Section I
Notices of Development of Proposed Rules and Negotiated Rulemaking

DEPARTMENT OF INSURANCE

State Fire Marshal

RULE TITLES:	RULE NOS.:
Definitions	4A-2.002
Manufacture; License Required	4A-2.004
Storage; Shortages or Thefts; Reports Required	4A-2.012
Use; General	4A-2.019
All Investigative Reports Must be Filed	4A-2.022

PURPOSE AND EFFECT: This rule is being amended to delete duplicative language. Further, language is being repealed as a result of the Section 120.536(2)(b), F.S. review.

SUBJECT AREA TO BE ADDRESSED: Deletion of duplicative and unnecessary language.

SPECIFIC AUTHORITY: 552.13 FS.

LAW IMPLEMENTED: 552.081, 552.091, 552.113, 552.12, 552.13, 552.241, 633.01(2) FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNECESSARY, A WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS WORKSHOP WILL NOT BE HELD):

TIME AND DATE: 9:00 a.m., Tuesday, April 24, 2001

PLACE: Room 142, Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Gabe Mazzeo, Division of Fire Marshal, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0320

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 PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Water Policy

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Indian River Area Citrus Best Management Practices	5M-1

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to adopt the Water Quality/Quantity BMPs for Indian River Area Citrus, and provide the mechanisms for the Florida Department of Agriculture and Consumer Services to verify compliance with the Best Management Practices (BMPs) and interim measures in accordance with Chapter 403.067(7), F.S.

SUBJECT AREA TO BE ADDRESSED: The purpose of this workshop is to review a draft rule that adopts the Water Quality/Quantity BMPs for Indian River Area Citrus, establishes record keeping requirements and the procedures for landowners and leaseholders to submit a notice of intent to comply with Best Management Practices (BMPs) and interim measures.

SPECIFIC AUTHORITY: 403.067(7) FS.

LAW IMPLEMENTED: 403.067(7) FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., April 27, 2001

PLACE: Indian River Research and Education Center, Institute of Food and Agricultural Sciences, 2199 South Rock Road, Ft. Pierce, FL 34945-3138, (561)468-3922

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Mark Jennings, Environmental Specialist III, Office of Agricultural Water Policy, 1203 Governor's Square Blvd., Suite 200, Tallahassee, Florida 32399-1650, (850)488-6249 or Fax (850)921-2153

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

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE:	RULE NO.:
Comprehensive Management Information System	6A-1.0014

PURPOSE AND EFFECT: The purpose of this amendment is to revise existing requirements of the statewide comprehensive management information system which are necessary in order to implement changes recommended by school districts and to make changes in state reporting and local recordkeeping procedures for state and/or federal programs. The effect is to maintain compatibility among state and local information systems components. The statewide comprehensive management information system provides the data on which the measurement of school improvement and accountability is based.

SUBJECT AREA TO BE ADDRESSED: DOE Information Data Base Requirements 2001-2002.

SPECIFIC AUTHORITY: 120.53(1)(b), 229.053(1), 229.555(3) FS.

LAW IMPLEMENTED: 228.093(3)(d)3., 229.555(2), 229.781 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE TO BE ADVERTISED IN A FUTURE EDITION OF THE FLORIDA ADMINISTRATIVE WEEKLY.

Requests for the rule development workshop should be addressed to: Wayne V. Pierson, Agency Clerk, Department of Education, 325 West Gaines Street, Room 1214, Tallahassee, Florida 32399-0400.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Lavan Dukes, Bureau of Education Information and Accountability Services, Division of Technology, 325 West Gaines Street, Room 852, Tallahassee, Florida 32399-0400, (850)487-2280

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

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE TITLES:	RULE NOS.:
Premium Tax; Rate and Computation	12B-8.001
Tax Statement; Overpayments	12B-8.003
Retaliatory Provisions	12B-8.016

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12B-8.001, F.A.C., is to: (1) remove references to the intangible personal property tax imposed under Chapter 199, F.S., as insurers are no longer subject to that tax; (2) clarify the application of credits when an entity ceases to exist; and (3) remove obsolete provisions from the rule.

The purpose of the proposed amendments to Rule 12B-8.003, F.A.C., is to adopt the changes to forms DR-907 and DR-908 used by the Department in administering the insurance premium tax.

The purpose of the proposed amendments to Rule 12B-8.016, F.A.C., is to clarify the availability of short year Florida corporate income tax returns in the retaliatory tax computation.

SUBJECT AREA TO BE ADDRESSED: The subject of this rule development workshop is the proposed changes necessary to Rule Chapter 12B-8, F.A.C., Insurance Premium Taxes, Fees and Surcharges.

SPECIFIC AUTHORITY: 213.06(1), 220.183(6), 624.5105(6) FS.

LAW IMPLEMENTED: 175.101, 175.121, 175.141, 185.08(3), 185.10, 185.12, 213.05, 213.235, 213.37, 220.183(3), 624.4621, 624.475, 624.509, 624.5091, 624.5092, 624.510, 624.5105, 624.511, 624.518, 624.519, 624.520(2), 626.7451(11), 627.3512, 627.357(9), 628.6015, 629.5011, 634.131, 634.313(2), 634.415(2) FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., April 24, 2001

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0100

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least five (5) calendar days before such proceeding by contacting Jamie Phillips, (850)488-0717. If you are hearing or speech impaired, please contact the Department by calling 1(800)DOR-TDD1 (1(800)367-8331).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Robert DuCasse, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, Post Office Box 7443, Tallahassee, Florida 32314-7443, telephone number (850)922-4700

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12B-8.001 Premium Tax; Rate and Computation.

(1) through (2) No change.

(3) Credits Against the Tax.

(a)1. The ~~intangible personal property tax (IPPT) imposed under Chapter 199, F.S., the~~ corporate income tax imposed under Chapter 220, F.S., and the emergency excise tax imposed under Chapter 221, F.S., which are, or should have been, filed and paid by an insurer shall discharge the liability for the insurance premium tax (IPT) imposed under s. 624.509, F.S., for the annual period in which such tax payments are or should have been made, to the extent of the maximum allowed. Any insurer issuing policies insuring against loss or damage from the risks of fire, tornado, and certain casualty lines may take a credit against gross premium receipts tax for the excise tax(es) imposed by s. 175.101, F.S., and s. 185.08, F.S.

2.a. When an insurer is required to file a short year Florida corporate income tax return, the due date, or the extended due date when a valid extension of time is made of said Florida return, determines whether the corporate income tax and emergency excise tax paid on the short year Florida corporate income tax return is available for use on the insurer's final insurance premium tax return (DR-908). If the due date, or extended due date when a valid extension of time is made, of the short year Florida corporate income tax return is on or before December 31 of the short period year, then the insurer may include the short year Florida corporate income tax and emergency excise tax payments on that year's DR-908. Unused corporate income tax and emergency excise tax credits cannot be transferred to the insurance premium tax return (form DR-908) of another entity. ~~Since the intangible personal property tax (IPPT) credit offsets dollar for dollar any Insurance Premium Tax (IPT) liability, changes made in the amount of IPPT due the State will result in a change in the insurer's IPT liability and also may result in a change in the insurer's salary tax credit and retaliatory tax liability. The IPPT credit should be applied against IPT for the year in which the IPPT return would have been filed, had it been timely filed, even if it was not.~~

b. For example, if an insurer ceased to exist on August 31, 2000, a short year Florida corporate income tax return, without extension, is due on December 1, 2000. Since the short year Florida corporate income tax return is due by December 31 of the short period year, the insurer should include the amount of tax due on the short year Florida corporate income tax return in the computation of the corporate income tax and emergency excise tax credit on its final insurance premium tax return, the 2000 DR-908, which is due March 1, 2001. If, however, the insurer extended the due date of the short year Florida corporate income tax return to June 1, 2001, the short year Florida corporate income tax return is not included in the computation of the corporate income tax and emergency excise tax credit on its final insurance premium tax return, the 2000 DR-908, which is due March 1, 2001. ~~For example, if the insurer paid intangible personal property tax (IPPT) February 1, 1995, on intangible assets managed or controlled in Florida on January 1, 1995, the amount paid should be claimed as a credit against its 1995 insurance premium tax (IPT) which was due March 1, 1996. However, if the insurer paid IPPT February 1, 1995, on intangible assets managed or controlled in Florida on January 1, 1994, the amount paid should be claimed as a credit against its 1994 IPT which was due March 1, 1995. In this situation, an amended 1994 IPT return must be filed provided the insurer had previously filed its original 1994 IPT return.~~

(b) Salaries. Fifteen percent of the amount paid after June 30, 1988, in salaries by the insurer to employees located or based in Florida may be credited against the net tax imposed by s. 624.509, F.S.

1. Salaries include only amounts paid directly to employees and do not include commissions paid to employees located or based in Florida.

2. Employees are those covered under Chapter 443, F.S., Unemployment Compensation, by the insurer taking the credit, a service representative as defined in s. 626.081, F.S., a supervising or managing general agent as defined in s. 626.091, F.S., and an adjuster or claims investigator as defined in s. 626.101, F.S.

3. Salary credit shall be allowed only to the extent that:

a. The employees are not disqualified under s. 624.509(5), F.S.; and

b. The employees are located or based in Florida; and

c. The insurer claiming the credit is the employer, as defined in s. 443.036(17), F.S., of the claimed employees, and said insurer satisfies the Chapter 38B-2, F.A.C., filing requirements.

4. Employees do not include independent contractors or any persons whose duties require them to have a valid insurance license issued under the Florida Insurance Code.

5. The wages paid to an individual who is employed directly by an employment agency, such as a temporary agency or a leasing company, are not included.

6. Net tax is the tax imposed under s. 624.509(1), F.S., after deductions for the ~~intangible personal property tax imposed under Chapter 199, F.S., the~~ corporate income tax imposed under Chapter 220, F.S., the emergency excise tax imposed under Chapter 221, F.S., and for gross premium receipts tax payable for firefighters' pension trust funds under s. 175.101, F.S., and police officers' retirement funds under s. 185.08, F.S.

(c) Assessments Credited Against the Tax.

1. Payments made by an insurance carrier, group self-insurer, or commercial self-insurance fund, for assessments made pursuant to s. 440.51, F.S., shall be allowed as a deduction against the amount of any other tax levied by the state upon the premiums, assessments, or deposits for workers' compensation insurance on contracts or policies of said insurance carrier, self-insurer, or commercial self-insurance fund.

2. Effective with the tax return filed for the 1997 taxable year, insurers who have paid an assessment to the Florida Life and Health Insurance Guaranty Association (FLHIGA) may claim a credit for part of such assessment as provided for in the Florida Statutes. Any credits not taken or utilized when available cannot be carried forward. When the insurer that paid the FLHIGA assessments and earned the future FLHIGA credits ceases to exist, all future FLHIGA credits available from payments made by the insurer are accelerated and may be claimed on the insurer's final insurance premium tax return. These future FLHIGA credits cannot be transfered or used by another insurer.

