DEPARTMENT OF HEALTH

Board of Hearing Aid Specialists

RULE TITLES:	RULE NOS.:
Definitions	64B6-8.001
Qualifications for Trainees, Sponsors and Designated Hearing Aid Specialists	64B6-8.002
Trainee Stages, Minimum Training Requirements, and Training Program	64B6-8.003

PURPOSE AND EFFECT: The Board proposes to review the existing language in these rules to determine if any amendments are necessary.

SUBJECT AREA TO BE ADDRESSED: Definitions; qualifications for trainees, sponsors and designated hearing aid specialists; trainee stages, minimum training requirements, and training program.

SPECIFIC AUTHORITY: 484.0445(1), 484.044 FS.

LAW IMPLEMENTED: 484.041, 484.0445, 484.045 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Sue Foster, Executive Director, Board of Hearing Aid Specialist, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

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

FLORIDA HOUSING FINANCE CORPORATION

RULE TITLES:	RULE NOS.:
Purpose and Intent	67-50.001
Definitions	67-50.005
Fees	67-50.010
Notice of Funding Availability (NOFA)	67-50.020
General Program Eligible Activities	67-50.030
General Program Restrictions	67-50.040
HAP Program Restrictions	67-50.050
HOME Program Restrictions	67-50.060
Application and Selection Procedures	67-50.070
Credit Underwriting Procedures	67-50.080
Disbursement of Funds, Draw Requests, and Loan Servicing	67-50.090
Compliance and Monitoring	67-50.100

PURPOSE AND EFFECT: The purpose of this Rule Chapter is to establish the procedures by which the Corporation shall: (1) Administer the Application process, determine loan amounts, and service loans to Developers for the construction of affordable housing under the Florida Homeownership Assistance Program (HAP)/Construction Loan Program and provide purchase assistance to Eligible Homebuyers under the HAP Permanent Loan Program, authorized by Chapters 420.507 and 420.5088, Florida Statutes (F.S.); and (2) Administer the Application process, determine loan amounts, and service loans to Developers for the construction of affordable housing and provide purchase assistance to Eligible Homebuyers under the HOME Investment Partnerships (HOME) Homeownership Loan Program, authorized by Chapter 420.5089, F.S and HUD regulations, 24 CFR § 92, which is adopted and incorporated into this Rule chapter by reference.

SUBJECT AREA TO BE ADDRESSED: The Rule Development Workshop will be held to receive comments and suggestions from interested persons relative to program requirements as specified in Rule Chapter 67-50, Florida Administrative Code.

SPECIFIC AUTHORITY: 420.507, 420.5088, 420.5089 FS.

LAW IMPLEMENTED: 420.507(23), 420.5088, 420.5089(2) FS.

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

TIME AND DATE: 10:00 a.m., Monday, January 6, 2003

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

DATE AND TIME: 10:00 a.m., Tuesday, January 7, 2003

PLACE: East Central Florida Regional Planning Council, 631 N. Wynmore Road, Suite 100, Maitland, Florida 32751

Any person requiring special accommodation at this hearing because of a disability or physical impairment should contact Laurie Camp at the above address. If you are hearing or speech impaired, please use the Florida Dual Party Relay system, which can be reached at 1(800)955-8770 (Voice) or 1(800)955-9771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT, IF AVAILABLE, IS: Esrone McDaniels, Deputy Development Officer, Homeownership Programs, Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, (850)488-4197

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

Section II
Proposed Rules

DEPARTMENT OF INSURANCE

RULE TITLES:	RULE NOS.:
Definitions	4-149.0025
Actuarial Memorandum	4-149.006
Forms Adopted	4-149.022
Calculation of Premium Rates	4-149.037

Employee Health Care Access Act
Annual and Quarterly Statement
Reporting Requirements 4-149.038
Marketing Communication Material and
Marketing Guidelines 4-149.041
Small Employer Health Reinsurance Program 4-149.043

PURPOSE, EFFECT AND SUMMARY: The rule:

- Provides rating standards to be used in the small employer group market. It provides for the implementation of recent law changes made to the small group market which allows for a higher rate for 1-life groups compared to 2-50 life groups.
- Relocates existing definitions to a definition section of the rule.
- Adopts an updated form DI4-1507 to be used in making filings to the Department.
- Allows exclusion of claims covered by workers' compensation and permits a rating factor based on the presence of workers' compensation coverage.
- Requires that a quote of a community rate must include a disclosure that the actual rate can vary 15%+/- based on underwriting.
- Prohibits issuers of guaranteed issue policies to small employers from imposing limitations not provided by §626.6699, F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No SERC 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: 624.308, 624.308(1), 626.9611, 627.410(6)(b),(e), 627.6699(5)(i) 3.a.,4.a., (11)(b)3.a., (13)(i),(16) FS.

LAW IMPLEMENTED: 119.07(1)(b), 624.307, 624.424(6), 625.121, 626.9541(1)(b),(g)2.,(x)3., 627.410, 627.476, 6276699(3)(g),(v),(5)(a),(i) 3.a.,4.a., (6),(7),(11),(12),(c),(e), (13),(b),(i), 627.807 FS.

