposes to update the rule text in subsection (5) to notify applicants that the $5.00 unlicensed activity fee shall be paid in addition to the current initial licensure and renewal fees. Unnecessary rule text is being deleted.

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 regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 465.005 FS.

LAW IMPLEMENTED: 455.641, 455.711, 465.008 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John Taylor, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-26.101 Fees and License Renewal Application.

(1) through (4) No change.

(5) The $5.00 unlicensed activity fee provided for pursuant to Section 455.641, F.S., shall be paid in addition to ~~earmarked from~~ the current initial licensure and renewal fees.

Specific Authority 465.005 FS. Law Implemented 455.641, 455.711, 465.008 FS. History–New 3-19-79, Formerly 21S-6.05, Amended 1-7-87, 4-21-87, 12-29-88, Formerly 21S-6.005, Amended 7-31-91, 1-10-93, Formerly 21S-26.101, 61F10-26.101, Amended 3-10-96, Formerly 59X-26.101, Amended 12-31-97, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 13, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 26, 2000

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE TITLE: RULE NO.:
Continuing Education Credits 64B16-26.103

PURPOSE AND EFFECT: The purpose of the rule amendments is to update the rule text with regard to the time periods for which applicants must submit proof of continuing education credits.

SUMMARY: The Board has determined that it is necessary to update the rule text to notify applicants of the time periods for which continuing education credits may be taken and accepted by the Board.

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 regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 455.604, 465,009 FS.

LAW IMPLEMENTED: 455.604, 465.009 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FAW

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John Taylor, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-26.103 Continuing Education Credits.

(1) No biennial renewal certificate shall be issued by the Board until the applicant submits proof satisfactory to the Board that during each of the calendar years ~~year of~~ preceding the renewal date ~~biennial period~~ that he has participated in not less than 15 hours of approved courses of continued professional pharmaceutical education per calendar year for a total of not less than 30 hours in the two calendar years ~~biennial period~~ preceding the renewal date ~~period~~.

(2) No change.

(3) No biennial renewal of license shall be issued by the Board until the applicant submits proof satisfactory to the Board that during the two calendar years ~~biennial period~~ preceding the renewal date ~~period~~ the licensee has participated in a CE course approved by the Board on HIV/AIDS. The course shall be not less than 1 contact hour and must contain these components:

(a) through (e) No change.

Notwithstanding the provisions of Section (2), proof of completion must be returned when submitting the biennial renewal fee. Hours obtained pursuant to Section (3) may be applied to the requirements of Section (1).

(4) through (7) No change.

Specific Authority 465.005, 455.604 FS. Law Implemented 465.009, 455.604 FS. History–New 3-19-79, Formerly 21S-6.07, Amended 1-7-87, Formerly 21S-6.007, Amended 7-31-91, 10-14-91, Formerly 21S-26.103, 61F10-26.103, Amended 7-1-97, Formerly 59X-26.103, Amended 7-11-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 13, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 26, 2000

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE TITLE: RULE NO.:
Examination Fees 64B16-26.2035

PURPOSE AND EFFECT: The purpose of the rule amendments is to update the rule text by increasing the fees.

SUMMARY: The Board has determined that amendments are necessary to increase the fees for the examination, component examination fees and the jurisprudence examination fee.

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 regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 465.005 FS.

LAW IMPLEMENTED: 465.007 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John Taylor, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254

THE FULL TEXT OF THE PROPOSED RULES IS:

64B16-26.2035 Examination Fees.

The examination fees for licensure by examination includes a fee of $100 ~~$50~~ payable to the Board, and component examination fees of $360 ~~$250~~ for the National Practice Examination and $130 ~~$85~~ for the jurisprudence examination. Component examination fees may be paid directly to the examination vendor. All fees collected under this section are non-refundable.

Specific Authority 465.005 FS. Law Implemented 465.007 FS. History–New 9-19-94, Amended 3-10-96, Formerly 59X-26.2035, Amended 3-22-99, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 13, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 26, 2000

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE TITLES:	RULE NOS.:
Reporting Continuing Education Requirements	64B16-26.603
Number of Required Hours	64B16-26.606

PURPOSE AND EFFECT: The Board proposes to update the language in Rule 64B16-26.603 with regard to reporting continuing education requirements. The Board proposes to amend Rule 64B16-26.606 by updating the rule text to further clarify the number of required hours a registered pharmacist must submit to the Board.

SUMMARY: The Board finds it necessary to amend the Rule 64B16-26.603 to notify each registered pharmacist the time period for reporting continuing education requirements. The Board finds it necessary to amend Rule 64B16-26.606 by updating the language so registered pharmacists will know that they must complete not less than fifteen hours per calendar year of continuing professional education in order to renew their license.

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 regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 465.005 FS.

LAW IMPLEMENTED: 465.009 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Taylor, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254

THE FULL TEXT OF THE PROPOSED RULES IS:

64B16-26.603 Reporting Continuing Education Requirements.

Each registered pharmacist shall at the time of the biennial license renewal, report programs of continuing professional education compliance for the two preceding calendar years prior to ~~during~~ the applicable renewal date ~~period~~. Each registered pharmacist shall retain documentation of participation in such continuing education programs for not less than two years after each biennial license renewal for audit purposes if and when such audit is undertaken by the Department of Health and the Board of Pharmacy. Such documentation shall consist of slips for lecture attendance, certification forms from instructors, or course completion slips from correspondence courses.

Specific Authority 465.005 FS. Law Implemented 465.009 FS. History–New 10-17-79, Formerly 21S-13.04, Amended 5-10-89, Formerly 21S-13.004, 21S-26.603, 61F10-26.603, 59X-26.603, Amended _____.

64B16-26.606 Number of Required Hours.

As a condition of the biennial renewal of his license a registered pharmacist must submit proof in the form of certification to the Board the completion of not less than fifteen (15) hours per calendar year of continuing professional education which fulfills the requirements of this rule. A pharmacist, upon request by the Board office, shall provide additional proof of the required continued pharmaceutical education credits as provided by Rule 64B16-26.603, F.A.C. At least five (5) of the required fifteen (15) hours per year must be obtained either at a live seminar, a live video teleconference, or through an interactive computer based application.

Specific Authority 465.005 FS. Law Implemented 465.009 FS. History–New 10-17-79, Formerly 21S-13.07, 21S-13.007, Amended 7-31-91, Formerly 21S-26.606, 61F10-26.606, 59X-26.606, Amended 2-23-98, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 13, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 26, 2000

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE TITLE:	RULE NO.:
Permit Fees	64B16-28.121

PURPOSE AND EFFECT: The purpose of the rule amendments is to update the rule text with regard to permit fees.