(d) Community Contribution Tax Credit.

1. Who May Claim the Credit. Any taxpayer who has received prior approval from the ~~Department of Community Affairs, through June 30, 1994, or the~~ Governor's Office of Tourism, Trade, and Economic Development~~, subsequently,~~ for its community contribution to any revitalization project undertaken by an eligible sponsor, shall be allowed a credit of 50 percent of the contribution. The total annual credit under this section applied against the tax due under s. 624.509, F.S., or s. 624.510, F.S., for a calendar year, may not exceed $200,000. The valuation of the contribution determined by the Governor's Office of Trade, Tourism, and Economic Development shall be used in the computation of the credit. In instances of fraud, the Executive Director of the Department of Revenue has the authority to redetermine the value of the contribution.

~~a. The valuation of the contribution determined by the Department of Community Affairs through June 30, 1994, or the Governor's Office of Trade, Tourism, and Economic Development, subsequently, shall be used in the computation of the credit. In instances of fraud, the Director of the Department of Revenue has the authority to redetermine the value of the contribution.~~

~~b. To qualify for the credit under the program expiring June 30, 1994, the insurer must have its community contribution approved by the Department of Community Affairs, and have completed the transfer of the asset by that date.~~

~~c. Beginning July 1, 1995, the program is reinstated pursuant to s. 624.5105, F.S., as amended, and will be administered by the Governor's Office of Trade, Tourism, and Economic Development.~~

2. through 5. No change.

(4) through (5) No change.

(6) Credits and deductions against the tax imposed by ss. 624.509 and 624.510, F.S., shall be taken in the following order:

(a) Deductions for assessments under s. 440.51, F.S.

(b) Credits for taxes paid under ss. 175.101 and 185.08, F.S.

(c) Credits for corporate income taxes paid under Chapter 220, F.S.

(d) Credits for the ~~The~~ emergency excise tax paid under Chapter 221, F.S.

(e) Salary tax credit.

~~(f) Credits for intangible personal property taxes paid under Chapter 199, F.S.~~

(f)~~(g)~~ All other available credits and deductions.

(g)~~(h)~~ A refund will not be created by credits.

(7) through (9) No change.

Specific Authority 213.06(1), 220.183(6), 624.5105(6) FS. Law Implemented 175.101, 175.121, 175.141, 185.08(3), 185.10, 185.12, 213.05, 213.235, 220.183(3), 624.4621, 624.475, 624.509, 624.5092, 624.510, 624.5105, 624.519, 624.520(2), 626.7451(11), 627.3512, 627.357(9), 628.6015, 629.5011, 634.131, 634.313(2), 634.415(2) FS. History–New 2-3-80, Formerly 12B-8.01, Amended 3-25-90, 4-10-91, 2-18-93, 6-16-94, 10-19-94, 1-2-96, 12-9-97, 6-2-98, 4-2-00, _____.

12B-8.003 Tax Statement; Overpayments.

(1) Tax returns and reports shall be made by insurers on forms prescribed by the Department. The Department prescribes Form DR-907, Florida Department of Revenue Insurance Premium Installment Payment, dated January 2001 ~~1999~~, and Form DR-908, Florida Department of Revenue Insurance Premium Taxes and Fees Tax Return, dated January 2001 ~~1999~~, and accompanying instructions as the forms to be used for the purpose of this chapter and hereby incorporates these forms by reference.

(2) through (4) No change.

Specific Authority 213.06(1) FS. Law Implemented 213.05, 213.37, 624.5092, 624.511, 624.518 FS. History–New 2-3-80, Formerly 12B-8.03, Amended 3-25-90, 3-10-91, 2-18-93, 6-16-94, 12-9-97, 3-23-98, 7-1-99, _____.

12B-8.016 Retaliatory Provisions.

(1) through (4) No change.

(5) When an insurer is required to file a short year Florida corporate income tax return, the due date, or the extended due date when a valid extension of time is made of said return, determines whether the corporate income tax and emergency excise tax paid on the short year Florida corporate income tax return is available for use on the insurer's retaliatory tax computation of its final insurance premium tax return (DR-908). If the due date, or the extended due date when a valid extension of time is made, of the short year Florida corporate income tax return is on or before December 31 of the short period year, then the insurer may include the short year Florida corporate income tax and emergency excise tax payments on that year's retaliatory tax computation.

Specific Authority 213.06(1) FS. Law Implemented 213.05, 624.509, 624.5091, 624.5092 FS. History–New 3-25-90, Amended 4-10-91, 12-9-97, 3-23-98, _____.

DEPARTMENT OF REVENUE

Corporate, Estate and Intangible Tax

RULE TITLES:	RULE NOS.:
Adjusted Federal Income Defined	12C-1.013
Apportionment for Special Industries	12C-1.0151
Sales Factor for Apportionment	12C-1.0155
Returns; Filing Requirement	12C-1.022

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12C-1.013, F.A.C. (Adjusted Federal Income Defined), is to reflect federal changes in entity classification. The objective of this amendment is to complement Section 220.13(2)(j), F.S.

The purpose of the proposed amendments to Rule 12C-1.0151, F.A.C. (Apportionment for Special Industries), is amended to clarify that deposit-type funds are not direct premiums written, and therefore are not included in the apportionment factor calculation of an insurance company.

The purpose of the proposed amendments to Rule 12C-1.0155, F.A.C. (Sales Factor for Apportionment), is to clarify which items of interest on loans are subject to sales factor inclusion. Further, the rule is amended to explain how sales of a partnership are to be included in the sales factor.

The purpose of the proposed amendments to Rule 12C-1.022, F.A.C. (Returns; Filing Requirements), is to conform the rule text to s. 220.22, F.S.

SUBJECT AREA TO BE ADDRESSED: This rule development workshop will address the proposed amendments to Rules 12C-1.013, 12C-1.0151, 12C-1.055, and 12C-1.022, F.A.C., that: 1) reflect the federal changes in entity classification complementing s. 220.13(2)(j), F.S.; 2) explain or define terms and concepts used in the application and administration of the corporate income tax regarding the apportionment formula for insurance companies; 3) clarify which items of interest on loans are subject to sales factor inclusion; and 4) conform the rule provisions regarding the filing of returns consistent with the provisions of s. 220.22, F.S.

SPECIFIC AUTHORITY: 213.06(1), 220.21, 220.51 FS.

LAW IMPLEMENTED: 220.02(3), 220.03(5), 220.12, 220.13, 220.131(1), 220.15, 220.151, 220.22, 220.43(1),(3), 220.44 FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., April 24, 2001

PLACE: Room 116, Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0100

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least five (5) calendar days before such proceeding by contacting Jamie Phillips, (850)488-0717. If you are hearing or speech impaired, please contact the Department by calling 1(800)DOR-TDD1 (1(800)367-8331).

THE PERSONS TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT ARE: Robert DuCasse, Tax Law Specialist, and Suzanne C. Paul, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4700

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12C-1.013 Adjusted Federal Income Defined.

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

(e) For tax years ending on or after July 1, 1998, limited liability companies and foreign limited liability companies qualified to do business in Florida will be allowed to file in the same manner for Florida corporate income tax purposes as for federal tax purposes. ~~Regardless of whether a limited liability company is treated for federal tax purposes as a corporation or a partnership, for Florida corporate income tax purposes the taxable income of a limited liability company is defined by s. 220.13(2)(j), F.S., as equal to the amount of taxable income determined as if a corporation under the Internal Revenue Code.~~

(2) through (13) No change.

(14) Net Operating Losses.

(a) Generally, ~~the~~ Florida law follows the Internal Revenue Code with respect to the computation and handling of a net operating loss (NOL). However, under s. 220.13(1)(b)1., F.S., a net operating loss may not be allowed as a carryback to years prior to the year of the loss. It may be allowed only as a carryover (NOLCO) and is treated in the same manner and for the same period of time as allowed in s. 172, I.R.C.

(b) through (i) No change.

(j) Under Treas. Reg. 1.1502-1(f)(2)(ii), the term "separate return limitation year" (SRLY) does not include a separate return year of any corporation which was a member of the affiliated group for each day of such year. The exception in Treas. Reg. 1.1502-1(f)(2)(ii), to the term "separate return limitation year" contemplates an affiliated group which remains in existence, and is, therefore, eligible to file a consolidated return for each year. If the affiliated group does not elect to file a consolidated return, each corporation must file a separate federal return. The Florida Corporate Income Tax Code generally embraces concepts of law which have been developed in connection with the income tax law of the United States. Subsection 220.43(1), F.S., provides that to the extent not inconsistent with the provisions of the Florida Income Tax Code or forms or regulations developed by the Department, a taxpayer will, for Florida tax purposes, take into account the items of income, deduction, and exclusion in the same manner as they are reflected for federal purposes. The requirements to file a Florida consolidated return, as well as the benefits and costs associated with filing a Florida consolidated return, are not the same as the requirements, benefits, and costs of filing a federal consolidated return. Florida allows federal net operating loss carryovers as a subtraction pursuant to s. 220.13(1)(b)1., F.S. However, the underlying federal concepts must be applied in a manner consistent with Florida law. Where members of a federal affiliated group have not elected, or are not eligible to elect, under the provisions of s. 220.131, F.S., to file a Florida consolidated return, SRLY concepts will be applied. SRLY concepts are applicable when a NOL carryover exists from a prior taxable year for which a Florida consolidated return was not filed and Florida corporate income tax returns were not filed for all members. The NOL carryover deduction from a subsidiary included in a consolidated NOL deduction is limited to that subsidiary's taxable income included in the consolidated taxable income for that year. Where all members of the federal affiliated group filed Florida corporate income tax returns for all years from which a NOL carryover is available, SRLY concepts will not be imposed.

(k) through (o) No change.

(15) through (20) No change.

Specific Authority 213.06(1), 220.51 FS. Law Implemented 220.02(3), 220.03(5), 220.13, 220.131(1), 220.43(1),(3) FS.~~, s. 70, Ch. 94-353 Laws of Florida.~~ History–New 10-20-72, Amended 1-19-73, 10-20-73, 10-8-74, 4-21-75, 5-10-78, 11-13-78, 12-18-83, Formerly 12C-1.13, Amended 12-21-88, 12-7-92, 5-17-94, 10-19-94, 3-18-96, _____.

12C-1.0151 Apportionment for Special Industries.

(l) through (2) No change.

(3) Insurance companies.

(a)1. An insurance company may, at its election, determine the premium written for reinsurance accepted in respect to properties and risks in Florida on the basis of the proportion which premiums written for reinsurance accepted from companies resident in or having a regional home office in Florida bears to premiums written for reinsurance accepted from all sources. ~~Alternatively, the premiums written for reinsurance accepted for properties and risks in Florida can be determined on the basis of each ceding company's ratio of direct premiums written in Florida to the sum of the total direct premiums written by each ceding company for the taxable year.~~

2. For purposes of this subsection, the "principal source of premiums" is defined as the majority (greater than 50 percent) of premium dollars received.