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

TIME AND DATE: 9:30 a.m., January 16, 2003

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Frank Dino, Bureau of Life and Health Forms and Rates, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0328, (850)413-5014

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 the person listed above.

THE FULL TEXT OF THE PROPOSED RULES IS:

4-149.0025 Definitions.

(1)(a) Actual-to-Expected (A/E) ratio: The ratio of actual incurred claims under the policy form divided by expected claims. This is equivalent to the actual annual loss ratio divided by the applicable durational loss ratios of the approved durational loss ratio table.

(b). For projected periods, the A/E ratio is the ratio of the projected claims divided by the expected claims.

(c) Both the year-by-year pattern of the A/E ratios and the aggregate past, future, and lifetime ratios shall be presented.

(2) Annually Rated Group Policies: Group policies, including major medical coverage, which meet all of the following criteria:

(a) The policies are funded on a 1 year basis to satisfy loss ratio requirements.

(b) The policies are expected to be repriced annually based on trend and demographic changes.

(c) Effects of underwriting, if any, are part of the composite assumptions so that durational claims experience is incorporated into the composite rate.

(d) Aging is not pre-funded, as in a Medicare supplement or long term care policy.

(3) Anticipated Loss Ratio: The present value of future benefits divided by the present value of future premiums computed over the entire future lifetime of the policy form.

(4) Attained Age Premium Schedule: An attained age premium schedule is one in which the policyholder's premium is dependent upon his or her age at policy renewal.

(a) The aging component of the claim cost is not pre-funded.

(b) These schedules shall be constructed so that the slope by age is substantially similar to the slope of the ultimate claim cost curve. The premiums shall form a smooth progression and, to eliminate jumps in premium caused by bracketed age groups, insurers shall use each available renewable age.

(c) These requirements do not apply to any group policy where the final premium charged is an average of the individual members.

(5) Closed Policy Form: A policy form is closed for rating purposes if the insurer has not actively offered it for sale in the previous 12 months.

(6) Credible Data:

(a) Except as provided in paragraph (b), if a policy form has 2,000 or more policies in force, then full (100 percent) credibility is given to the experience; if fewer than 500 policies are in force, then zero (0 percent) credibility is given.

(b) For policy forms with low expected claims frequency, such as accident and long term care, at least 1,000 claims, over a period not to exceed the most recent 5 year period, shall be assigned 100 percent credibility; 200 claims shall be assigned 0 percent credibility.

(c) Linear interpolation is used for inforce amounts between the low and high values in paragraph (a) or (b).

(d) For group policy forms, the numbers in this definition refer to individual group certificates or subscribers, not policies.

(e) For coverage that is not subject to paragraph (f). below, a combination of Florida and nationwide data shall be used only if Florida-only data is not fully credible, with the total credibility being the nationwide credibility level; i.e., if Florida data is 20 percent credible, and nationwide is 60 percent credible, the data will be weighted 20 percent Florida and 40 percent nationwide. If nationwide credibility is less than 100 percent credible, the complement, 40 percent in the above example, shall be weighted for medical trend, to the degree applicable.

(f) Due to the geographic pricing of medical expense coverage, Florida-only data shall be used for medical expense forms. When Florida data is not fully credible, the complement of the experience credibility factor shall be weighted with medical trend.

(7) Durational Loss Ratio Table: The table of annual loss ratios where a loss ratio is the ratio of incurred claims divided by earned premium for each policy duration, by policy duration determined from the original actuarial memorandum when the form was first approved.

(a)1.a. The company shall adjust the durational loss ratio table when the average annual premium at the time of filing results in a loss ratio standard pursuant to the provisions of subsection 4-149.005(4), F.A.C., that is changed by at least .5 percent from the current lifetime loss ratio standard for the form.

b. Each loss ratio in the durational loss ratio table shall be increased by the ratio of the loss ratio standard determined from the current average annual premium divided by the prior lifetime loss ratio standard;

2.a. When the loss ratio is adjusted pursuant to subparagraph (a)1. above, the lifetime loss ratio standard for the form shall be the prior lifetime standards weighted by the accumulated earned premiums applicable to each standard with the weight for the new lifetime loss ratio standard being the present value of projected premiums.

b. If the company is unable to provide the historical information necessary to calculate the appropriate weighting, the new standard will be the lifetime loss ratio as determined by subparagraph (a)1. above.

(b) The approved durational loss ratio table is the durational loss ratio table contained in the filing when the form was originally approved, or any subsequent durational loss ratio table filed where the Department explicitly approved the table.

(8) Earned Premium:

(a) The portion of the total premium paid by the insured attributable to the period of coverage elapsed. This includes all modal loadings, fees, or charges that are required to be paid by the insured.

(b) Premium shall be earned uniformly over the period for which coverage is provided.

(c) Sections 627.6043(2) and 627.6645(4), Florida Statutes, provide that the company may have a short rate table approved. If approved, the short rate table is used in lieu of uniform earning (pro-rata) for determining refunds upon cancellation, and shall not be incorporated for rate filing purposes.