SUMMARY: The purpose of the rule amendments is to increase the fee amount for the initial and biennial permit renewal fees for a pharmacy.

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 regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 465.005, 465.022 FS.

LAW IMPLEMENTED: 465.022 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John Taylor, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-28.121 Permit Fees.

(1) The initial permit fee for a pharmacy, as provided by Section 465.022(8)(a), Florida Statutes, shall be two hundred fifty ~~twenty~~ dollars ($250) ~~($220)~~.

(2) The biennial permit renewal fee for a pharmacy, as provided by Section 465.022(8)(b), Florida Statutes, shall be two hundred fifty ~~one hundred seventy-five~~ dollars ($250) ~~($175)~~.

(3) through (4) No change.

Specific Authority 465.005, 465.022 FS. Law Implemented 465.022 FS. History–New 7-31-91, Formerly 21S-28.121, 61F10-28.121, 59X-28.121, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 13, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 26, 2000

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: 9:30 a.m., September 21, 2000,

PLACE: Radisson Riverwalk Hotel, 200 North Ashley Drive, Tampa, Florida 33602

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Gwen Lightfoot, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

THE FULL TEXT OF THE PROPOSED RULES IS:

67-32.002 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," or "Property" means the rental housing unit or units to be repaired or improved by a loan from the Program.

(5) "EHCL" or "EHCL Program" means the Elderly Housing Community Loan Program created pursuant to Section 420.5087(3)(c)2.

(6)~~(5)~~ "Elderly" describes a person 62 years of age or older. Persons meeting the Fair Housing Act requirements for Elderly, pursuant to Section 760.29(4), Florida Statutes, shall be considered Elderly for purposes of this Program.

(7)~~(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.

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

(9)~~(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.

(10)~~(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.

(11)~~(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 9I-32.002, Amended 11-9-98, 1-2-00, _____.

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 9I-32.003, Repromulgated 11-9-98, 1-2-00, _____.

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 per funding cycle.

(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 the National Fire Protection Association Life Safety Code Handbook NFPA 101 (1997) and all publications referenced in Chapter 32 and Appendix B thereof. 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 (15%) 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, 1-2-00, _____.

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 EHCL ~~Elderly Housing Community Loan~~ Program Application packet, effective on the date of the latest amendment to this Rule Chapter, ~~(adopted January 2, 2000)~~ 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, 1-2-00, _____.

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 Development ~~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) EHCL ~~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 Development ~~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 1-2-00, Amended _____.

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) 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, 1-2-00, Repromulgated _____.

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 1-2-00, Amended _____.

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 shall occur during the implementation phase of the repairs or improvements and may occur after completion of such repairs or improvements as a result of suspected default or noncompliance issues.

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, 1-2-00, 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 which will include the Rule and the Application Package.

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

(c)~~(b)~~ Credit underwriting fee ($2,200) ~~($2,100)~~ 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.

(d)~~(c)~~ 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.

(e)~~(d)~~ Loan Servicing fees to be paid by the Sponsor to the servicer/monitoring agent pursuant to contract between the Corporation and the servicer/ monitoring agent ~~Inspection and processing fee~~.

~~(e) 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 EHCL ~~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 420.507(19), 420.5087(3)(c) FS. History–New 10-2-89, Amended 2-25-96, Formerly 9I-32.011, Amended 11-9-98, 1-2-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Gayle White, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Gwen Lightfoot, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 22, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 26, No. 12, March 24, 2000

FLORIDA HOUSING FINANCE CORPORATION

PURPOSE, EFFECT AND SUMMARY: 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 2001 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:

DATE AND TIME: 10:00 a.m., September 21, 2000

PLACE: Radisson Riverwalk Hotel, 200 North Ashley Drive, Tampa, Florida 33602

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Gwen Lightfoot, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

THE FULL TEXT OF THE PROPOSED RULES IS:

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 9I-48.001, Amended 11-9-98, Repromulgated 2-24-00, _____.

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 on the date of the latest amendment to this Rule Chapter ~~February 24, 2000~~. A copy of s~~S~~uch form is included as an attachment to the Application Package.

(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 Internal 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 Internal 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 residents, 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 CAP01 ~~CAP00~~" 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 on the date of the latest amendment to this Rule Chapter ~~February 24, 2000~~.

(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" or "IRC" 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 is unable to be employed as a commercial fishing worker due to such 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 "CHDO²s" 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. With 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.~~

(28)~~(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.

(29) "Development," "Project," or "Property" 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.

(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 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.

(32)~~(31)~~ "Development Expenses" means, with respect to SAIL Developments, usual and customary operating and financial costs, such as the compliance monitoring fee, the financial monitoring fee, replacement reserves, the servicing fee and the debt service reserves. As it relates to the application of Development Cash Flow described in Fla. Admin. Code Ann. r ~~R~~. 67-48.010(4), the term does not include extraordinary capital expenses, developer fees and other non-operating expenses.

(33)~~(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.

(34)~~(33)~~ "Draw" means the disbursement of funds to a Development under the SAIL and HOME Programs.

(35)~~(34)~~ "Elderly" means a person 62 years of age or older. With respect to the SAIL, 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 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) "Executive Director" means the Executive Director of the Corporation.

(38) "Extended Use Agreement," ~~or~~ "Extended Low-Income Housing Agreement" or "EUA" 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) "Family" or "Family Household" describes a household composed of one or more persons.

(40) "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) "Farmworker Household" means a household of one or more persons wherein at least one member of the household is a Farmworker at time of move-in.

(42) "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) "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 ~~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, third party management agents or companies, Housing Credit Syndicators, Credit Enhancers who are regulated by a state or federal agency and who do not share in the profits of the Development or building contractors whose total fees are within the limit described in Rule 67-48.002(47), F.A.C.

(44) "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 August 2000 ~~1999~~, 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. A copy of s~~S~~uch form is included as an attachment to the Application Package.

(45) "Final Housing Credit Allocation" means, with respect to a Housing Credit Development, the issuance of Housing Credits by the 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) "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) "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 then 20% of the Development cost is sub-contracted to any one entity unless otherwise approved by the Board for a specific Development.

(48) "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) "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) "HOME" or "HOME Program" means the HOME Investment Partnerships Program pursuant to the HUD Regulations.

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

(53) "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) "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 or more HOME-Assisted Units).

(55) "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 resident-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 resident-paid utilities.

(56) "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) "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) "Housing Credit Extended Use Period" or "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) "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) "Housing Credit Development" means the proposed or existing rental housing Development(s) for which Housing Credits have been applied or received.