(b) If the principal source of premiums written by an insurance company is not for premiums for reinsurance accepted by it, the adjusted federal taxable income is apportioned to Florida by multiplying it by a fraction, the numerator of which is the direct premiums written for insurance upon properties and risks in Florida and the denominator of which is the direct premiums written for insurance upon properties and risks everywhere.

(c) Deposit-type funds, as separately listed on Schedule T of the Annual Statement filed with the Department of Insurance, are not direct premiums written and therefore are not included in the apportionment factor calculation of an insurance company.

(4) No change.

Specific Authority 213.06(1), 220.51 FS. Law Implemented 220.151 FS. History–New 5-17-94, Amended 3-18-96, _____.

12C-1.0155 Sales Factor for Apportionment.

(1) through (3) No change.

(4) Sales of a partnership are included in the denominator of a taxpayer's sales factor to the extent of the taxpayer's interest in the partnership. The amount of sales in Florida is also included in the numerator of the sales factor to the extent of the taxpayer's interest in the partnership. Partnership sales should be allocated to each partner based on each partner's interest in the partnership, or as designated in the partnership agreement, for inclusion in the Florida sales factor.

Specific Authority 213.06(1), 220.51 FS. Law Implemented 220.15, 220.44 FS. History–New 5-17-94, Amended 3-18-96, _____.

12C-1.022 Returns; Filing Requirement.

(1) No change.

(2) Foreign (out-of-state) corporations.

(a) through (c) No change.

(d) The determination ~~of~~ whether a foreign (out-of-state) corporation is required to file a Florida corporate income/franchise tax return is dependent only on the activities of the corporation during that tax year. However, there is a continuing expectation ~~presumption~~ that a foreign corporation that was required to file in a previous year has a filing requirement in subsequent years. Therefore, a foreign corporation should file a return with a statement clearly explaining why there is not a continuing filing requirement. A foreign corporation must respond in writing to inquiries of the Department clearly explaining why a Florida filing is not required.

(e) No change.

(3) Foreign (non-U.S.) corporations.

(a) No change.

(b) Foreign corporations which are not considered under the Internal Revenue Code to have income effectively connected with a U.S. trade or business, but ~~and~~ for which any tax is due ~~is withheld at the source~~ under the provisions of s. 1442, I.R.C., will ~~not~~ be required to file a Florida corporate income/franchise tax return.

(c) through (d) No change.

(4) through (6) No change.

Specific Authority 213.06(1), 220.21, 220.51 FS. Law Implemented 220.22 FS. History–New 10-20-72, Amended 10-20-73, Revised 10-8-74, Amended 3-5-80, Formerly 12C-1.22, Amended 12-21-88, 4-8-92, 12-7-92, 3-18-96, _____.

DEPARTMENT OF CORRECTIONS

RULE TITLE: RULE NO.:

ADA Provisions for Inmates 33-210.201

PURPOSE AND EFFECT: The purpose of the proposed rule is to establish guidelines with regard to ADA provisions for inmates. The effect is to: provide relevant definitions; establish procedures for accommodation requests by inmates; establish procedures and guidelines for the approval or denial of accommodation requests; provide procedures relating to the approval, possession, and maintenance of health care appliances; and, establish guidelines for the maintenance of health accessible features and equipment.

SUBJECT AREA TO BE ADDRESSED: ADA provisions for inmates.

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 944.09, 958.04 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Giselle Lylen Rivera, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-210.201 ADA Provisions for Inmates.

(1) Policy. In accordance with the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et. seq., the Department of Corrections does not discriminate, on the basis of a disability, against any inmate with regard to its programs, services, or activities for which the inmate is otherwise qualified. Inmates shall be provided the opportunity to identify the nature of any disability and to request an accommodation or auxiliary aids. Additional information on the ADA is available from the chief administrator or the impaired inmate coordinator of any department facility.

(2) Definitions.

(a) ADA Coordinator – the central office employee assigned to implement provisions of Title I and Title II of the ADA and Section 504 of the 1973 Rehabilitation Act.

(b) Direct threat – refers to a health or safety risk in which an inmate poses a significant likelihood of substantial harm to department staff, the public, other inmates, or herself or himself.

(c) Equally effective communication – communication with inmates with various disabilities that is equal to communication with inmates without any documented disabilities.

(d) Health care appliance – refers to devices or medical support equipment prescribed for a disabled inmate and approved by the Office of Health Services or its designee.

(e) Individual with a disability – refers to an inmate, as determined by department medical staff, who has a physical or mental impairment that substantially limits one or more major life activities.

(f) Intake officer – refers to the staff member at an institution who is designated to respond to inmate grievances alleging a violation of the ADA and to requests for accommodation.

(g) Major life activities – activities that an average person can perform with little or no difficulty, such as walking, speaking, performing manual tasks, hearing, learning, and seeing.

(h) Mental impairment – any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

(i) Other permanent disability – refers to a disability other than a mobility, hearing, vision or speech impairment that may require the inmate to be placed in a designated facility due to the severity of the disability.

(j) Permanent disability – an impairment that is not expected to improve within six months.

(k) Qualified inmate with a disability – refers to a person who meets the essential eligibility requirements of the department and Title II of the ADA of 1990 and whose access to the department's programs, services, or activities is accomplished by reasonable accommodation.

(l) Reasonable accommodation – refers to any modification or adjustment that will allow a qualified individual to participate in, or benefit by, the programs, services, or activities of a department institution or facility.

(m) Substantially limited – refers to an individual who is unable to perform, or is significantly limited in the ability to perform, a major life activity compared to an average person in the general population.

(n) Undue hardship – refers to an action that is excessively costly, extensive, substantial, or disruptive to the business being conducted at a facility or that would fundamentally alter the nature or operation of the facility.

(o) Youthful offender – refers to the category of individuals set forth in Rule 33-506.101, F.A.C.

(3) Accommodation Request Procedure.

(a) The determination of whether an inmate is disabled shall be made by department medical staff, either at reception or at the institution where the inmate is assigned, based upon the inmate's record of impairment or some other qualified evaluation of the inmate's impairment.

1. The nature and extent of the disability will be assessed during the evaluation process.

2. In determining if a person's impairment substantially limits a major life activity, the following factors shall be considered:

a. The nature and severity of the impairment;

b. The length of time the impairment is expected to last; and,

c. The expected, permanent, or long-term impact of the impairment.

(b) All department and privately operated facilities shall furnish to any inmate, upon request, a Reasonable Modification or Accommodation Request, Form DC2-530. Form DC2-530 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. The effective date of this form is _____.

(c) Individuals requesting an accommodation or modification shall submit a request in writing on the Reasonable Modification or Accommodation Request, Form DC2-530, specifying the type of accommodation requested and why it is necessary. Any supporting documentation must be attached to Form DC2-530.

1. The Reasonable Modification or Accommodation Request, Form DC2-530, shall be submitted to the designated intake officer. This staff member shall be:

a. The assistant warden for programs (AWP) or the assistant warden (AW) at major department institutions, in the event the institution does not have an AWP;

b. The correctional officer major at work release centers;

c. The facility chief for community facilities; or,

d. The facility supervisor for contract facilities.

2. Inmates who cannot put their requests in writing shall make their verbal requests to classification, security, or library staff or to the intake officer who shall reduce the request to writing and have the inmate sign or otherwise acknowledge it.

(d) The intake officer shall review the DC2-530 and approve, give modified approval of, or deny the inmate's request for an accommodation.

1. If the intake officer approves the request for accommodation, the inmate shall be notified by memo, with the anticipated completion date, if necessary, of the accommodation.

2. If the intake officer denies or grants a modified approval of the request, she or he shall forward the form, and any supporting documents, to the central office ADA coordinator within ten days, including a justification or reason for the denial or modification. The requesting inmate shall be notified of the action taken by memo.

(e) The central office ADA coordinator shall review the request received and note whether she or he concurs or disagrees with the intake officer's decision.

1. If the ADA coordinator disagrees with the intake officer's recommendation, she or he will consult with the central office director for the program area in which the accommodation is requested to obtain input.

2. If, after consulting with the central office director for the program area in which the accommodation is requested, the recommendation of the ADA coordinator is a reversal of the intake officer's decision, the form shall be returned to the intake officer with a memorandum stating the reasons for this action.

(f) Once the institution receives this information, it will take steps to comply with the recommendations of the ADA coordinator and notify the inmate of the actions to be taken by memo.

(g) The intake officer will complete an "Inmate Request for Accommodation Log," Form DC2-529 for each Form DC2-530 received. Form DC2-529 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. The effective date of this form is . Form DC2-259 shall include:

1. The name of the requesting inmate;

2. The inmate's Florida Department of Corrections identification number;

3. The date the request was received;

4. The disposition of the request, (approved, modified, or denied);

5. The name of the individual making the decision;

6. Whether an appeal was filed;

7. The resolution of the appeal, if any; and,

8. The date of the final decision.

(h) The intake officer will forward each Form DC2-529 to the ADA coordinator by the fifth day of each month.

(i) Copies of the requests, logs, and all other documentation shall be placed in the inmate's medical record and in the department's confidential ADA file located in the central office.

(4) Justification for Denial of Requests for Accommodation. A request for accommodation shall be denied for any of the following reasons:

(a) A legitimate penological interest:

1. A request for accommodation shall be denied when it would pose a risk to the safety or security of the institution, staff, or the public, or when the request would adversely impact other penological interests, including deterring crime and maintaining inmate discipline.

2. In all determinations of reasonable accommodation, public safety and the health, safety, and security of all inmates and staff shall remain the overriding considerations.

(b) The department need not take an action to provide accessibility to a service, program or activity if the action would impose or require:

1. An undue financial burden on the agency where, in a cost benefit analysis, its costs would be an unjustifiable use of public funds. The ADA coordinator shall consult with the Office of the General Counsel to make a determination if an accommodation would result in an undue financial burden.

2. An administrative burden on the agency; or,

3. A fundamental alteration of the nature of the service, program, or activity. The ADA coordinator shall consult with the Office of the General Counsel to make a determination if an accommodation would constitute a fundamental alteration.

(c) Direct Threat. The ADA coordinator, in consultation with the Office of the General Counsel and the central office director for the program area in which the accommodation is requested, shall make a final determination on whether a requested accommodation poses a direct threat.

(d) Equally Effective Means. A request for accommodation shall be denied if equally effective access to a program, service, or activity can be afforded through an alternate method which is less costly or intrusive. Alternative methods that are less costly or intrusive to the existing operation or program shall be utilized to provide reasonable access in lieu of modifications requested by the inmate so long as they are equally effective.

(5) Inmates shall appeal the denial of requests for accommodation by following the guidelines set forth in Rule 33-103.001, F.A.C.

(6) Effective Communication. Reasonable accommodation shall be afforded to inmates with disabilities to ensure equally effective communication with staff, other inmates, and, where applicable, the public.