(9) Entire Future Lifetime: The maximum period over which the policy would be in effect if not terminated by action of the insurer or the insured.

(a) For individual and group policies other than annually rated group polices, the minimum acceptable period for calculation purposes is the number of years before fewer than 5 percent of the original policyholders or certificateholders remain inforce. This period is determined using the anticipated termination rates for the form.

(b) For annually rated group policies, the entire future lifetime is the rating period.

(10) Expected Claims:

(a) The actual earned premium or, for projected periods the projected premium, times the applicable policy durational loss ratio from the approved durational loss ratio table which was in effect for the time period covered by the premiums.

(b) For annually rated group policies, this reflects the actual target loss ratio for the group; i.e., reflecting different retention loads based on group differences.

(11) Franchise Policies: These are considered to be individual policies under these rules unless the franchise policies are health benefit plans under Section 627.6699, Florida Statutes. In this event, the franchise policies will be considered to be group policy forms.

(12) Group Insurance Policy Form: Any insurance provided by a group master contract issued to any entity representing a group specified in Chapter 627 Part VII, Florida Statutes, such as a trust, an association, a union, an employer, or a group established primarily for the purpose of providing insurance coverage.

(13) Group Size:

(a) For Group Insurance Policy Forms insuring employer/employee relationships, the group size is the average number of certificates per employer.

(b) For other types of groups, the group size is the number of certificates issued in the state of Florida for out-of-state group master contracts or the average number of certificates per master contract issued in the state of Florida for in-state groups, up to a maximum of 50 certificates.

(14) Incurred Claims: Claims occurring within a fixed period, whether or not paid during the same period, under the terms of the policy form.

(a) Claims include scheduled benefit payments, reimbursement benefit payments, or services provided by a provider or through a provider network for medical, dental, vision, disability, and similar health benefits.

(b) Claims do not include state assessments, taxes, company expenses, or any expense incurred by the company for the cost of adjusting and settling a claim; including the review, qualification, oversight, management or monitoring of a claim, or incentives or compensation to providers for other than the provision of health care services.

(c) A company may at its discretion include costs that are demonstrated to reduce claims, such as a fraud intervention program or case management costs, which are identified in each filing, and are demonstrated to reduce claims costs and do not result in increasing the experience period loss ratio by more than 5 percent.

(d) For scheduled claim payments, such as disability income or long term care, the incurred claims shall be the present value of the benefit payments discounted for continuance and interest.

(15) Line of Business: For rating purposes, the Department recognizes the following types of policy forms:

(a) Medical Expense: Policy forms that pay benefits based on the actual costs charged for hospital care (in or out patient), health care provider services, durable medical equipment, drugs, blood, medical supplies, x-ray and radiology services, lab work or like services which are reasonable and medically necessary and are not otherwise excluded under the policy.

1. The Policy Form will be considered a "medical expense" policy if at least 50 percent of total benefits of the policy based upon expected claim costs are subject to medical trend.

2. The following coverages will not be considered medical expense insurance:

a. Medicare Supplement insurance.

b. Long Term Care insurance.

c. Coverage supplemental to liability insurance.

d. Worker's compensation or similar insurance.

e. Automobile medical payment insurance.

(b) Medical Indemnity: Policy forms that pay a predetermined, specified, fixed benefit for services provided.

1. Claim costs under these forms are generally not subject to medical trend, although they may be subject to utilization changes.

2. Policy forms that can use this structure include hospital indemnity, dread disease, and accident policy forms.

(c) Medicare Supplement: Policy forms which pay benefits supplementing the federal Medicare program. These are subject to Rule Chapter 4-156, F.A.C.

(d) Long Term Care: Policy forms which provide benefits as defined in Rule Chapter 4-157, F.A.C. These policies are subject to this Part I, except that the minimum loss ratios shall be as required by Rule Chapter 4-157, F.A.C. In the event of any conflict between this rule chapter and Rule Chapter 4-157, F.A.C., the latter shall prevail.

(e) Loss of Income: Policy forms which pay a regular income as long as the insured is disabled but not beyond the benefit period.

(16) New Policy Form: A policy form that is proposed for approval to the Department and has no policies issued or inforce.

(17) Policy Form: A single policy form or any collection of policy forms that have been combined for rating purposes. A collection once combined continues to be combined.

(18) Premium Schedule: The collection of rates to be charged encompassing base rates and any modifying factors.

(19) Rate Change: Any change to the premium schedule being charged.

(20) Renewal Clauses:

(a) Optionally Renewable: Renewal can be declined on any individual or group contract at the option of the insurer.

(b) Conditionally Renewable: Renewal can be declined by class, by geographic area or for stated reasons other than deterioration of health. The insurer may revise rates on a class basis.

(c) Guaranteed Renewable includes:

1. Policy forms where the renewal cannot be declined by the insurer for any reason other than fraud, misrepresentation, failure to pay the premium when due, or expiration of the contract, but the insurer can revise rates on a class basis.