(61) "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) "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) "Housing Credit Syndicator" means a person, partnership, corporation, trust or other entity that regularly engages in the purchase of interests in entities that produce Qualified Low Income Housing Projects [(as defined in Section 42(g) of the Internal Revenue Code])] and provides at least one written reference in the Application that such person, partnership, corporation, trust or other entity has performed its obligation under the partnership agreements and is not currently in default under those agreements.

(64) "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) "HUD" means the U.S. Department of Housing and Urban Development.

(66) "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), together with subsequent amendments thereto, as in effect on the date of this Rule Chapter.

(67) "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, and which shall be used to certify the income of all residents residing in a set-aside unit in a Development. A copy of s~~S~~uch form is included as an attachment to the Application Package.

(68) Land Use Restriction Agreement," or "LURA" means, with respect to the SAIL or HOME Program, an agreement between the Corporation and the Applicant which sets forth the Set-Aside requirements and other Development requirements, if any, under the SAIL or HOME Program.

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

(70)~~(69)~~ "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.

(71)~~(70)~~ "Match" means non-federal contributions to a HOME Development eligible pursuant to the HUD Regulations.

(72)~~(71)~~ "Non-Profit" means a qualified non-profit entity as defined in the HUD Regulations, Section 42(h)(5)(C)~~(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. The purpose of the Non-Profit must be, in part, to foster low-income housing and such purpose must be reflected in the Articles of Incorporation of the Non-Profit entity. 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 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.

(73)~~(72)~~ "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.

(74)~~(73)~~ "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.

(75)~~(74)~~ "Preliminary Allocation" means a non-binding reservation of Housing Credits issued by the Executive Director to a Housing Credit Development which has successfully completed the credit underwriting process and demonstrated a need for Housing Credits.

(76)~~(75)~~ "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.

(77)~~(76)~~ "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.

(78)~~(77)~~ "Program" or "Programs" means the SAIL, HOME and/or HC Program(s) as administered by the Corporation.

(79)~~(78)~~ "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 on the date of the latest amendment to this Rule Chapter ~~February 24, 2000~~. A copy of s~~S~~uch form is included as an attachment to the Application Package.

(80)~~(79)~~ "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), and is adopted and incorporated herein by reference, effective on the date of the latest amendment to this Rule Chapter ~~February 24, 2000~~. A copy of s~~S~~uch form is included as an attachment to the Application Package.

(81)~~(80)~~ "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.

(82)~~(81)~~ "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 on the date of the latest amendment to this Rule Chapter ~~February 24, 2000~~, and which was approved by the Governor of the State of Florida on _____ ~~December 16, 1999~~, 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. The QAP is included as an attachment to the Application Package.

(83)~~(82)~~ "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.

(84)~~(83)~~ "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 on the date of the latest amendment to this Rule Chapter ~~February 24, 2000~~. A copy of s~~S~~uch form is included as an attachment to the Application Package.

(85)~~(84)~~ "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 Code, 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 $20,000 or more."

(86)~~(85)~~ "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.

(87)~~(86)~~ "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.

(88)~~(87)~~ "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.

(89)~~(88)~~ "SAIL" or "SAIL Program" means the State Apartment Incentive Loan Program created pursuant to Section 420.5087, Florida Statutes.

(90)~~(89)~~ "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%.

(91)~~(90)~~ "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 the 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.

(d) 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.

(92)~~(91)~~ "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 residents (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 residents (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.

(93)~~(92)~~ "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.

(94)~~(93)~~ "Single Room Occupancy" or "SRO" means housing, consisting of single room dwelling units, that is the primary residence of its occupant or occupants. Each 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 residents. An SRO does not include facilities for Students.

~~(94) "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) "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) "Student" means, with respect to SAIL and Housing Credit Developments, 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) "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) "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) "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) "Very Low-Income" means

(a) With respect to the SAIL Program,

1. I~~i~~f 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 9I-48.002, Amended 11-9-98, 2-24-00, _____.

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 final judgment of a court of law or recommended order of a hearing officer or administrative law judge or settlement agreement which has been adopted by final order approved by the Corporation's Board of Directors in connection with litigation with respect to a previous cycle.

(3) 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 the HOME allocation for CHDOs 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 rental ~~multifamily~~ cycle administered pursuant to Fla. Admin. Code Ann. r. 67-48, the Corporation will distribute funds in the following order:

1. Funds will be allocated to qualified CHDO~~'~~s in order of ranking, until 15% of the available funds have been allocated.

2. The remaining funds will then be allocated to Applications for proposed Developments in order of ranking.

(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) With respect to the HC Program, said notice shall also set forth the anticipated Allocation Authority and any geographic or other targeting requirements.

(5) After selection of Applications ~~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) 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) With respect to the HC Program, the Corporation shall be exempt from the notice requirements in subsections (1) and (4) 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 Applicants ~~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) above would interfere with the ability of the Corporation to distribute the balance of its Allocation Authority.

(7) With respect to the HC Program, in the event there remains Allocation Authority after the Corporation has exhausted its waiting list of Applications ~~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) 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) In the event of a federally declared disaster, any Allocation Authority not preliminarily allocated, as well as any Authority remaining after Preliminary Allocation, can be diverted by the Board of Directors~~, based upon an Executive Order signed by the Governor,~~ to one or more federal~~ly~~ or state declared disaster areas.

~~(10) The Notice of Funding or Credit Availability shall reference the amount of allocation 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, 420.5089, 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.003, Amended 11-9-98, 2-24-00, _____.

67-48.004 Application and Selection Procedures for Developments.

(1) The Corporation hereby adopts by reference the Application Package (Form CAP01 ~~CAP00~~) 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. 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 disk(s) 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 accordance with the Application instructions will result in a reduction of points awarded or rejection in accordance with the instructions in the Application.~~

(4) ~~Subject to the limited exceptions contained within Rule 67-48.005 , F.A.C.,~~ O~~o~~nce the Application has been received by the Corporation, no additions, deletions, or changes will be accepted for Application or scoring purposes unless the Applicant has been notified of non-material errors by FHFC. In such case, the Applicant will have five calendar days from receipt of such notification to submit corrected information along with a $200 correction fee for each item to be corrected. A non-material change is one that does not change the fundamental aspects of the Application and seeks only to correct minor errors or omissions. For example, an Applicant may not change the number of units, the amenities promised, the Principals, the method of obtaining site control or evidence of zoning, nor may the Applicant submit additional information such as a revised experience chart, evidence of zoning, site control documents or proof of infrastructure availability. An Applicant may submit, after notification by FHFC, information that corrects typographical, transpositional or scrivener's errors. Further, errors of omission, such as failing to list on the verification form the name of the firm that conducted the Phase I Environmental Assessment, would be considered a non-material change.