(a) Auxiliary aids which are reasonable, effective, and appropriate to the needs of the inmate, shall be provided to ensure equal access to programs, services, or activities offered by the department when simple written or oral communication is not effective.

(b) Auxiliary aids include bilingual aids or qualified interpreters, readers, sound amplification devices, captioned television or text displays, telecommunication devices for the deaf (TDD), audiotaped texts, Braille materials, large-print signs and materials, or the assignment of an inmate aid for work, training, and school.

(c) When an auxiliary aid is deemed necessary to provide an inmate with an equal opportunity to participate in a program, service or activity, it shall be provided at the expense of the department.

(7) Health Care Appliances.

(a) Prescription and approval.

1. A physician or clinical associate shall prescribe and approve health care appliances for eligible inmates if these devices meet medical necessity, safety, and security requirements. Health care appliances include orthopedic prostheses, orthopedic braces or shoes, crutches, canes, walkers, wheelchairs, hearing aids, and other items which are necessary to accommodate the inmate's needs.

2. If security staff denies a health care appliance to an inmate for safety or security reasons, the Chief of Security, or his or her designee, shall immediately consult with the Chief Health Officer, or his or her designee, to determine necessary action to accommodate the inmate's needs.

3. Accommodations shall include modifying the appliance or substituting a different appliance at state expense, as long as its function is equivalent or superior.

(b) Possession of Health Care Appliances.

1. Health care staff shall identify health care appliances as property of the inmate and appropriately document them as such in accordance with Rule 33-602.201, F.A.C.

2. Any health care appliance the disabled inmate has properly obtained while in the department's custody shall not be removed unless there are legitimate documented safety or security reasons.

3. Health care appliances shall be removed if a physician or dentist determines that the appliance is no longer medically necessary or appropriate.

(c) Maintenance of Health Care Appliances.

1. When an appliance, other than a wheelchair, is in need of repair or replacement, the inmate shall notify health care staff of his or her needs by a medical call-out or a request to see a doctor.

a. Health care staff shall schedule the inmate for an appointment and evaluate the condition of the appliance.

b. Once the need for repair or replacement is verified, the inmate shall be issued an appropriate appliance or accommodation.

2. A non-indigent inmate shall be financially responsible for damage, repair and replacement of appliances, or parts and batteries and shall be charged for the cost thereof in accordance with Rule 33-601.308(4), F.A.C.

(8) Maintenance of Accessible Features and Equipment. The department shall maintain necessary equipment in operable working condition and necessary structural features of buildings to make its services, programs, and activities accessible to disabled inmates. If maintenance or repairs are required, service or access shall be temporarily interrupted for no longer than 30 days duration.

(9) Educational and work programs. Inmates with disabilities shall have the opportunity to participate in educational and work programs.

(a) Inmates shall be evaluated to participate in an educational or work program on a case-by-case basis.

(b) Eligibility to participate in any program is dependent on the inmate's ability to perform the essential functions of the program with, or without, reasonable accommodation and on meeting the department's requirement for the program.

Specific Authority 944.09 FS. Law Implemented 944.09, 958.04 FS. History–New _____.

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Supplier Diversity & Outreach MBE Contracting Rule	40E-7
RULE TITLES:	**RULE NOS.:**
Policy	40E-7.611
Definitions	40E-7.621
Policy Review & Goal Setting Committee	40E-7.623
Bid Incentive Program	40E-7.628
Proposal Evaluation & MBE Criteria	40E-7.631
Sheltered Market Program	40E-7.633
Annual Long-Term and Project-Specific Goals	40E-7.635
District Implementation	40E-7.637
Emergency Waiver of Participation Goals	40E-7.639
Compliance	40E-7.645
Good Faith Efforts	40E-7.647
Reciprocal Certification	40E-7.651
Certification Eligibility	40E-7.653
Certification Review Process	40E-7.655
Graduation from MBE Program	40E-7.659
Recertification Review Procedures	40E-7.661
Suspension, Debarment, Revocation or Decertification	40E-7.664
Penalties for Fraudulent MBE Representation	40E-7.6645
Application for Additional Areas of Certification	40E-7.665
Administrative Hearings	40E-7.667

PURPOSE AND EFFECT: The District intends to amend the current M/WBE Rule to address several legislative mandates in Chapter 288, Florida Statutes. In addition, the District is amending the rule to implement the District's Equity in Contracting Plan. Specifically, the rule amendments will delete those portions of the rule dealing with the policy review & goal setting committee, sheltered markets, bid incentives, good faith efforts and project specific goals for District procurements. The District also intends to streamline the certification criteria. Although this rule has been presented to the public, since that

time there have been significant changes. Therefore, during this rule development period, the District seeks to encourage participation by the contracting community in developing this rule, which will increase diversity.

SUBJECT AREA TO BE ADDRESSED: The proposed rule development concerns changes to the South Florida Water Management District's ("District") existing Chapter 40E-7 Part VI, F.A.C. Supplier Diversity & Outreach M/WBE contracting Rule.

SPECIFIC AUTHORITY: 373.607 FS.

LAW IMPLEMENTED: 373.607 FS.

RULE DEVELOPMENT WORKSHOPS WILL BE HELD AT THE TIMES, DATES AND PLACES SHOWN BELOW:

TIME AND DATE: 10:00 a.m. – 12:00 p.m., Monday, April 23, 2001

PLACE: Orlando Osceola County Library, Buenaventura Lakes Branch, 405 Buenaventura Lakes Boulevard, Kissimmee, FL 34744

TIME AND DATE: 10:00 a.m. – 12:00 p.m., Wednesday, April 25, 2001

PLACE: Ft. Lauderdale Field Station, 2535 Davie Road, Davie, FL 33317

TIME AND DATE: 10:00 a.m. – 12:00 p.m., Thursday, April 26, 2001

PLACE: Miami/Dade Regional Service Center, 172A W. Flagler Street, Miami, FL 33130

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Sandy Hammerstein, Procurement Division, South Florida Water Management District, Post Office Box 24680, West Palm Beach, Florida 33416-4680, 1(800)432-2045, Extension 2847 or (561)682-2847 (internet: shammer@sfwmd.gov).

Although Governing Board meeting, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including the testimony and evidence upon which any appeal is to be based.

Persons with disabilities or handicaps who need assistance may contact Tony Burns, District Clerk, (561)682-6206, at least two business days in advance to make appropriate arrangements.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

SUPPLIER DIVERSITY & OUTREACH MBE ~~M/WBE~~ CONTRACTING RULE

(Substantial rewording of Rule 40E-7.611 follows. See Florida Administrative Code for present text.)

40E-7.611 Policy.

(1) The rules under this Part establish policies and procedures designed to remedy documented disparities in District contracting and the present effects of past marketplace discrimination. The rules under this Part implement specific recommendations of the District's Minority Business Availability and Utilization Study ("Study") as developed by MGT of America, Inc., dated August, 1995 and made a part of the District's Supplier Diversity & Outreach Program ("Program").

(2) The District shall evaluate the progress of its Program to determine specific program provisions that require modification, expansion, and/or curtailment.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History–New 9-25-96, Amended

(Substantial rewording of Rule 40E-7.621 follows. See Florida Administrative Code for present text.)

40E-7.621 Definitions.

(1) "Annual Contract Forecast Report" (ACFR) means a preliminary summary report estimating the number, probable dollar value and the planned solicitation date for budgeted contracts and purchases proposed for each fiscal year.

(2) "Certified Minority Business Enterprise" means a firm certified by the District pursuant to Rules 40E-7.651 and 40E-7.653, F.A.C and Section 287.0943(1) & (2), Florida Statutes.

(3) "Control" means to direct with primacy or cause the direction of all phases of the management and daily operations of the business, including, but not limited to, standard management practices and principles such as policy development, establishment of personnel reporting lines and operational procedures, problem solving, etc.

(4) "Domicile" means the state in which the business has its principal place of business and as it relates to corporations it also means the state under whose laws the corporation was formed.

(5) "Family member" means any person who is a spouse, parent, step-parent, grandparent, step-grandparent, child, step-child, grandchild, step-grandchild, sibling, half-brother, half-sister, step-sister, including adopted persons and those persons who are married to family members.

(6) "Federally recognized Indian Tribe" means an Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or other organized group or community, including any Alaskan Native Village, which is recognized by the Secretary of the Interior as having special rights and is recognized as eligible for the services provided by the United States to Indians because of their status as Native Americans.

(7) "Front" means a business concern which falsely claims to be owned and controlled by minority persons or women as defined herein.

(8) "Industry categories" mean construction, CCNA professional services, non-CCNA professional services, commodity/services procurement (manufacturing, wholesale, retail), and contractual (other) services.

(9) "Independently operated" means not dependent on the support, influence, guidance, control or not subject to restriction, modification or limitation from a non-minority, except for customary business auxiliary services, e.g., legal, banking, etc.

(10) "Joint Venture" means an association of two or more persons or businesses carrying out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge and/or property. Joint ventures must be established by written agreement.

(11) "Minority Business Enterprise" or "MBE is as defined in Section 288.703(2), Florida Statutes.

(12) "Minority" person means an individual who is a citizen or lawful permanent resident of the State of Florida who is:

(a) African American: a person having origins in any of the racial groups of the African diaspora.

(b) Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands, including the Hawaiian Islands prior to 1778.

(c) Hispanic American: a person with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean Islands, regardless of race.

(d) Native American: a person who is a member of federally recognized Indian tribe.

(e) An American Woman.

(13) "Non-minority" means any person who does not meet the eligibility requirements of a minority person related to ethnicity, race or gender, permanent Florida residency or origins, even though such person has self-designated to be a member of a statutorily designated ethnic, racial or gender group.

(14) "Office of the Inspector General" – The District office which provides a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government as referenced in Section 20.055(2), F.S.

(15) "Origins" means the minority owner's racial or cultural and geographic derivations, as substantiated by at least one grandparent's birth.

(16) "Permanent resident" means a resident whose true, fixed and permanent home and principal establishment is within the State of Florida, who has lived in the State of Florida for at least six (6) months out of the last twelve (12) months and who does not routinely and habitually establish occupancy in a personally owned, mortgaged or leased residence outside of Florida.

(17) "Program" means a blend of business initiatives, administered by the District, which include race, ethnic and gender neutral; and race, ethnic and gender specific provisions designed to:

(a) Increase diversity in District contracting and procurement; and

(b) Remedy disparity and the present effects of past marketplace discrimination.

(18) "Relevant Market Area" means the following Florida counties: Broward; Charlotte; Collier; Dade; Glades; Hendry; Highlands; Lee; Martin; Monroe; Okeechobee; Orange; Osceola; Palm Beach; Polk; St. Lucie; Alachua; Brevard; Duval; Hillsborough; Indian River; Leon; Pinellas; Seminole; and Volusia.

(19) "Responsible" means a firm is capable in all respects to fully perform the contract requirements and has the integrity and reliability, which will assure good faith performance.