2.a. Policy forms subject to Section 627.6425 or 627.6571, Florida Statutes.

b. When an insurer discontinues offering a particular policy form for health insurance coverage pursuant to Section 627.6425(3)(a), Florida Statutes:

(I) The nonrenewal of coverage shall occur on the policy anniversary;

(II) The offer of new coverage pursuant to Section 627.6425(3)(a)2., Florida Statutes, shall be considered a renewal of coverage and shall be renewed on the policy anniversary at the same class basis as the coverage being discontinued.

(III) If the forms do not have consistent class definitions, the class shall be determined based on the original application and underwriting status of the individual when the discontinued coverage was first issued.

(IV) For policy forms subject to Section 627.6571, Florida Statutes, the renewal or nonrenewal of coverage shall be coincident with the effective date of coverage when the group is rerated, which is generally the annual anniversary of the group.

(d) Non-Cancelable: Renewal cannot be declined for any reason other than fraud, misrepresentation, or failure to pay the premium when due, and that rates cannot be revised by the insurer.

(e) Non-Renewable: A contractual provision exists which prevents a policy duration of more than a specific period, which shall be no more than 1 year.

(21) Select and Ultimate Premium Schedule: Any premium schedule which has premiums that vary based on the time elapsed since issuance of the policy. These do not include rate schedules that reduce due to temporary risk charges, a one-time policy fee, or policyholder action to reduce benefits.

(22) Similar Benefits:

(a) Policy forms may be considered by the insurer to have similar benefits if the benefit configuration under the forms is of the same type.

(b) Covered services, benefit triggers, copay amounts, copay options, deductible sizes, daily limits, inside and outside limits may vary and still be considered by the insurer as having similar benefits up to an entire line of business.

Specific Authority 624.308(1), 627.410(6)(b),(e) FS. Law Implemented 627.410(1),(2),(6), 627.411(1)(e) FS. History–New _____.

4-149.006 Actuarial Memorandum ~~and Definitions~~.

(1) through (3) No change.

~~(4) Definitions.~~

~~(a)1. Actual-to-Expected (A/E) ratio: The ratio of actual incurred claims under the policy form divided by expected claims. This is equivalent to the actual annual loss ratio divided by the applicable durational loss ratios of the approved durational loss ratio table.~~

~~2. For projected periods, the A/E ratio is the ratio of the projected claims divided by the expected claims.~~

~~3. Both the year-by-year pattern of the A/E ratios and the aggregate past, future, and lifetime ratios shall be presented.~~

~~(b) Annually Rated Group Policies: Group policies, including major medical coverage, which meet all of the following criteria:~~

~~1. The policies are funded on a 1 year basis to satisfy loss ratio requirements.~~

~~2. The policies are expected to be repriced annually based on trend and demographic changes.~~

~~3. Effects of underwriting, if any, are part of the composite assumptions so that durational claims experience is incorporated into the composite rate.~~

~~4. Aging is not pre-funded, as in a Medicare supplement or long term care policy.~~

~~(c) Anticipated Loss Ratio: The present value of future benefits divided by the present value of future premiums computed over the entire future lifetime of the policy form.~~

~~(d) Attained Age Premium Schedule: An attained age premium schedule is one in which the policyholder's premium is dependent upon his or her age at policy renewal. The aging component of the claim cost is not pre-funded. These schedules shall be constructed so that the slope by age is substantially similar to the slope of the ultimate claim cost curve. The premiums must form a smooth progression and, to eliminate jumps in premium caused by bracketed age groups, insurers shall use each available renewable age. These requirements do not apply to any group policy where the final premium charged is an average of the individual members.~~

~~(e) Closed Policy Form: A policy form is closed for rating purposes if the insurer has not actively offered it for sale in the previous twelve (12) months.~~

~~(f) Credible Data:~~

~~1. Except as provided in 2., if a policy form has 2,000 or more policies in force, then full (100 percent) credibility is given to the experience; if fewer than 500 policies are inforce, then zero (0 percent) credibility is given.~~

~~2. For policy forms with low expected claims frequency, such as accident and long term care, at least 1,000 claims, over a period not to exceed the most recent 5 year period, shall be assigned 100 percent credibility; 200 claims shall be assigned 0 percent credibility.~~

~~3. Linear interpolation is used for inforce amounts between the low and high values in subparagraph 1. or 2.~~

~~4. For group policy forms, the numbers in this definition refer to individual group certificates or subscribers, not policies.~~

~~5. For coverage that is not subject to subparagraph 6. below, a combination of Florida and nationwide data shall be used only if Florida-only data is not fully credible, with the total credibility being the nationwide credibility level; i.e., if Florida data is 20 percent credible, and nationwide is 60 percent credible, the data will be weighted 20 percent Florida and 40 percent nationwide. If nationwide credibility is less than 100 percent credible, the complement, 40 percent in the above example, shall be weighted for medical trend, to the degree applicable.~~