(5)~~(4)~~ The computer disk(s) containing all completed forms must be submitted. In addition a~~A~~n original and three 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. Exhibits must be placed behind each form to which they refer. The submitted Application which is considered the original shall 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 applicable penalty shall be applied in accordance with Application Instructions and forms.

(6) Failure to submit an Application completed in accordance with the Application instructions will result in a reduction of points awarded or rejection in accordance with the instructions in the Application.

(7)~~(5)~~ Applications shall be limited to one submission per subject property with exception of Tax-Exempt Bond-Financed Developments applying noncompetitively for Housing Credits.

(8) Trailers, mobile homes, manufactured housing and other such non-site built housing are not eligible for any FHFC funding.

(9)~~(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.

(10)~~(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 Application ~~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 all applicable ~~the entire~~ Application forms and verification forms which are ~~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 Application's ~~Applicant's~~ SAIL or HOME score is not sufficient for SAIL or HOME funding, HC will not be awarded.

(i) An Applicant or any Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer is in arrears for any financial obligation it has to the Corporation.

(11)~~(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.

(12)~~(9)~~ If an Applicant or any Principal, ~~or~~ Affiliate or Financial Beneficiary of ~~or~~ 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 and the cure period granted for correcting such non-compliance has ended, at the time of submission of the Application or at the time of issuance of a final credit underwriting report, the requested allocation will be denied and the Applicant and the Affiliates of the Applicant or Developer will be 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.

(13)~~(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.

(14)~~(11)~~ The Application ~~Package~~ shall be evaluated and preliminarily ranked using the factors specified in the Application Package.

(15)~~(12)~~ Preliminary scores and rankings shall be transmitted to all Applicants, along with notice of appeal rights. Following completion of the informal hearing process ~~appeals~~, final award of points shall be submitted to the Board for approval.

(16)~~(13)~~ The Review Committee shall use other Corporation staff to assist in reviewing certain portions of the Application.

(17)~~(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, and 8 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 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 11 ~~10~~ calculation: SAIL or HOME loan amount divided by the lower of a~~A~~ctual t~~T~~otal Development Cost or t~~T~~hreshold t~~T~~otal 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 11 ~~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 with the lowest number of total residential units.

(18)~~(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.

(19)~~(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, Formerly 9I-48.004, Amended 4-7-98, 11-9-98, 2-24-00, _____.

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 calendar days of the date of receipt of the notice, as follows:

1. The petition must be submitted in accordance with Form FHFC Appeal 2001, hereby incorporated by reference, and ~~The request~~ must specify in detail each issue, form and score ~~the forms and the scores~~ sought to be appealed. A copy of such form is included as an attachment to the Application package.

2. The petition must be accompanied by an appeal fee as set forth on Form FHFC Appeal 2001. ~~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 penalty will be applied in accordance with the Application Instructions and forms.~~ 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 calendar days of the date of receipt of the notice, a written request for a review of the other Application's ~~Applicant's~~ score, as follows:

1. The petition must be submitted in accordance with Form FHFC Appeal 2001, hereby incorporated by reference, and ~~Each request~~ must specify in detail the assigned Application number, as well as each issue, form and score sought to be appealed ~~the forms and the scores in question~~. A copy of such form is included as an attachment to the Application package. Each request is limited to the review of only one Application's score.

2. The petition must be accompanied by an appeal fee as set forth on Form FHFC Appeal 2001.

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 calendar days of the date of receipt of the notice, as follows:

(a) The petition must be submitted in accordance with Form FHFC Appeal 2001, hereby incorporated by reference, and ~~The request~~ must specify in detail each issue, form and score ~~the forms and the scores~~ sought to be appealed. A copy of such form is included as an attachment to the Application package.

(b) As set forth on Form FHFC Appeal 2001, no appeal fee is required.

~~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 penalty will be applied in accordance with the Application Instructions and forms.~~ 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 eligible for review when:

(a) It is timely filed, which, for purposes of this subsection, means ~~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, or other courier service~~, or by telefax~~. Written notifications, petitions or requests for review will NOT be accepted via telefax or other electronic means. ~~Petitions or requests for review that are not timely filed shall constitute a waiver of the right of the Applicant to such a review.~~;

(b) It is submitted in accordance with Form FHFC Appeal 2001 and the instructions set out in 67-48.005(1)-(2) above; and

(c) It is accompanied by the correct appeal fee, as specified on Form FHFC Appeal 2001.

(4) Failure to file a written notification, petition or request for review in accordance with Section 67-48.005(1)-(3) will 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, Formerly 9I-48.005, Amended 4-7-98, 11-9-98, 2-24-00, _____.

67-48.006 Compliance and Reporting Requirements.

(1) Any duly authorized representative of the Corporation or the Treasury shall be permitted at any time during normal business hours to inspect and monitor Development and resident records and facilities. All resident 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 representatives 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 resident occupying a Low-Income or Very Low-Income unit. Records for each occupied Low-Income or Very Low-Income unit shall contain the following documentation:

(a) The resident's rental application containing the name or names of each household member, employment and income information for each household member, and other information required by the owner of the Development;

(b) An executed lease agreement listing the term of the tenancy and all of the residents residing in the unit;

(c) Verification of the income of each resident 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 resident; and

(e) Income Certification Form TIC-1 for each resident. A sample Form TIC-1 can be obtained from the Corporation.

(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 Progam 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 Low-Income Housing Credit Allocation Certificate Form 8609, Rev. 8/96, and Schedule A, Annual Statement, Rev. 8/96 (Form 8609) for the first year housing credits are claimed to the Compliance Section of Florida Housing Finance Corporation. These forms are incorporated by reference and are due at the same time they are filed with the Internal Revenue Service. Form 8609 and Schedule A (Form 8609) can be obtained from the Internal Revenue Service by calling 1-800-829-4477. Additionally, correspondence shall accompany these forms which indicates 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 9I-48.006, Amended 11-9-98, 2-24-00, _____.

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 $80 ~~$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 form and exhibit tabs may be obtained for a fee of $50 ~~$40~~.

(2) Application Tab Kit Fee: Each person requesting additional form and exhibit tabs for the Application shall remit a fee of $30 ~~$20~~ per Application Tab Kit, payable to the Corporation prior to the issuance of the Application Tab Kit.

(3) Application Fee:

(a) SAIL and HC Applicants shall submit to the Corporation at the time of submission of the Application a non-refundable Application fee of:

1. $500 ~~$250~~ per Application per Program 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

2. $1,000 ~~$500~~ per Application per Program for all others.