(20) "Responsive" means a firm's bid or proposal conforms in all material respects to the invitation to bid or request for proposal and shall include compliance with MBE goals or good faith efforts.

(21) "A Small Business" – means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million, or any firm based in this state which has a Small Business Administration 8(a) Certification. As applicable to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

(22) "Sole proprietorship" means a business concern owned by one minority person.

(23) "Supplier" means a firm that sells goods and commodities.

(24) "Third-Party Development Assistance Provider" – means local, regional, state or federal agencies, institutions and business development organizations that provide technical, management, financial and other related assistance to small, minority-owned businesses.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History–New 9-25-96, Amended _____.

40E-7.623 Policy Review & Goal Setting Committee.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History–New 9-25-96, Repealed _____.

40E-7.628 Bid Incentive Program.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History–New 9-25-96, Repealed _____.

(Substantial rewording of Rule 40E-7.631 follows. See Florida Administrative Code for present text.)

40E-7.631 Proposal Evaluations and MBE ~~M/WBE~~ Criteria.

(1) For contracts awarded based on evaluation criteria, there shall be a MBE participation criterion of 10% or 20% of the total points awarded.

(2) The proposer shall identify all certified MBE firms which will be utilized as subcontractors, and delineate for each the specific elements of work each MBE firm will be responsible for performing and the dollar value of the work as a percentage of the total contract value. All proposals with MBE participation shall contain documentation, signed by both the proposer and the selected MBE subcontractors which: confirms their intent to establish a business relationship and confirms the MBE participation percent. All MBE's must submit proof of certification with the proposal.

(3) All MBEs must submit proof of certification with the proposal as described in Rule 40E-7.653, F.A.C.

(4) The percentage of MBE participation will be calculated by dividing the proposer's expenditures to a MBE subcontractor for providing direct labor or a bona fide service by the total project dollars as identified in the proposal.

(5) A proposer may count toward its MBE participation the fees or commissions charged for providing direct labor or a bona fide service, such as professional, technical, consultant or managerial services.

(6) For the purposes of this rule, the District will not count toward a proposer's MBE participation any portion or portions of the MBE subcontractor's work that is subcontracted back to:

(a) The proposer, either directly to, or through any other company or firm owned and/or controlled by the proposer, or

(b) Any non-MBE firm with which the MBE firm has a present business relationship. A present business relationship is defined as both firms having some of the same owners or the sharing of space, equipment, financing or employees.

(7) For the purposes of this rule, a MBE subcontractor shall not be allowed to subcontract all or a majority of the subcontractual portion of the work to another non-MBE firm or firms. A MBE subcontractor shall be prohibited from engaging in a subcontractual agreement with the intent of collecting a broker's fee or commission, and whose employees perform none of the direct labor or service activities specified in the contract.

(8) Participation by a MBE firm shall not be considered and the MBE firm shall be disqualified if the owner or owners of the MBE firm engages in an agreement with a non-MBE firm with the intent of securing employment with that non-MBE firm during the course of performing a District contract.

Specific Authority 287.055, 373.607 FS. Law Implemented 287.055, 373.607 FS. History–New 9-25-96, Amended _____.

40E-7.633 Sheltered Markets Program.

Specific Authority 287.055, 373.607 FS. Law Implemented 287.055, 373.607 FS. History–New 9-25-96, Repealed _____.

40E-7.635 Annual Long-Term and Project-Specific Goals.

Specific Authority 287.055, 373.607 FS. Law Implemented 287.055, 373.607 FS. History–New 9-25-96, Repealed _____.

(Substantial rewording of Rule 40E-7.637 follows. See Florida Administrative Code for present text.)

40E-7.637 District Implementation.

The District shall make affirmative efforts to ensure all businesses have the maximum opportunity to participate in the District's contracting and procurement processes. The following are examples of affirmative efforts by the District:

(1) Establish an office with sufficient staff and the necessary authority and responsibility to implement the rules established under this Part.

(2) Identify all competitive contracting opportunities within the District budget.

(3) Include MBEs on contract solicitation lists or vendor lists.

(4) Monitor and maintain records sufficient for verification of steps taken and results achieved to maximize MBE participation.

(5) Evaluate the District's efforts to achieve MBE participation.

(6) When requested by an unsuccessful bidder, conduct debriefing sessions on awarded contracts to explain why bids/proposals may have been unsuccessful.

(7) Coordinate outreach with Procurement and contracting departments to offer instructions and clarify bid/proposal specifications, procurement policy, procedures, and general bidding requirements.

(8) Divide purchases and contracts into smaller units, areas, or quantities where feasible and likely to increase MBE participation without substantial adverse fiscal impact to the District.

(9) Ensure that bid/proposals, specifications, and plans are written so as not to unreasonably limit MBE participation.

(10) Maintain a database of MBEs and encourage MBEs to participate in training programs offered by the District and/or third party development assistance providers.

(11) Encourage the development of MBEs by using services and assistance provided by the Small Business Administration and other third party development assistance providers.

(12) Refer businesses to third party development assistance providers for bonding, financial and technical assistance.

(13) Promote the District's Program internally and externally, through the use of an annual marketing and outreach plan.

(14) Collect and maintain information and reports to provide guidance to the Governing Board and staff regarding MBE participation.

(15) Schedule pre-bid or pre-proposal meetings, where appropriate, to inform potential contractors of Program requirements and other bid/proposal requirements.

(16) Maintain a file of successful bid/proposal documents from past procurement and encourage MBEs to review and evaluate such documents.

(17) Provide instructions on job performance requirements.

(18) Provide information and assistance on continued certification procedures, subcontracting practices, and bonding requirements.

(19) Provide supplier diversity training to District staff.

(20) Review multi-year contracts, amendments, and change orders for opportunities to increase MBE participation.

(21) Continue to investigate race, ethnic, and gender-neutral provisions to lessen barriers for participation by any business wishing to do business with the District.

(22) Place notices of contract opportunities and bids at District service centers, in the Dodge report, MBE trade association newsletters, major local or regional newspapers, and minority- and woman-focused media.

(23) Plan and participate in vendor training seminars for the purpose of informing potential bidders/proposers/vendors of the District's Program and the business opportunities available.

(24) Serve as liaison with economic development organizations and agencies working in support of economic development in the minority community.

(25) Provide notices of bids/business proposals to facilitate the participation of MBEs.

(26) Create and disseminate MBE directories to contractors for use in identifying subcontractors and material suppliers.

(27) Consider reducing bonding and insurance requirements for smaller projects.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History–New 9-25-96, Amended _____.

40E-7.639 Emergency Waiver of Participation Goals.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History–New 9-25-96, Repealed _____.

(Substantial rewording of Rule 40E-7.645 follows. See Florida Administrative Code for present text.)

40E-7.645 Compliance.

(1) The District shall monitor and evaluate Program performance and compliance. Failure to comply with the MBE requirements of an awarded contract shall result in suspension or debarment of the firms or individuals involved.

(2) Suspension or debarment of firms for activity contrary to the Program, and the appeal process, shall be carried out pursuant to Rule 40E-7.664, F.A.C.

(3) Each District contract awarded with points provided for MBE participation shall contain a provision incorporating the rules under this Part by reference and a statement that failure to comply with any of the requirements by a contractor shall be considered a breach of contract.

(4) Each District contract shall contain a provision requiring the contractor, during the term of the contract, to comply with, as to tasks and proportionate dollar amounts throughout the term of the contract, all plans made in their proposal for use of MBEs.

(5) Each District contract shall contain a provision requiring maintenance of records, and information necessary to document compliance with the rules under this Part and shall include the right of the District to inspect such records.

(6) Each District contract shall contain a provision prohibiting any agreements between a contractor and a MBE in which the MBE promises not to provide subcontracting quotations to other bidders or potential bidders.

(7) The District shall ensure program compliance by a contractor or its participating subcontractors through contract provisions. Contractor compliance provisions include:

(a) Withholding from the contractor ten percent (10%) of all future payments, exclusive of any retainage, under the contract until it is determined that the contractor is in compliance;

(b) Withholding from the contractor all future payments under the contract until it is determined that the contractor is in compliance;

(c) Refusal of all future bids or offers submitted to the District by the Contractor for a period of three (3) years;

(d) Initiation of decertification action;

(e) Cancellation of the eligible project/contract for cause.

(8) Any individual who falsely represents any entity as a MBE or does not fulfill the contractual obligations is subject to the penalties under Section 287.094, F.S. To ensure that all obligations under contracts awarded to a MBE are met, the contractor's MBE efforts throughout the performance of the contract shall be reviewed. The contractor shall advise the District of any situation in which regularly scheduled progress payments are not made to MBE subcontractors.

(9)(a) After the date of contract execution, prime contractors shall make good faith efforts to maintain the level of MBE participation established in the contract by substituting a non-complying MBE subcontractor with another MBE subcontractor.

(b) Prime contractors must notify the District when the need to replace a MBE subcontractor arises.

(10) The District will not transact business with any vendor placed on the discriminatory vendor list maintained by the Department of Management Services pursuant to section 287.134, Florida Statutes.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History–New 9-25-96, Amended _____.

40E-7.647 Good Faith Efforts.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History–New 9-25-96, Repealed _____.

(Substantial rewording of Rule 40E-7.651 follows. See Florida Administrative Code for present text.)

40E-7.651 Reciprocal Certification.

(1) Reciprocal certification shall be granted to applicant businesses which have been certified by other jurisdictions and meet the District certification standards. An applicant business shall provide an affidavit attesting that the applicant business has sought to do business within the District's relevant market area prior to the time a bid or proposal is submitted.

(2) An applicant business is not eligible for reciprocal certification if the business exceeds a net worth of $5 million. As applicable to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

(3) Eligibility for reciprocal certification shall be contingent upon (1) an agreement between the District and another certifying jurisdiction within the State of Florida, and (2) any additional requirements, pursuant to this Rule. The applicant businesses seeking reciprocal certification must submit to the District a copy of the current certification from the certifying jurisdiction and a copy of the completed application submitted to the certifying jurisdiction along with affidavits of continued eligibility.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History–New 9-25-96, Amended _____.

(Substantial rewording of Rule 40E-7.653 follows. See Florida Administrative Code for present text.)

40E-7.653 Certification Eligibility.

(1) The District shall have the authority to accept, review, approve and or deny applications for MBE certification. The District shall also have the authority to decertify, suspend and/or debar firms pursuant to Rule 40E-7.664, F.A.C.

(2) Applicant businesses shall submit applications for MBE certification using Form No. 0964, "Application for Certification", which is hereby incorporated by reference and which can be obtained from the District upon request. Mailing addresses must include the number, name of the street, suite number, if any, and correct zip code. A post office box will not be acceptable absent a street address. An applicant business shall provide an affidavit attesting that the applicant business has sought to do business within the District's relevant market area prior to the time a bid or proposal is submitted.

(3) An applicant business must satisfy subsection (4) below in order to be considered 51% owned by minority persons. The ownership exercised by minority persons shall be real, substantial, and continuing, and shall go beyond mere pro forma ownership of the firm as reflected in its ownership documents. In its' analysis, the District may also consider the transferal of ownership percentages with no exchange of capital at fair market value.