~~6. Due to the geographic pricing of medical expense coverage, Florida-only data shall be used for medical expense forms. When Florida data is not fully credible, the complement of the experience credibility factor shall be weighted with medical trend.~~

(g) Durational Loss Ratio Table: The table of annual loss ratios where a loss ratio is the ratio of incurred claims divided by earned premium for each policy duration, by policy duration determined from the original actuarial memorandum when the form was first approved;

1.a. The company shall adjust the durational loss ratio table when the average annual premium at the time of filing results in a loss ratio standard pursuant to the provisions of subsection 4-149.005(4), F.A.C., that is changed by at least .5 percent from the current lifetime loss ratio standard for the form. Each loss ratio in the durational loss ratio table shall be increased by the ratio of the loss ratio standard determined from the current average annual premium divided by the prior lifetime loss ratio standard;

b.(I) When the loss ratio is adjusted pursuant to 1.a. above, the lifetime loss ratio standard for the form shall be the prior lifetime standards weighted by the accumulated earned premiums applicable to each standard with the weight for the new lifetime loss ratio standard being the present value of projected premiums.

(II) If the company is unable to provide the historical information necessary to calculate the appropriate weighting, the new standard will be the lifetime loss ratio as determined by 1.a. above.

2. The approved durational loss ratio table is the durational loss ratio table contained in the filing when the form was originally approved, or any subsequent durational loss ratio table filed where the Department explicitly approved the table.

(h) Earned Premium:

1. The portion of the total premium paid by the insured attributable to the period of coverage elapsed. This includes all modal loadings, fees, or charges that are required to be paid by the insured.

2. Premium shall be earned uniformly over the period for which coverage is provided.

3. Sections 627.6043(2) and 627.6645(4), F.S., provide that the company may have a short rate table approved. If approved, the short rate table is used in lieu of uniform earning (pro-rata) for determining refunds upon cancellation, and shall not be incorporated for rate filing purposes.

(i) Entire Future Lifetime: This is the maximum period over which the policy would be in effect if not terminated by action of the insurer or the insured.

1. For individual and group policies other than annually rated group polices, the minimum acceptable period for calculation purposes is the number of years before fewer than 5 percent of the original policyholders or certificateholders remain inforce. This period is determined using the anticipated termination rates for the form.

2. For annually rated group policies, the entire future lifetime is the rating period.

(j)1. Expected Claims: The actual earned premium or, for projected periods the projected premium, times the applicable policy durational loss ratio from the approved durational loss ratio table which was in effect for the time period covered by the premiums.

2. For annually rated group policies, this reflects the actual target loss ratio for the group; i.e., reflecting different retention loads based on group differences.

(k) Franchise policies are considered to be individual policies under these rules unless the franchise policies are health benefit plans under Section 627.6699, F.S. In this event, the franchise policies will be considered to be group policy forms.

(l) Group Insurance Policy Form: This means any insurance provided by a group master contract issued to any entity representing a group specified in Chapter 627 Part VII, F.S., such as a trust, an association, a union, an employer, or a group established primarily for the purpose of providing insurance coverage.

(m) Group Size: For Group Insurance Policy Forms insuring employer/employee relationships, the Group Size is the average number of certificates per employer. For other types of groups, the Group Size is the number of certificates issued in the State of Florida for out-of-state group master contracts or the average number of certificates per master contract issued in the State of Florida for in-state groups, up to a maximum of 50 certificates.

(n) Incurred Claims: Incurred claims are claims occurring within a fixed period, whether or not paid during the same period, under the terms of the policy form.

1. Claims include scheduled benefit payments, reimbursement benefit payments, or services provided by a provider or through a provider network for medical, dental, vision, disability, and similar health benefits.

2. Claims do not include state assessments, taxes, company expenses, or any expense incurred by the company for the cost of adjusting and settling a claim, including the review, qualification, oversight, management or monitoring of a claim or incentives or compensation to providers for other than the provision of health care services.

3. A company may at its discretion include costs that are demonstrated to reduce claims, such as a fraud intervention program or case management costs, which are identified in each filing, and are demonstrated to reduce claims costs and do not result in increasing the experience period loss ratio by more than 5 percent.

4. For scheduled claim payments, such as disability income or long term care, the incurred claims shall be the present value of the benefit payments discounted for continuance and interest.

(o) Line of Business: For rating purposes, the Department recognizes the following types of policy forms:

1. Medical Expense: Policy forms that pay benefits based on the actual costs charged for hospital care (in or out patient), health care provider services, durable medical equipment, drugs, blood, medical supplies, x-ray and radiology services, lab work or like services which are reasonable and medically necessary and are not otherwise excluded under the policy. The Policy Form will be considered a "Medical Expense" policy if at least 50% of total benefits of the policy based upon expected claim costs are subject to Medical Trend. The following coverages will not be considered medical expense insurance:

a. Medicare Supplement insurance.

b. Long Term Care insurance.

c. Coverage supplemental to liability insurance.

d. Worker's compensation or similar insurance.

e. Automobile medical payment insurance.