(b) HOME Applicants shall submit to the Corporation at the time of submission of the Application a non-refundable fee of:

1. $100 ~~$50~~ if Applicant ~~qualifies~~ or Applicant's g~~G~~eneral p~~P~~artner 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

2. $250 ~~$100~~ for all others.

(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. However, such fee shall be 5% for Applicants that qualify or whose g~~G~~eneral p~~P~~artner qualifies as a Non-Profit entity pursuant to Rule 67-48.002 (72)~~(71)~~, 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 .5% ~~.05%~~ of the SAIL loan amount will be charged if a request ~~the Corporation is asked~~ to extend the SAIL loan commitment is approved by the Board [see Rule 67-48.012(6)] ~~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 Applicants ~~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.~~

(10)~~(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.

(11)~~(12)~~ Development Cost Pro Forma: All of the fees set forth above with respect to the SAIL Program are part of Development cost and can be included in the Development cost pro forma and paid with SAIL loan proceeds. Failure to pay any fee shall cause the firm loan commitment under any Program to be terminated or shall constitute a default on the respective loan documents.

(12) Scoring Correction Fee: Upon notification by FHFC of non-material errors found during preliminary scoring, any desired corrections based on such notification must be accompanied by a fee of $200 for each item to be corrected.

(13) Appeal Fees: All petitions for appeal must be accompanied by the correct appeal fee as set forth on Form FHFC Appeal 2001.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.007, Amended 11-9-98, 2-24-00,_____.

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, 2-24-00,_____.

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) 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)(a)-(c).

(6) Applicants cannot request additional funding for the same Development within the SAIL Program in order to obtain their Developer fee.

(7) 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% of the cost of the building exclusive of land. A total Developer fee of 18% 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.

(8) In no event can the amount of the Developer's fee increase over what Developer fee is shown in the Application.

(9) The General Contractor's fee shall be limited to a maximum of 14% of the total construction cost.

(10) 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 9I-48.009, Amended 11-9-98, 2-24-00, _____.

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 Section 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.

(5) To the extent that funds are available in the 10% amount reserved for counties with a population of 100,000 or less, those Applicants that have successfully competed for HC in the same cycle and require SAIL for financial feasibility will receive SAIL funds in conjunction with the requirements of Section 67-48.009, F.A.C., if the Development has no more than 60 total units.

(6) 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.

(7) If an Application for an SRO Development is allocated HC and requires SAIL for financial feasibility, SAIL funding will be awarded in conjunction with the requirements of Section 67-48.009, F.A.C.

(8)~~(5)~~ After the six-month period has expired, the Corporation shall allocate SAIL funds to Applicants meeting threshold requirements, without regard to demographic category.

(9)~~(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.

(10)~~(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 9I-48.0095, Amended 11-9-98, 2-24-00, _____.

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. For purposes of this rule, mortgages securing a letter of credit as credit enhancement for the bonds financing the first mortgage shall be considered a contingent liability and part of the first mortgage lien, provided that the Applicant's counsel furnishes an opinion regarding the contingent nature of such mortgage satisfactory to the Corporation and its counsel.

(3) The loans shall be non-amortizing and shall have interest rates as follows:

(a) 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 loans 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) without constituting a default on the loan.

(4) The loans described in Fla. Admin. Code Ann. r. 67-48.010(3)(a) and (b) 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~~ Bb~~b~~ase interest payment deferred from previous years;

(e) Mandatory payment on subordinate mortgages;

(f) 12% Return on Equity to Applicant ~~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 Applicant ~~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 Applicant ~~Sponsor~~ shall retain all remaining monies, unless the Applicant ~~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;

(b) Development Expenses ~~including the servicing fee~~ on the SAIL loan;

(c) Any other unpaid SAIL interest deferred from the current and previous years;

(d) Mandatory payment on subordinate mortgages;

(e) 12% Return on Equity to Applicant ~~Sponsor~~;

(f) Any unpaid Return on Equity deferred from previous years; and

(g) Remaining monies to be equally divided between the Applicant ~~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 Applicant ~~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 May 31 ~~April 15~~ of each year of the SAIL loan term, the Applicant ~~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 May 31 ~~April 15~~ following the calendar year within which the first unit is occupied. The certification shall require submission of audited financial statements and the SAIL annual reporting form, Cash Flow Reporting Form SR-1, Rev. 1/98. Form SR-1 can be obtained from the assigned 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 Applicant ~~Developer~~ as to the accuracy of such financial statements. The Applicant ~~Developer~~ shall furnish to the Corporation or its servicer, unaudited statements, certified by the Applicant's ~~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 May 31 ~~April 15~~ of each year of the SAIL loan term. Failure to submit the required financial certification by May 31 ~~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 July 31 ~~May 31~~ of each calendar year of the SAIL loan.

(c) The Applicant ~~Developer~~ shall remit the interest due to the Corporation servicer no later than August 31 ~~June 30~~ of each year of the SAIL loan term. The first payment of SAIL base interest ~~on 9% loans~~ will be due no later than August 31 ~~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 Applicant ~~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 Applicant ~~Developer~~ agreeing to further extend the Compliance Period or provide additional amenities or resident programs suitable for the resident population. Further, the Board shall limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

(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) Applicants ~~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 households 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 Applicant's ~~Developer's~~ selection of a management company prior to such company assuming responsibility for the Development. The Applicant, its designated representative, ~~Developer~~ or the managing agent of the Development must attend a Corporation-sponsored training workshop on certification and compliance procedures prior to the leasing of any units in the Development.

(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 residents, advertising to be used, other means of encouraging residents to rent at the Development, and priority to the original targeted group of residents. If the Corporation determines that prior marketing efforts were insufficient, a revised plan which is satisfactory to the Corporation must be submitted and implemented for a four-month period prior to reconsideration.

(b) The Board will require Applicants ~~Sponsors~~ to provide additional amenities or resident programs suitable for the proposed resident population.

(c) The Board will require Applicants ~~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 Applicant ~~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 Development's ~~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 9I-48.010, Amended 11-9-98, 2-24-00, _____.

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 Applicant ~~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 Applicant ~~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 Applicant ~~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 Applicant ~~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 Applicant ~~Developer~~ that there are no Development funds available to repay the SAIL loan and the Applicant ~~Developer~~ knows of no source from which funds could or would be forthcoming to pay the SAIL loan; and

4. A certification from the Applicant ~~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 2-24-00, Amended _____.

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 of 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 Pproperty. 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 an operating expenses reserve, 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 g~~G~~uarantor.