(4) If the applicant business was obtained by transfer, the minority person on whom eligibility is based must own 51% of the applicant firm for a minimum of two (2) years, when any previous majority ownership interest in the firm was by a non-minority who is or was a relative, former employer, or current employer of the minority person on whom eligibility is based. This requirement shall not apply to minority persons who are otherwise eligible who take a 51% or greater interest in a firm that requires professional licensure to operate and who will be the qualifying licensure for the firm when certified. A transfer made within a related immediate family group from a nonminority person to a minority person in order to establish ownership by a minority person shall be deemed to have been made solely for purposes of satisfying certification criteria and shall render such ownership invalid for purposes of qualifying for such certification if the combined total net asset value of all members of such family group exceeds $1 million. For purposes of this subparagraph, the term "related immediate family group" means one or more children under 16 years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.

(a) The applicant business must satisfy either subparagraphs 1., 2., or 3. below:

1. In a corporate form of organization, the minority shareholders of the corporation must own at least 51% of all issued stock. Minority shareholders who own at least 51% of each and every class of stock will be presumed to have satisfied the conditions of this rule. Where the minority shareholders do not own at least 51% of each class of stock, the applicant shall establish that the aggregate of all stock owned by minority shareholders is equal to at least 51% of all issued shares. The applicant may establish that the aggregate of all stock owned by minority shareholders is equal to at least 51% of all issued shares by:

a. Using the par value of the stock, but only where each class of stock has a par value;

b. Using the fair market value of each class of stock;

c. Showing the numerical ratio of stock ownership where all shares, regardless of class, have the same par value or fair market value; or

2. In a partnership form of organization, the minority partners must own at least 51% of the partnership, or

3. In any other form of organization, the minority owners must own at least 51% of the business interest of the organization, including, but not limited to 51% of the ownership of assets, dividends, and intangible assets such as copyrights and patents.

(b) The minority owners must demonstrate that they share income, earnings and any other benefits from the business concern which are accorded to any other owner. The minority

owners' share of income, earnings and benefits shall be commensurate with the percentage of their ownership in the business concern, including salaries, draws, bonuses, commissions, insurance coverage, proceeds from business investments and properties, and profit-sharing.

(c) The minority owners must demonstrate that they share in all the risks assumed by the business firm. Such sharing of business risks shall be demonstrated through the minority owners' primary role in decision-making, and negotiation and execution of related transaction documents either as individuals or as officers of the business. The minority owners' sharing in business risks shall be commensurate with their percentage of ownership, including start-up costs and contributions, acquisition of additional ownership interests, third-party agreements, and bonding applications. Start-up contributions may be space, cash, equipment, real estate, inventory or services estimated at fair market value. All contributions of capital by the minority owners must be real and substantial. The following are presumed not to be real and substantial capital contributions:

1. Promises to contribute capital;

2. Notes payable to the applicant business;

3. Notes payable to the non-minority owners or to the non-minority family members of any owner; and

4. Past services rendered by the minority person as an employee, rather than as a decision-maker.

(d) The business firm cannot at any time enter into any agreement, option, scheme, or create any rights of conversion, which, when exercised, would result in less than 51% minority ownership or in the loss of the minority owners' control of the business firm.

(5) An applicant must establish that the minority owner seeking certification be the license holder, qualifying agent, and/or the professional license holder and possess the authority to control and exercise dominant control over the management and daily operations of the business.

(a) The discretion of the minority owners shall not be subject to any formal or informal restrictions (including, but not limited to, by-law provisions, purchase agreements, employment agreements, partnership agreements, trust agreements or voting rights, whether cumulative or otherwise), which would vary or usurp managerial discretion customary in the industry.

(b) The minority owners must exercise sufficient management and technical responsibilities and capabilities to maintain control of the business. If the owners of the business who are not minority persons are disproportionately responsible for the operations of the business, then the business shall not be considered to be controlled by minority owners.

(c) The control exercised by the minority owners shall be real, substantial and continuing. In instances where the applicant business is found to be a family-operated business, with duties, responsibilities and decision-making occurring either jointly or mutually among owners and principals, or severally along managerial and operational lines between minority owners and non-minority owners or principals, the minority owners shall not be considered as controlling the business. Where the minority owners substantiate that the assumption of duties is not based on their lack of knowledge or capability to independently make decisions regarding the business' management and day-to-day operations, the minority owners' control may not be affected. The minority owners shall establish that they have dominant responsibility for the management and daily operations of the business as follows:

1. The minority owners shall control the purchase of goods, equipment, business inventory and services needed in the day-to-day operation of the business. The minority owners' control of purchasing shall be evidence of their knowledge of products, brands, manufacturers, types of equipment and products and their uses, etc., rather than merely reflective of the minority owners' ministerial execution of the ordering/acquisition of goods.

2. The minority owners shall control the hiring, firing and supervision of all employees, and the setting of employment policies, wages, benefits and other employment conditions. In instances where minority owners have delegated the hiring and firing of employees, the minority owners shall demonstrate that their knowledge and capability is sufficient to evaluate the employees' performance in the given industry.

3. The minority owners shall have knowledge and control of all financial affairs of the business. The ability of any non-minority owner or employee to sign checks and enter into financial transactions on behalf of the business shall be considered in determining financial control. The minority owners shall expressly control the investments, loans to/from stockholders, bonding, payment of general business loans, payroll and establishment of lines of credit.

4. The minority owners shall have managerial and technical capability, knowledge, training, education and experience required to make decisions regarding that particular type of work. In determining the applicant business' eligibility, the District will review the prior employment and educational requirements for the given industry, the previous and existing managerial relationship between and among all owners, especially those who are familiarly related, and the timing and purpose of management changes. If the minority owners have delegated management and technical responsibility to others, the minority owners must substantiate that they have caused the direction of the management of the business and each phase of the technical operations of the business through their demonstrable knowledge of and capability in the delegated areas.

5. The minority owners shall display independence and initiative in seeking and negotiating contracts, accepting and rejecting bids and in conducting all major aspects of the business in regard to any and all bidding and contracting. In

instances where the minority owners do not directly seek or negotiate contracts, prepare estimates, or coordinate with contracting officials, but claim to approve or reject bids and contractual agreements, the minority owners shall demonstrate that they have the knowledge and expertise to independently make contractual decisions.

6. The minority owners shall substantiate personal direction and actual involvement with all major aspects of the applicant business. The major aspects shall be defined as those tasks essential to accomplish all objectives and operations related to those services or commodities for which the applicant business requests certification.

(6) To establish that it is a small minority business concern, the applicant shall:

(a) Demonstrate that it is an independently owned and operated business concern. In assessing business independence, the District shall consider all relevant factors, including the date the firm was established, the adequacy of its resources, and the degree to which financial, managerial and/or operational relationships exist with other persons and/or business concerns. For purposes of this rule, the District's consideration of such financial relationships, managerial and/or operational relationships shall not be affected by arrangements made out of necessity or due to the business' inability to secure traditional capitalization through banks, lending institutions or others.

(b) Demonstrate that it is not an affiliate of a non-minority business nor share (on an individual or combined basis) common ownership, directors, management, employees, facilities, inventory, financial resources and expenses, equipment or business operations with a non-minority person and/or business concern which is in the same or an associated field of operation.

(c) To establish that it is a small business concern, the applicant shall demonstrate that the net worth of the business concern, together with its affiliates, does not exceed five (5) million dollars and an average net worth after federal income taxes, excluding any carryover losses, for the preceding two years of not more than two (2) million dollars. In determining the net worth of the business and its affiliates, the District shall consider the most recent annual financial statements for the business and the business owner. If no annual financial statement is available, the applicant shall submit a financial statement for any quarter during the previous six (6) months. In determining the business' income, the District shall consider the two most recent financial statements for the business and/or the most recent federal income tax returns.

(d) To establish that it is a small business concern, the applicant shall provide documentation to demonstrate that it employs two-hundred (200) or fewer permanent, full-time employees. The number of permanent, full-time employees shall be determined by adding the number of employees the applicant acknowledges to be permanent, full-time employees to the number of permanent positions the applicant needs in order to carry out its business based upon the quantity of work performed and the annual gross receipts of the business concern. In determining whether the applicant meets the criteria for a small business, the District shall consider such documentation as:

1. Personnel records.

2. Florida Quarterly Unemployment Reports.

3. Annual Federal Unemployment Report.

4. Payroll ledgers.

5. Employee leasing agreement.

(e) The applicant must demonstrate that it is domiciled in Florida. In determining whether the applicant is domiciled in Florida, the District shall consider such documentation as:

1. Articles of Incorporation.

2. Partnership Agreement.

3. Certification required to be filed pursuant to Section 620.108, Florida Statutes.

4. Business licenses.

(7) The applicant business must demonstrate that it is at least 51% owned by minority persons who are permanent residents of Florida.

(8) The applicant business must provide evidence of the minority/women status of owners who are claiming to be minority persons, as follows:

(a) Demonstrate that the applicant business owners' ethnicity qualifies them as an eligible person pursuant to Rule 40E-7.621(8), F.A.C. In determining the ethnicity of a person, the District shall consider any of the following:

1. Birth certificate.

2. Passport.

3. Citizenship papers.

4. Drivers license.

5. Voter registration card.

6. Death certificate.

7. Membership in a federally recognized Indian tribe.

8. Tribal registration.

9. Any other documentation that tends to substantiate the person's claim of minority status.

(b) Demonstrate that the applicant business owners' gender qualifies them as an eligible person pursuant to Rule 40E-7.621(19), F.A.C. In determining the gender of a person, the District shall consider any of the following:

1. Birth certificate.

2. Passport.

3. Citizenship papers.

4. Drivers license.

5. Any other documentation that tends to substantiate the person's claim of minority status.

(c) Demonstrate that the applicant business owners' origin qualifies them as an eligible person pursuant to Rule 40E-7.621(8), F.A.C. When determining a person's origins, the District shall accept any of the following documentation in order to clearly establish a direct line of descent:

1. Marriage licenses.

2. Divorce decrees.

3. Adoption papers, to show the adopted person's original, not adopted, origins.

4. Court orders which have the effect of changing a person's name.

5. An Affidavit, except that of an official of the federal government, a state government or a municipality.

6. A "family tree" or "family chart".

(9) The applicant business shall establish that it is currently performing or seeking to perform a useful business function in each specialty area requested by the applicant. The applicant business is considered to be performing a useful business function when it is responsible for the execution of a distinct element of the work of a contract and carrying out its responsibilities in actually performing, managing and supervising the work involved. The useful business function of an applicant business shall be determined in reference to the products or services for which the applicant business requested certification. When the applicant business is required by law to hold a license, other than an occupational license, in order to undertake its business activity, the applicant business shall not be considered to be performing a useful business function unless it has the required license(s).