2. Medical Indemnity: Policy forms that pay a predetermined, specified, fixed benefit for services provided. Claim costs under these forms are generally not subject to Medical Trend, although they may be subject to utilization changes. Policy forms that can use this structure include Hospital Indemnity, Dread Disease, and Accident policy forms.

3. Medicare Supplement: Policy forms which pay benefits supplementing the federal Medicare program. These are subject to Rule Chapter 4-156, F.A.C.

4. Long Term Care: Policy forms which provide benefits as defined in Rule Chapter 4-157, F.A.C. These policies are subject to this Part I, except that the minimum loss ratios shall be as required by Rule Chapter 4-157, F.A.C. In the event of any conflict between this rule chapter and Rule Chapter 4-157, F.A.C., the latter shall prevail.

5. Loss of Income: Policy forms which pay a regular income as long as the insured is disabled but not beyond the benefit period.

(p) New Policy Form: This means a policy form that is proposed for approval to the Department and has no policies issued or inforce.

(q) Policy Form: This means either a single policy form or any collection of policy forms that have been combined for rating purposes. A collection once combined continues to be combined.

(r) Premium Schedule: This is the collection of rates to be charged, and encompasses base rates and any modifying factors.

(s) Rate Change: This is any change to the premium schedule being charged.

(t) Renewal Clauses:

1. Optionally Renewable means that renewal can be declined on any individual or group contract at the option of the insurer.

2. Conditionally Renewable means that renewal can be declined by class, by geographic area or for stated reasons other than deterioration of health. The insurer may revise rates on a class basis.

3. Guaranteed Renewable includes:

a. Policy forms where the renewal cannot be declined by the insurer for any reason other than fraud, misrepresentation, failure to pay the premium when due, or expiration of the contract, but the insurer can revise rates on a class basis.

b.(I) Policy forms subject to Section 627.6425 or 627.6571, F.S.

(II) When an insurer discontinues offering a particular policy form for health insurance coverage pursuant to Section 627.6425(3)(a), F.S., the nonrenewal of coverage shall occur on the policy anniversary, and the offer of new coverage pursuant to Section 627.6425(3)(a)2., F.S., shall be considered a renewal of coverage and shall be renewed on the policy anniversary at the same class basis as the coverage being discontinued. If the forms do not have consistent class definitions, the class shall be determined based on the original application and underwriting status of the individual when the discontinued coverage was first issued. For policy forms subject to Section 627.6571, F.S., the renewal or nonrenewal of coverage shall be coincident with the effective date of coverage when the group is rerated, which is generally the annual anniversary of the group.

4. Non-Cancelable means that renewal cannot be declined for any reason other than fraud, misrepresentation, or failure to pay the premium when due and that rates cannot be revised by the insurer.

5. Non-Renewable means that there is a contractual provision which prevents a policy duration of more than a specific period which shall be no more than one (1) year.

(u) Select and Ultimate Premium Schedule: This is any premium schedule which has premiums that vary based on the time elapsed since issuance of the policy. These do not include rate schedules that reduce due to temporary risk charges, a one-time policy fee, or policyholder action to reduce benefits.

(v) Similar Benefits: Policy Forms may be considered by the insurer to have Similar Benefits if the benefit configuration under the forms is of the same type. Covered services, benefit triggers, copay amounts, copay options, deductible sizes, daily limits, inside and outside limits may vary and still be considered by the insurer as having similar benefits up to an entire Line of Business.

Specific Authority 624.308(1), 627.410(6)(b),(e) FS. Law Implemented 627.410(1),(2),(6), 27.411(1)(e) FS. History–New 7-1-85, Formerly 4-58.06, 4-58.006, Amended 4-18-94, 4-9-95, 11-20-02, _____.

PART III SMALL EMPLOYER HEALTH CARE ACCESS

4-149.022 Forms Adopted.

(1) No change.

(2)(a) Form DI4-1507, "The Florida Department of Insurance, Treasurer and Fire Marshal Life and Health Forms and Rates Universal Standardized Data Letter", rev. 9/02 ~~1/02~~.

(b) Form DI4-1507A, "The Florida Department of Insurance, Treasurer and Fire Marshal Life and Health Forms and Rates Universal Standardized Data Letter Instruction Sheet", rev. 9/02 ~~1/02~~.

(c) through (jjj) No change.

Specific Authority 624.308 FS. Law Implemented 627.410 FS. History–New 10-29-91, Amended 5-15-96, 4-4-02, 5-2-02, _____.

4-149.037 Calculation of Premium Rates.

(1) through (2) No change.

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

(c)1. To avoid over insurance and to provide for coordination of benefits pursuant to Section 627.4235, Florida Statutes, a plan may include a provision to exclude claims for benefits paid by workers' compensation insurance coverage of the employer.

2. To reflect the benefit differences provided by the plan, a carrier may file for approval a rating factor reflecting the additional benefits being provided by the health plan if the small employer:

a. Is exempt from the requirement to have workers' compensation, and

b. Does not have workers' compensation insurance.