2. Developer and General Contractor's history in successfully completing Developments of similar nature.

3. Problems encountered previously with Developer or c~~C~~ontractor.

4. Exposure of Corporation funds compared to total Development C~~c~~osts.

At a minimum, the Credit Underwriter shall require a p~~P~~ersonal g~~G~~uarantee for completion of construction from the principal individual or the c~~C~~orporate g~~G~~eneral p~~P~~artner of the borrowing entity. In addition, a letter of credit or p~~P~~ayment and p~~P~~erformance b~~B~~ond 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 final 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 Application(s) ~~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, Rev. 11/99, 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. Such form is included as an attachment to the Application Package.

(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 one-half of one percent ~~.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 Development's ~~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.

(10) At least five calendar days prior to attending any closing:

(a) the Applicant must provide evidence of all necessary consents or required signatures from first mortgagees or subordinate mortgagees to the Corporation and its counsel, and

(b) the Credit Underwriter must have received all items necessary to release its letter confirming that all closing contingencies have been met, including the finalized sources and uses of funds and draw schedule.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.012, Amended 11-9-98, 2-24-00, _____.

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 Applicant ~~Developer~~ shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Applicant ~~Developer~~ for an advance.

(a) A copy of the request for an 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 will disburse construction draws through Automatic Clearing House (ACH). The Applicant may request disbursement of construction draws via a wire transfer. The Applicant will be charged a fee of $8 for each wire transfer requested. This charge will be netted against the draw amount.

(5)~~(4)~~ The Corporation shall elect to withhold any Draw ~~advance~~ or portion of any Draw ~~advance~~, notwithstanding any documentation submitted by the Applicant ~~Developer~~ in connection with the 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 from that as shown on the loan documents; or

(b) The percentage of progress of construction of the improvements differs from that ~~as~~ shown on the request for a Draw ~~an advance~~.

(6)~~(5)~~ The servicer may request submission of revised construction budgets.

(7)~~(6)~~ If the Corporation determines that further analysis by the Credit Underwriter is required prior to the release of the final D~~d~~raw, 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.

(8)~~(7)~~ Retainage in the amount of 10% per D~~d~~raw 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 9I-48.013, Amended 11-9-98, 2-24-00, _____.

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 amount of HOME funds that must be invested in a Rental Development is $1,000 times the number of HOME-Assisted Units in the Development.

(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 who annual income does not exceed 60% of the median family income for the area, as determined by HUD, with adjustments for family size, 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 resident increases above 80% of area median income, the next unit that becomes available in the Development must be rented to a HOME income-eligible resident. If the income of a Very Low-Income household increases above the limits for a Very Low-Income household,

then the Developer must rent the next available unit to a Very Low-Income household. The amount of rent the resident whose income has increased must pay is the lesser of the amount payable by resident under state or local law or 30% 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 (resident rent, subsidy amount, and utility allowance) to the maximum applicable HOME high or low rent limit minus utilities. However, Developments with project-based rental assistance may utilize the project-based rents as compared to the HOME High and Low rents. Compliance with the HOME rent restrictions will take precedence over the Developer's acceptance of a full Section 8 (resident-based) subsidy for the HOME-Assisted Units.

(e) The minimum 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 Ceost. 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 12-23-96, 1-6-98, Formerly 9I-48.014, Amended 11-9-98, Repromulgated 2-24-00, Amended _____.

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 12-23-96, 1-6-98, Formerly 9I-48.015, Amended 11-9-98, Repromulgated 2-24-00, Amended _____.

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 2-24-00, _____.

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 12-23-96, 1-6-98, Formerly 9I-48.018, Amended 11-9-98, Repromulgated 2-24-00, _____.

67-48.019 Eligible and Ineligible HOME Development Costs.

(1) HOME funds may be used to pay for the following eligible costs as numerated 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.

(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 Ceost excluding land and building acquisition costs. A Developer fee on the building acquisition cost shall be limited to 4% 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.

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) Resident-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, 2-24-00, Repromulgated _____.

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 g~~G~~eneral p~~P~~artner 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 g~~G~~eneral p~~P~~artner 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 g~~G~~eneral p~~P~~artner 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 g~~G~~eneral p~~P~~artner 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 C~~c~~ost, as determined and certified by the Credit Underwriter.

(6) Before disbursing any HOME funds, there must be a written agreement with the Applicant ~~Developer~~ ensuring compliance with the requirements of the HOME Program pursuant to this Rule Chapter and the HUD Regulations.

(7) A representative of the Applicant ~~The Developer~~ and the managing agent of the Development must attend a Corporation-sponsored training session on income certification and compliance procedures.

(8) If the Development has 12 or more HOME-Assisted Units, 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, the Corporation will commence legal action to protect the interest of the Corporation. The Corporation shall acquire real and personal property or any interest in the Development if that acquisition is necessary to protect any HOME loan; sell, transfer, and convey any such property to a buyer without regard to the provisions of Chapters 253 and 270, 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 Applicant ~~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)(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)(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 Applicant ~~Developer~~ agreeing to further extend the Compliance Period or provide additional amenities or resident programs suitable for the resident population. Further, the board shall limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(7),(8),(9) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.020, Amended 11-9-98, 2-24-00, _____.

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 Applicant ~~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 Applicant ~~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 Applicant ~~Developer~~ that there are no Development funds available to repay the loan and the Applicant ~~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 9I-48.0205, Amended 11-9-98, Repromulgated 2-24-00, Amended _____.

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 A~~a~~pplications 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 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-funded Development.

5. The Credit Underwriter shall consider the following when determining the need for construction completion guarantees:

a. Liquidity of the gGuarantor.

b. Developer and General Contractor's history in successfully completing Developments of similar nature.

c. Problems encountered previously with Developer.

d. Problems encountered previously with cContractor.

e. Exposure of Corporation funds compared to total Development Ccosts. At a minimum, the Credit Underwriter shall require a pPersonal gGuarantee for completion of construction from the principal individual or the cCorporate gGeneral pPartner of the borrowing entity.

In addition, a letter of credit or pPayment and pPerformance bBond will be required if the Credit Underwriter determines after evaluation of a.-e. above that the 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 Pproperty. 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 Applications ~~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.

(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.

(3) At least five calendar days prior to attending any closing:

(a) the Applicant must provide evidence of all necessary consents or required signatures from first mortgagees or subordinate mortgagees to the Corporation and its counsel, and

(b) the Credit Underwriter must have received all items necessary to release its letter confirming that all closing contingencies have been met, including the finalized sources and uses of funds and draw schedule.

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, 2-24-00, _____.

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 Applicant ~~borrower~~ shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Applicant ~~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 Ddraw 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 from that shown on the loan documents.

(b) The percentage of progress of construction of improvements differs from that shown on the request for a Draw.

(c) Developments subject to and not in compliance with Federal Labor Standards.