(a) In determining if an applicant business is acting as a regular dealer and that it is not acting as a conduit to transfer funds to a non-minority business, the District shall consider the applicant business' role as agent or negotiator between buyer and seller or contractor. Though an applicant business may sell products through a variety of means, the District shall consider the customary and usual method by which the majority of sales are made in its analysis of the applicability of the regular dealer requirements. Sales shall be made regularly from stock on a recurring basis constituting the usual operations of the applicant business. The proportions of sales from stock and the amount of stock to be maintained by the applicant business in order to satisfy the requirements of this rule will depend on the business' gross receipts, the types of commodities sold, and the nature of the business' operation. The stock maintained shall be a true inventory from which sales are made, rather than be a stock of sample, display, or surplus goods remaining from prior orders or by a stock maintained primarily for the purpose of token compliance with this rule. Consideration shall be given to the applicant's provision of dispensable services or pass-through operations which do not add economic value, except where characterized as common industry practice or customary marketing procedures for a given product. An applicant business acting as broker or packager shall not be regarded as a regular dealer absent a showing that brokering or packaging is the normal practice in the applicant business' industry. Manufacturer's representatives, sales representatives and non-stocking distributors shall not be considered regular dealers for purposes of the rules under this Part.

(b) Documentation to substantiate a useful business function may include but not be limited to the following:

1. Executed purchase orders.

2. Paid invoices.

3. Executed contracts.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History–New 9-25-96, Amended 6-16-98, _____.

(Substantial rewording of Rule 40E-7.655 follows. See Florida Administrative Code for present text.)

40E-7.655 Certification Review Procedures.

(1) Upon receipt, all applications for MBE certification shall be given an initial screening to ensure appropriate signature and completeness. The application must bear the original signature of the minority owner who is submitting the application for review. If the application is submitted by means of a facsimile machine, the signature page of the application, with the original signature of the minority owner, must be submitted to the District within thirty (30) days of facsimile submission.

(2) Within sixty (60) days following initial receipt of the application, the District will request the applicant business to furnish omitted items or additional information. If all requested information or items are not received by the District within thirty (30) days from the date of the request, the District will deny the applicant business certification as a MBE.

(3) The on-site verification review may be conducted by the District upon receipt of the completed application. Failure to cooperate with the scheduling of the on-site review or during the on-site review shall result in the denial of the application.

(4) Applicants determined eligible shall receive a certification letter stating the length of time for which the business has been certified, the specialty areas of the business, the minority status categories in which the business is certified, and the business' responsibilities set out in Section 287.0943(1) & (2), F.S. Once certified, an applicant shall remain certified for a period of one (1) year unless otherwise revoked for cause. The District retains the right to reevaluate the certification of any business at any time.

(5) Applicants determined ineligible shall receive a letter stating the basis for the denial of certification and citing applicable rules and shall not be eligible to submit new applications until 180 days after the date of the notice of denial of certification or the District's final agency order denying certification.

Specific Authority 120.53, 120.54(1), 120.60(2), 373.607 FS. Law Implemented 120.53, 120.54(1), 120.60(2), 373.607 FS. History–New 9-25-97, Amended _____.

(Substantial rewording of Rule 40E-7.659 follows. See Florida Administrative Code for present text.)

40E-7.659 Graduation from MBE ~~M/WBE~~ Program.

(1) Participation in the District's Program will be dependent upon the MBE's need for the affirmative procurement initiatives extended to MBE's under this Part. The MBE shall be graduated and shall not be eligible for continued participation in the affirmative procurement initiatives contained in the rules under this Part as a prime contractor if the business exceeds a net worth of $5 million. As applicable to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

(2) A MBE which is considered graduated under this section shall be counted towards prime contractor's goal attainment when utilized as a subcontractor or joint venture partner.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History–New 9-25-96, Amended _____.

(Substantial rewording of Rule 40E-7.661 follows. See Florida Administrative Code for present text.)

40E-7.661 Recertification Review Procedures.

(1) Applications for recertification shall be submitted using Form No. 0958, "Application for Recertification", which is hereby incorporated by reference and available from the District upon request.

(2) The District will notify MBEs no later than sixty (60) days before the end of the certification period. If the minority owner is unable to use the recertification affidavit because changes in the applicant's business have occurred, the minority owner shall notify the District in writing. Recertification requests must be filed in the District no later than the last effective date of the current certification period. Recertification requests received by the District after the expiration of the certification period shall be given a ten (10) day grace period. Recertification requests received by the District after the ten (10) day grace period will not be processed for a period of 90 days.

(3) Upon receipt, all recertification requests shall be given an initial screening to ensure appropriate signature and completeness. Within sixty (60) days following initial receipt of the applicant's recertification request, the District will request the applicant to furnish omitted or additional information. If the requested information or items are not received by the District within thirty (30) days from the date of the request, the District will deny the applicant recertification as a MBE.

(4) The on-site verification review may be conducted by the District upon receipt and review of the recertification request. Failure to cooperate with the scheduling of the on-site review or during the on-site review shall result in the denial of recertification.

(5) Recertification shall be granted when the applicant has complied with this rule and substantiates eligibility for MBE status.

(6) Applicants deemed eligible shall receive a recertification letter stating the length of time for which the business has been certified, the specialty areas of the business, and the minority status categories in which the business is certified. Once recertified, an applicant shall remain certified for a period of one (1) year unless otherwise revoked for cause. The District retains the right to reevaluate the certification of any business at any time.

(7) Applicants determined ineligible shall receive a letter stating the basis for the denial of recertification and shall not be eligible to submit a new application for 180 days after the date of the notice of denial of recertification or the District's final agency order denying recertification.

(8) If an application for recertification is timely submitted, a MBE shall remain certified until the District has made a determination concerning eligibility.

(9) Applicant businesses failing to submit the District recertification application as required by Subsection (1) of this section, shall not be considered certified immediately subsequent to the anniversary date of the last certification. Applicant businesses shall receive written notification of the expiration of prior certification.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History–New 9-25-96, Amended _____.

(Substantial rewording of Rule 40E-7.664 follows. See Florida Administrative Code for present text.)

40E-7.664 Suspension, Debarment, Revocation or Decertification.

(1) Prior to suspending, debarring, revoking or decertifying a firm from the Program, the District shall inform the firm in writing by certified mail, return receipt requested, of the facts or conduct which warrant such action.

(2) Facts or conduct that could warrant suspension, decertification, or debarment include but are not limited to:

(a) Failure to meet qualifying criteria.

(b) Fraud, deceit, or misrepresentation for the purpose of obtaining MBE status.

(c) Refusal to permit on-site inspections.

(d) Failure to report changes in the status or activities of the business entity or its minority ownership which affects the MBE's eligibility for certification.

(3) The written notice issued by the District shall contain:

(a) The statutory provision(s) or rule(s) of the Florida Administrative Code which is alleged to have been violated;

(b) The specific facts or conduct relied upon to justify the suspension, debarment, revocation or decertification; and

(c) A statement that the firm has the right to file a request for an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, within 14 days of receipt of the notice.

(d) A statement that the suspension, debarment, revocation or decertification shall become conclusive and final agency action if no request for a hearing is filed within 14 days of receipt of the notice.

(4) All requests for a hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, shall be made in the form of a Petition in accordance with Chapter 28-106, Florida Administrative Code.

(5) If the firm fails to file a request for a hearing within the timeframes prescribed in Chapter 120, Florida Statutes, and Chapter 28-106, Florida Administrative Code, the suspension, debarment, revocation or decertification shall become conclusive and final agency action.

Specific Authority 120.53, 373.607 FS. Law Implemented 120.53, 373.607 FS. History–New 9-25-96, Amended _____.

(Substantial rewording of Rule 40E-7.6645 follows. See Florida Administrative Code for present text.)

40E-7.6645 Penalties for Fraudulent MBE ~~M/WBE~~ Representation.

Applicant businesses are advised that criminal penalties can be imposed under Section 775.082, Section 775.083, or Section 775.084, F.S., for fraudulent MBE representation. It is the intent of the District to notify the proper law enforcement agency in all such instances.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History–New 9-25-96, Amended _____.

(Substantial rewording of Rule 40E-7.665 follows. See Florida Administrative Code for present text.)

40E-7.665 Application for Additional Areas of Certification.

(1) Any business that is currently certified shall submit a written request when requesting certification as a MBE in additional specialty areas.

(2) Within sixty (60) days following initial receipt of the request, the District will request the applicant business to furnish omitted or additional information. If all the requested information or items are not received by the District within thirty (30) days from the date of the request, the District will deny the applicant business certification as a MBE in the requested additional specialty areas.

(3) The on-site verification review may be conducted by the District upon receipt and review of the request. Failure to cooperate with the scheduling of the on-site review or during the on-site review shall result in the denial of certification in the requested additional specialty areas.

(4) Certification in the additional specialty areas shall be granted when the applicant business has complied with this rule and substantiates eligibility for MBE status.

(5) Applicant businesses determined eligible shall receive a certification letter stating the length of time for which the business has been certified, all the specialty areas of the business, and the minority status categories in which the business is certified.

(6) Applicant businesses determined ineligible shall receive a letter stating the basis for the denial of certification in the additional specialty areas and shall not be eligible to submit a new application for certification for 180 days after the date of the notice of denial of certification or the District's final agency order denying certification. If a firm is denied twice within a year the firm shall not be able to reapply for a period of one (1) year form the date of the second denial, or if appealed, the date of the decision to deny is upheld.

(7) Submittal of a request for certification in additional specialty areas shall not extend the applicant business' original certification period.

Specific Authority 120.53, 373.607 FS. Law Implemented 120.53, 373.607 FS. History–New 9-25-96, Amended _____.

(Substantial rewording of Rule 40E-7.667 follows. See Florida Administrative Code for present text.)

40E-7.667 Administrative Hearings.

If an applicant business believes it has been wrongly denied certification or recertification as a MBE, the applicant business may file a request for hearing pursuant to Sections 120.569 and 120.57, F.S. in the form of a petition in accordance with Chapter 28-106, F.A.C. within 14 days of receipt of Notice of Denial of certification.

Specific Authority 120.53, 373.607 FS. Law Implemented 120.53, 373.607 FS. History–New 9-25-96, Amended _____.

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Minimum Flows and Levels 40E-8

PURPOSE AND EFFECT: The purpose and effect of the rule development is to establish minimum flows and levels by December, 2001 for Lake the Loxahatchee River & Estuary and the St. Lucie River & Estuary, in accordance with Chapter 373, Florida Statutes.

SUBJECT AREAS TO BE ADDRESSED: Minimum flows and levels.

SPECIFIC AUTHORITY: 373.042, 373.044, 373.113, 373.171 FS.

LAW IMPLEMENTED: 373.042, 373.0421 FS.