(4) Rate filing requirements – Modified Community Rating. Premium schedules for benefit plans offered to small employer groups shall be based solely on the following categories and factors of the employee, without regard to the nature of the employer group.

(a) No change.

(b)1. through 3. No change.

4. The rate required by subparagraph (4)(a)7. above shall be applicable when both employee and spouse are enrolled in Medicare. If one is enrolled and one is not, regardless of which spouse is the employee, the rate charged shall be adjusted to reflect the reduction of exposure due to the fact that one spouse is enrolled in Medicare. The rate shall be determined assuming that one individual is enrolled in Medicare. The rate for the individual enrolled in Medicare will be isolated, multiplied by the Medicare primary to Medicare secondary ratio, and then added back to the portion of the rate that is not Medicare primary. A sample illustrative calculation follows; other combinations should be calculated in a similar manner:

a. For employee + spouse coverage where the spouse is Medicare primary – The difference between the employee + spouse Medicare secondary rate and the employee only Medicare secondary rate shall be determined. This shall reflect the implied spouse rate. This implied spouse rate shall be multiplied by the ratio of the Medicare primary rate divided by the Health plan primary rate. This resulting rate shall be added to the employee only rate.

b. For family coverage – The difference between the family rate and the employee + dependent rate shall be determined. This shall reflect the implied spouse rate. This implied spouse rate shall be multiplied by the ratio of the Medicare primary rate divided by the Health plan primary rate. This resulting rate shall be added to the employee + dependent only rate.

(c) through (6) No change.

(7)(a) A small employer carrier may file for approval subject to Part I of this rule chapter a rate factor to be applied to one-life groups.

(b) If elected, the carrier shall file the rate schedule applicable to the 2-50 eligible employee groups and include the rate factor to be applied to such rate schedule resulting in the rate schedule to be applied to one-life groups.

(c) The one-life factor shall not exceed 1.50.

(d) The one-life factor shall be applied to all one-life groups.

(e) If the small employer carrier elects the option permitted by subsection 4-149.037(6), F.A.C., in addition to this option, the one-life factor shall be determined such that the one-life factor times the maximum increase permitted under subsection 4-149.037(6), F.A.C., does not exceed 1.50.

(f) If the small employer carrier elects the options permitted by subsection 4-149.037(6), F.A.C. and this option, the rate quoted to the one-life group shall first apply the one-life factor under this subsection (7) and then apply the provisions of subsection (6) with the total adjustment limited to 1.50.

(g) Future filings shall include aggregate small group experience, actual one-life group experience, one-life group experience with the earned premium restated to remove the one-life factor; i.e., restate earned premium as though the 2-50 eligible employee rate schedule without the one-life factor rate had been charged, and the 2-50 group experience with the earned premium restated to the current manual rate basis.

(h) The aggregate experience, as well as the separate one-life experience, shall meet the target loss ratio standards for the form.

Specific Authority 624.308(1), 627.6699(16) FS. Law Implemented 627.410, 627.6699(6),(12)(e),(13),(13)(i) FS. History–New 3-1-93, Amended 11-7-93, 5-11-94, 4-23-95, 8-4-02, _____.

4-149.038 Employee Health Care Access Act Annual and Quarterly Statement Reporting Requirement.

(1)(a) Pursuant to Section 627.6699, Florida Statutes ~~F.S.~~, each carrier that provides health benefit plans in this state shall file, pursuant to paragraph 4-149.044(2)(b), F.A.C., ~~with its annual statement each year,~~ on or before March 1 for the preceding year ending December 31, Form DI4-1094, Report of Gross Annual Premiums and Enrollment Data for Health Benefit Plans Issued to Florida Residents adopted in Rule 4-149.044, F.A.C., providing information on health benefit plans written in this state.

(b) No change.

(2) No change.

(3)(a) All small employer carriers utilizing rating adjustments pursuant to subsection 4-149.037(7), F.A.C., shall make semiannual reports of their experience. The semiannual reports shall reflect experience from January 1 through June 30 and from July 1 through December 31 of each year. The reports shall be filed with the Department, pursuant to paragraph 4-149.044(2)(b), F.A.C., within 45 days following the last day of the reporting period. The carrier shall report:

1. through 7. No change.

8. (7)/(4) ~~(7)/(3)~~ percentage deviation of charged rate to community rate for claims, health and duration status.

(b) through (d) No change.

Specific Authority 627.6699(5)(i)3.a.,4.a.,(16) FS. Law Implemented 624.424(6), 627.6699(5)(i)3.a.,4.a. FS. History–New 3-1-93, Amended 11-7-93, 8-4-02, _____.

4-149.041 Marketing Communication Material and Marketing Guidelines.

(1) No change.

(2) Any insurer marketing small group health plans shall comply with the following guideline:~~.~~

(a) through (e) No change.