(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 HOME 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 9I-48.022, Amended 11-9-98, 2-24-00, _____.

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, or any Principal, Affiliate or Financial Beneficiary of an Applicant or Developer in a Funding Cycle shall result in disqualification from participation in the current HC Funding Cycle and for a period of not less than one year Program ineligibility for the Applicant in that Funding Cycle. The Applicant and its Principals, Affiliates and Financial Beneficiaries will continue to be ineligible to participate in future HC Funding Cycles until such time as all noncompliance issues are cured.

(2) 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 provided by FHFC 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-2001 2000, which is incorporated by reference, by the earlier of the following two dates. A copy of sSuch form is included as an attachment to the Application Package.

(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-2001 2000 shall include an unqualified audit report prepared by an independent certified public accountant. 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 Executive Director, and the recorded Extended Use Agreement has been received in accordance with 67-48.029, the Forms 8609 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 9I-48.023, Amended 11-9-98, 2-24-00, _____.

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 Hhousing Ccredits in this state. As the allocating agency for

the state, distribution of hHousing cCredits 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 _____ December 16, 1999, 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 9I-48.025, Amended 11-9-98, 2-24-00, _____.

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 the letter 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) Applicants may request, in writing, extensions to specified credit underwriting deadlines. If an extension is approved by FHFC, the Applicant must pay an extension fee of one-half of one percent of the Housing Credit request amount stated in the Application. The extension fee is payable to Florida Housing within ten days of the Corporation's approval. Failure to submit full payment of the extension fee within the ten days will result in the Application being re-ranked to the last position within its Geographic or categorical Set-Aside. If this results in the Application falling below the funding line and thereby causing another Application to rise above the funding line, the Application rising above the funding line will be invited into credit underwriting. ~~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) Failure to submit required information by a specified deadline to the assigned Credit Underwriter, unless a written extension of time has been approved by the Corporation, will result in an Application being re-ranked to last position within its Geographic or categorical Set-Aside. If this results in the Application falling below the funding line and thereby causing another Application to rise above the funding line, the Application rising above the funding line will be invited into credit underwriting.

(6)~~(5)~~ The Corporation shall select the Credit Underwriter for each Development.

(7)~~(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.

(8)~~(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.

(9)~~(8)~~ The Credit Underwriter shall use the following procedures during the underwriting evaluation:

(a) The Credit Underwriter, in determining the amount of housing credits a Development is eligible for when using the qQualified bBasis cCalculation, shall use a housing credit percentage of:

1. Thirty (30) basis points over the percentage as of the date of iInvitation to cCredit uUnderwriting 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 iInvitation to cCredit uUnderwriting 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 iInvitation to fFinal cCredit uUnderwriting up to four percent (4%) will be used for Developments receiving FHFC tax-exempt bonds in calendar year 2000 or later.

(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-funded Development.

(c) 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 4% of the cost of the building exclusive of land. A total Developer fee of 18% 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.

(d) In no event can the amount of the Developer fee increase over what Developer fee is shown in the Application.

(e) The General Contractor's fee shall be limited to a maximum of 14% of the actual ~~total~~ construction cost.

(f) Costs such as syndication fees and brokerage fees cannot be included in e~~E~~ligible b~~B~~asis. 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 (c)~~(d)~~ above.

(g) All contracts for hard or soft Development costs must be itemized for each cost component.

(h) 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 P~~p~~roperty. The Credit Underwriter shall use the same appraiser as the first mortgage lender provided the appraisal has not been ordered.

(i) 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.

(j) A separate market study shall be required if the appraisal does not adequately address the market for the proposed Development.

(k) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of the Credit Underwriter's expertise, the cost of providing such expertise shall be borne by the Applicant.

(l) The minimum combined debt service coverage shall be 1.10 and the maximum debt service coverage shall be 1.50, including all 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.

(m) In addition to an operating expenses reserve, 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.

(n) The Corporation's assigned Credit Underwriter shall conduct, at the Applicant's sole expense, a pre-construction analysis and review of all the Development's costs. In addition, the Credit Underwriter shall analyze the physical needs assessment submitted as part of the Application. If the Credit Underwriter determines that the submitted physical needs assessment is insufficient, the Credit Underwriter shall order a new physical needs assessment at the Applicant's sole expense.

(o) Contingency reserves which total no more than 5% of hard and soft costs may be included within the Total Development cost for Application and underwriting purposes.

(p)~~(k)~~ If the Credit Underwriter requires additional clarifying ~~clarying~~ 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.

(10)~~(9)~~ After the completion of its analysis, the Credit Underwriter shall submit its draft recommendation including a detailed report of the Development's ~~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.

(11)~~(10)~~ If the Credit Underwriter recommends that Housing Credits be allocated to the Development, the Executive Director shall determine the c~~C~~redit 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 c~~C~~redits be allocated to the Development and the Executive Director accepts the recommendation, the Applicant shall be notified that no Housing Credits will be allocated to the Development 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), which Obligation of Funding is incorporated by reference. A copy of the obligation for funding can be obtained from the U.S. Department of Agriculture, P.O. Box 147010, Gainesville, FL 32614-7010. 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 9I-48.026, Amended 11-9-98, 2-24-00, _____.

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-2001 ~~2000~~, which form is incorporated by reference. The Form MFMRB-2001 ~~2000~~ can be obtained from Florida Housing's Multifamily Mortgage Revenue Bond Program;

(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 HC Program scoring 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 Sections I and IV of this Rule Chapter, except for Sections 67-48.026 and 67-48.028 ~~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~~; and

~~(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~~

(g)~~(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) 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 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) 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) 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.~~

(b)~~(c)~~ Be subject to the Application fee specified in this Rule Chapter;

(c)~~(d)~~ Meet the HC Program threshold requirements pursuant to the Qualified Allocation Plan and shall have completed loan closings on all required financing;

(d)~~(e)~~ Participate in the credit underwriting process pursuant to this Rule Chapter, unless such Development has received its tax-exempt bond financing through the Corporation, in which case the Development must be underwritten to the extent necessary to determine Development feasibility and housing credit need;

(e)~~(f)~~ Be subject to the credit underwriting fees as set forth in this Rule Chapter;

(f) Be subject to the administrative fee specified in this Rule Chapter;

(g) Receive a Preliminary Determination from the Corporation upon satisfying the requirements of sections (a) through (f) above.~~;~~ A Development may receive a Preliminary Determination prior to the bonds being issued and the submission of an Application, if the Corporation receives a credit underwriting report prepared by one of the Corporation's contracted Credit Underwriters which recommends a Housing Credit allocation and the issuance of tax-exempt bonds, and receives evidence of a loan commitment in reference to the tax-exempt bonds. The administrative fee must be paid within seven days of the date of the Preliminary Determination;

~~(h) Be subject to the administrative fee specified in this Rule Chapter;~~

(h)~~(i)~~ Be subject to a Developer fee limitation as specified in this Rule Chapter;

(i)~~(j)~~ Be subject to the provisions in this Rule Chapter, pertaining to the required Extended Use Agreement;

(j)~~(k)~~ Be subject to the monitoring fee specified in this Rule Chapter unless such Development has received tax-exempt bond financing through the Corporation; ~~and~~

(k) 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. An original and one photocopy of each Application for these Developments shall be received by the Corporation no later than July 1 of the year the Development is placed in service; and

(l) 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, Amended 12-23-96, 1-6-98, Formerly 9I-48.027, Amended 11-9-98, 2-24-00, _____.