A RULE DEVELOPMENT WORKSHOP FOR THE LOXAHATCHEE RIVER & ESTUARY WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m. – 12:00 p.m., April 26, 2001

PLACE: Stuart City Hall, Commission Chambers, 121 Flagler Avenue, Stuart, FL 34994

A RULE DEVELOPMENT WORKSHOP FOR THE ST. LUCIE RIVER & ESTUARY WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 1:00 p.m. – 4:00 p.m., April 26, 2001

PLACE: Stuart City Hall, Commission Chambers, 121 Flagler Avenue, Stuart, FL 34994

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: For technical issues contact, Scott Burns (internet: sburns@sfwmd.), or Cecile Ross (internet: cross@sfwmd.gov) at South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045. For procedural issues contact: Julie Jennison, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, Extension 6294 or (561)682-6294 (internet: jjenniso@sfwmd.gov).

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including the testimony and evidence upon which any appeal is to be based.

Persons with disabilities or handicaps who need assistance may contact Tony Burns, District Clerk, (561)682-6206, at least two business days in advance to make appropriate arrangements.

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

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: RULE NO.:
Independent Laboratory Services 59G-4.190

PURPOSE AND EFFECT: The purpose of this rule amendment is to incorporate by reference the Florida Medicaid Independent Laboratory Services Coverage and Limitations Handbook, April 2001. The handbook changes include the January 2001 Independent Laboratory Services Fee Schedule, and a revision of the technical and professional components of laboratory services. The effect will be to incorporate by reference in the rule the current Florida Medicaid Independent Laboratory Services Coverage and Limitations Handbook.

SUBJECT AREA TO BE ADDRESSED: Independent Laboratory Services.

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.905, 409.908, 409.9081 FS.

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

TIME AND DATE: 9:00 a.m., April 23, 2001

PLACE: Agency for Health Care Administration, 2728 Ft. Knox Boulevard, Building 3, Conference Room E, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Susan Rinaldi, Medicaid Program Development, P. O. Box 12600, Tallahassee, Florida 32317-2600, (850)922-7308

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

59G-4.190 Independent Laboratory Services.

(1) No change.

(2) All independent laboratory providers enrolled in the Medicaid program must comply with the provisions of the Florida Medicaid Independent Laboratory Coverage and Limitations Handbook, April 2001 ~~April 2000~~, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, HCFA-1500 and Child Health Check-Up 221, which is incorporated by reference in Chapter 59G-5.020, F.A.C. Both handbooks are available from the Medicaid fiscal agent.

Specific Authority 409.919 FS. Law Implemented 409.905~~(7)~~, 409.908, 409.9081~~, 409.913~~ FS. History–New 1-1-77, Amended 10-11-81, Formerly 10C-7.41, Amended 6-30-92, Formerly 10C-7.041, Amended 9-28-94, 1-9-96, 10-20-96, 9-14-97, 3-22-00, _____.

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: RULE NO.:
Portable X-ray Services 59G-4.240

PURPOSE AND EFFECT: The purpose of this rule amendment is to incorporate by reference the Florida Medicaid Portable X-ray Services Coverage and Limitations Handbook, April 2001. The handbook changes include the January 2001 Portable X-ray Services Fee Schedule, clarification of the professional and technical components of portable x-ray services and a revision of the components of a request for portable x-ray services. The effect will be to incorporate by reference in the rule the current Florida Medicaid Portable X-ray Services Coverage and Limitations Handbook.

SUBJECT AREA TO BE ADDRESSED: Portable X-ray Services.

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.905(10), 409.908, 409.9081 FS.

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

TIME AND DATE: 9:00 a.m., April 23, 2001

PLACE: Agency for Health Care Administration, 2728 Ft. Knox Boulevard, Building 3, Conference Room E, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Susan Rinaldi, Medicaid Program Development, P. O. Box 12600, Tallahassee, Florida 32317-2600, (850)922-7308

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

59G-4.240 Portable X-ray Services.

(1) No change.

(2) All portable x-ray providers enrolled in the Medicaid program must comply with the provisions of the Florida Medicaid Portable X-ray Services Coverage and Limitations Handbook, April 2001 ~~April 1999~~, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, HCFA-1500 and Child Health Check-Up, which is incorporated by reference in Chapter 59G-5.020, F.A.C. Both handbooks are available from the Medicaid fiscal agent.

Specific Authority 409.919 FS. Law Implemented 409.905(10), 409.908, 409.9081, 409.913 FS. History–New 10-11-81, Formerly 10C-7.411, Amended 7-1-92, Formerly 10C-7.0411, Amended 5-16-94, 1-9-96, 10-20-96, 8-27-97, 3-22-00, _____.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Family Safety and Preservation

RULE TITLES:	RULE NOS.:
Definitions	65C-27.001
Timeframes	65C-27.002

PURPOSE AND EFFECT: These rules are to clarify timeframes in subsection 39.407(5), F.S. The timeframes apply to all qualified evaluators that provide initial suitability assessments for children that are referred for residential treatment placement. They also apply to the 3-month independent reviews for children in residential treatment.

SUBJECT AREA TO BE ADDRESSED: Dependent Children.

SPECIFIC AUTHORITY: 39.407(5)(i) FS.

LAW IMPLEMENTED: 39.407(5) FS.

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

TIME AND DATE: 9:00 a.m., April 20, 2001

PLACE: 1317 Winewood Blvd., Building 8, Room 232, Tallahassee, FL 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Darcy Abbott, Supervisor, 1317 Winewood Blvd., Building 8, Room 204, Tallahassee, FL 33299 or by calling (850)488-4062

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

65C-27.001 Definitions.

(1) "Qualified Evaluator" means a psychiatrist or psychologist licensed in Florida who has at least 3 years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents and who has no actual or perceived conflict of interest with any inpatient facility or residential treatment center or program.

(2) "Suitability Assessment" means assessment by a qualified evaluator that includes a personal examination and assessment of the child that includes written findings.

(3) "3-Month Independent Review" means assessment by a qualified evaluator that includes a personal examination and assessment of the child in residential treatment. The assessment includes evaluation of the child's progress toward achieving the goals and objectives of the treatment plan, which must be submitted to the court.

Specific Authority 39.407(5)(i) FS. Law Implemented 39.407(5) FS. History–New _____.

65C-27.002 Timeframes.

(1) When the department believes that a child is in need of an initial suitability assessment for residential treatment, a request must be made to the Agency for Health Care Administration contract provider that coordinates the qualified evaluator registry.

(2) The Agency for Health Care Administration contracted provider shall refer the initial suitability assessment request to a registered qualified evaluator.

(3) The Agency for Health Care Administration contracted provider has 12 working days to coordinate an initial suitability assessment with the qualified evaluator and submit the completed assessment back to the Agency for Health Care Administration, the Department of Children and Families and the child's guardian ad litem.

(4) For all children in the custody of the department that are residing in residential treatment, a 3 month independent review must be conducted at least every 90 days after the child's initial placement. It is the department's responsibility to notify the Agency for Health Care Administration contracted provider no later than the 70th day of the child's placement in residential treatment to request a 3 month independent review. The Agency for Health Care Administration contracted provider must contact a qualified evaluator to perform the 3 month independent review and must submit the completed independent review to the Agency for Health Care Administration, the department and court at least 6 days prior to the 90th day in residential treatment. The 3-month independent review process must continue every 90 days for as long as the child resides in residential treatment.

Specific Authority 39.407(5)(i) FS. Law Implemented 39.407(5) FS. History–New _____.

Section II
Proposed Rules

DEPARTMENT OF BANKING AND FINANCE

Division of Securities and Finance

RULE TITLES:	RULE NOS.:
Registration of Issuer/Dealers, Principals and Branch Offices	3E-600.004
Termination of Registration as Dealer, Investment Adviser, Branch Office, Principal or Agent	3E-600.008
Registration Renewals	3E-600.009

PURPOSE AND EFFECT: Section 517.12(6), F.S., authorizes the Department to adopt rules establishing procedures for depositing fees and filing documents by electronic means. The purpose of the proposed changes is to provide for electronic filing of certain information or forms and to allow the electronic payment of registration renewal fees through the Department's website.

SUMMARY: The proposed change to Rule 3E-600.004, F.A.C., will allow a dealer or investment adviser registered with the Department to amend the branch office registration information electronically or by submitting a written request in lieu of filing Form DA-1-91. The proposed changes to Rule 3E-600.008, F.A.C., will allow electronic filing for withdrawals, cancellations, or terminations of registrations for branch offices and to authorize a registrant to terminate a branch office registration by submitting the request in writing in lieu of filing Form DA-1-91. The proposed change to Rule 3E-600.009, F.A.C., will allow non-NASD member firms, associated persons of non-NASD member firms and branch offices to electronically pay registration renewal fees through the Department's website.

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

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

SPECIFIC AUTHORITY: 517.03(1), 517.12(6),(15) FS.

LAW IMPLEMENTED: 517.12, 517.161(5) FS.

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

TIME AND DATE: 10:00 a.m., April 30, 2001

PLACE: Room 664, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Rick White, Financial Administrator, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9805

THE FULL TEXT OF THE PROPOSED RULES IS:

3E-600.004 Registration of Issuer/Dealers, Principals and Branch Offices.

(1) An issuer required to be registered or who elects to be registered pursuant to Sections 517.12(1), 517.051(9), or 517.061(11), F.S. ~~Florida Statutes~~, selling its own securities exclusively through its principals or agents (as those terms are defined in ~~under~~ Section 517.021, F.S. ~~Florida Statutes~~, and Rule 3E-200.001, F.A.C., respectively) may obtain registration as an issuer/dealer by filing as required under Rules 3E-600.001(1), 3E-400.002, or 3E-500.011, F.A.C., as appropriate, provided that:

(a) The associated persons of said issuer/dealer comply with the registration requirements of Section 517.12, F.S., and Rules 3E-600.005 and 3E-600.006, F.A.C., ~~thereunder,~~ provided that such person primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities;

(b) Said issuer/dealer may register up to five (5) associated persons, which persons will be exempted from the examination requirements of Rule 3E-600.005(2), F.A.C., provided such issuer/dealer shall register no more than five (5) associated persons, and at the time of application for registration advises the Department of his intention to register no more than five (5) associated persons. Failure to so advise the Department will require all associated person applicants to fulfill the examination requirements of Rule 3E-600.005(2), F.A.C. Registration of more than five (5) such associated persons, at any one time, will void this exemption, and all such associated persons will be required to meet the examination requirements of Rule 3E-600.005(2), F.A.C.

(2) No change.

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

(c) If the information contained in any branch office registration form becomes inaccurate or incomplete for any reason before or after the branch office becomes registered, including changing the location of the branch office or the supervisory personnel thereof, the dealer or investment adviser shall amend the information by filing a complete and originally executed Form DA-1-91 (Revised 11-91) with the Department within thirty (30) days of the change and denoting thereon that the information reported is an amendment to a previous filing. In lieu of filing Form DA-1-91, a registrant may amend the branch office registration information electronically at the time of renewal by following the applicable instructions on the Department's website (www.dbf.state.fl.us) on the Internet. Also, a registrant may change the address or terminate a branch