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 November 14 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 Rev. 8/97, which is incorporated by reference and 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. Such form is included as an attachment to the Application package.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 9I-48.028, Amended 11-9-98, 2-24-00, 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 Eextended Uuse Ppperiod, the Compliance Period, and to evidence commitments made by the Applicant in the Application. Such commitments, for example, include the Housing Credit Set-Aside commitment, resident programs, and Development amenities.

(2) The following provisions shall be included in the Extended Use Agreement:

(a) The Applicable Fraction for Housing Credit Set-Aside uUnits for each taxable year in the extended use period shall not be less than the Applicable Fraction;

(b) Eligible Persons occupying Set-Aside uUnits shall have the right to enforce in any State of Florida court the extended use requirement for Set-Aside uUnits;

(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, 2-24-00, Repromulgated _____.

67-48.030 Sale or Transfer of a Housing Credit Development.

An owner of a Housing Credit Development, its successor or assigns which has ~~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 2-24-00, Amended _____.

67-48.031 Termination of Extended Use Agreement and Disposition of Housing Credit Developments.

The Housing Credit Eextended Uuse Ppperiod 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 sSet-aAside 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 resident of any s~~S~~et-a~~A~~side u~~U~~nit, or any increase in the gross rent with respect to any s~~S~~et-a~~A~~side u~~U~~nit 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 2-24-00, _____.

67-48.032 Minimum Set-Aside for Non-Profit Organizations Under Housing Credit 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 g~~G~~eneral p~~P~~artner qualifies as a Non-Profit entity pursuant to Rule 67-48.002(72)~~(71)~~, 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 Applications from 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 or categorical Set-Aside pursuant to the QAP. This procedure will be used again on or after October 1, if necessary, to ensure that the Corporation ~~Agency~~ allocates at least 10% of its Allocation Authority to qualified Non-Profit Applicants. Any Application of a 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 Applications ~~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 an Application to the HC Program as a Non-Profit entity but does not qualify as such, the Application will be rejected and 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 9I-48.032, Amended 11-9-98, 2-24-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Gayle White, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Gwen Lightfoot, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 22, 2000

DATE PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 26, No. 12, March 24, 2000

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF STATE

Division of Elections

RULE NO.: RULE TITLE:
1S-2.002 Placement of Races on Primary Ballot

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to Rule 1S-2.002 in response to comments received from the public. The proposed rule was initially noticed on page 3355, Vol. 26, No. 27, of the Florida Administrative Weekly on July 7, 2000. Paragraphs (4)(a) and (b) will now read:

(a) Either:

1. Across the top of any ballot page, card or voting machine ballot including a UPC, shall be printed, "Official Primary Ballot Party and Universal Primary Contest(s)" (with proper party name inserted) and with "Contest" being either singular or plural, as appropriate; or

2. Each time a UPC appears on a ballot, the words "Universal Primary Contest" shall appear after, or underneath, the office name of the UPC and before the "Vote for…" text.

(b) The names of all candidates for all partisan offices including candidates for the UPC office shall be displayed with an appropriate party name or abbreviation of party name. The party name or abbreviation of party name shall be similar to that used on a general election ballot pursuant to section 101.151(4), Florida Statutes.

DEPARTMENT OF EDUCATION

State Board of Independent Colleges and Universities

RULE NO.: RULE TITLE:
6E-1.0032 Fair Consumer Practices

NOTICE OF CHANGE

Notice is hereby given that proposed rule 6E-1.0032, F.A.C., published in Vol. 26, No. 25, June 23, 2000, Florida Administrative Weekly, has been changed to reflect comments received at the Public Hearing on July 19, 2000.

Section 1.0032(2)(f) has been changed so that when adopted it will read:

(f) Refund policy:

1. The college or center shall have an equitable prorated refund policy for all students. This policy shall be prominently displayed in the catalog and uniformly administered. Any nonrefundable fees or charges shall be clearly disclosed. The policy shall provide a formula for proration of refunds based upon the length of time the student remains enrolled. The college shall not consider that all or substantially all tuition for an entire program or term is earned when a student has been enrolled for only a minimal percentage of the program or term. The refund policy shall provide for cancellation of any obligation within three working days, pursuant to s. 246.041(1)(n)3.e., Florida Statutes. Refunds shall be made within thirty days of the date that the college determines that the student has withdrawn. The length of time the student is enrolled shall be determined by the date on which the student notifies the college in writing that he or she has withdrawn. The college shall disclose to each student individually, in writing, in conjunction with the refund policy, the office to which a notice of withdrawal shall be delivered. These disclosures shall be made to each student prior to the collection of tuition or fees.

2. This policy does not include dormitory or meal fees. Refund policies for those fees shall be set by colleges and disclosed to each student individually, in writing, in conjunction with the refund policy. The disclosure shall be made to each student prior to the collection of such fees.

3. Refund policies which pertain to students who are receiving Title IV Federal Student Financial Assistance or veterans' benefits shall be in compliance with applicable federal regulations.

DEPARTMENT OF EDUCATION

State Board of Independent Colleges and Universities

RULE NO.: RULE TITLE:
6E-1.0035 Permission to Operate

NOTICE OF CHANGE

Notice is hereby given that proposed rule 6E-1.0035, F.A.C., published in Vol. 26, No. 25, June 23, 2000, Florida Administrative Weekly, has been changed to reflect comments received at the Public Hearing on July 19, 2000.

Section 1.0035(2)(b) has been changed so that when adopted it will read:

(b) The college has been evaluated and approved by an agency, either governmental or accrediting, which has been determined by the board to have standards at least comparable to the board's licensure standards;

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:
33-602.221 Protective Management

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. 26, No. 25, June 23, 2000, issue of the Florida Administrative Weekly:

33-602.221 Protective Management.

(1) Definitions.