(f)1. Pursuant to Section 626.9611, Florida Statutes ~~F.S.~~, the Department identifies the following as being prohibited by Section 626.9541(1)(b), Florida Statutes ~~F.S.,~~ for a small employer carrier in reflecting any of the permitted rate adjustments in subsection 4-149.037(6), F.A.C.:

a. No change.

b. Where necessary underwriting information has not been analyzed, to quote a rate other than the approved community rate. Any such quote of the community rate shall include a disclosure that the rate will be affected by the results of underwriting by up to 15 percent ~~without disclosure that the rate may be adjusted~~ up or down ~~to 15 percent~~ for new groups, or up to a 10 percent increase for renewal groups.

2. No change.

(g) Any practice that results in the declination of an application from an eligible small employer, other than for statutorily permitted reasons, constitutes a failure to comply with the guaranteed-issue requirements of Section 627.6699(5), Florida Statutes; for example, imposing standards for eligibility that are not required by law, such as:

1. Requiring the small employer be a domestic entity; or

2. Requiring the group have prior group coverage; or

3. Requiring payment of premiums with business checks instead of personal checks.

Specific Authority 627.6699(13)(i), (16), 626.9611 FS. Law Implemented 626.9541(1)(b), (g)2., (x)3., 627.6699(3)(g), (v), (5)(a), (7), (12), (12)(c), (13), (13)(b) FS. History–New 3-1-93, Amended 11-7-93, 4-23-95, 8-4-02, _____.

4-149.043 Small Employer Health Reinsurance Program.

(1) No change.

(2) Of the 8 additional members of the board, subsequently amended to 13 in the 2000 legislative session, 5 shall be selected from individuals recommended by small employer carriers. Any small employer carrier wishing to do so may submit a list of recommended appointees to the commissioner either on its own behalf or through its trade organization. The list shall be submitted to: Chief, Bureau of Life and Health Forms & Rates, Division of Insurer Services, Department of Insurance, Larson Building, Tallahassee, FL 32399-0328 or submitted electronically to lhfrbureau@doi.state.fl.us. ~~lhfrbureau@doi.state.fl.us~~. The carrier or trade organization submitting the list shall include the following information about the persons it is recommending:

(a) through (d) No change.

Specific Authority 624.308(1), 627.6699(11)(b)3.a. FS. Law Implemented 627.6699(11) FS. History–New 11-7-93, Amended 8-4-02, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Frank Dino, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Rich Robleto, Chief, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 25, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 8, 2002

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Pesticides	5E-2
RULE TITLES:	RULE NOS.:
Definitions	5E-2.0105
Performance Standards and Acceptable Test Conditions for Preventive Termite Treatments for New Construction	5E-2.0311

PURPOSE, EFFECT AND SUMMARY: Under Chapter 487.041(4)(e), F.S., the Department has been authorized and required to develop rules to specifying the performance standards and acceptable testing conditions for data submitted in support of efficacy claims for pesticide products containing label statements for use as preventative treatments for termites for new construction. This rulemaking will concern the language of the rule that will specify the performance standards and acceptable testing conditions regarding data provided in support of registration of pesticide products containing label statements for use as preventative treatments for new construction so that the data show that the product will prevent damage to a structure and its contents for a minimum of five years under Florida conditions.

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 cost, or to provide a proposal for a lower cost regulatory alternative, must do so within 21 days of this notice.

SPECIFIC AUTHORITY: 487.041(4)(e) FS.

LAW IMPLEMENTED: 487.041(4)(e) FS.

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

TIME AND DATE: 10:00 a.m., January 23, 2003

PLACE: Hurston South Tower, 400 South Robinson St., Orlando, FL 32810

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Steve Dwinell, Assistant Division Director, Division of Agriculture Environmental Services, Department of Agriculture and Consumer Services, Mayo Bldg., Tallahassee, FL

THE FULL TEXT OF THE PROPOSED RULES IS:

5E-2.0105 Definitions.

(1) Building structure and its contents – For the purpose of the rule the term structure and its contents shall mean: the building, both structural and nonstructural components assembled as a part of the construction.

(2) Building test – A test conducted on a building as defined in Section 202 of the Florida Building Code (2001 edition, available from the Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399) with an area not less than 350 square feet.

(3) Field plot test – A test conducted at a research site other than a building and at which there are no termite preventative treatments other than the product being tested.

(4) Formulated Bait – A mixture of an active ingredient in the concentration proposed for registration and a material that can be fed upon by subterranean termites.

(5) Independent monitors – Cellulose available and palatable to the subterranean termite population that does not contain a termiticide and is used to assess treatment effects on the termite population.

(6) Infestation – Presence of living pests in, on, or under a structure, lawn, or ornamental.

(7) Inspection Ports – Devices or building modifications that provide access to visual inspection of an area of a structure.

(8) Randomly Selected – Each item in a population has an equal chance of being chosen.

(9) Re-infestation – An occurrence of an infestation in a building after a previous infestation has been eliminated.

(10) Stand-Alone – A product or device containing active ingredient pesticide or pesticides used to control a termite infestation without the required use of another pesticide or procedure.

Specific Authority 487.041(4)(e) FS. Law Implemented 487.041(4)(e) FS. History–New _____.

5E-2.0311 Performance Standards and Acceptable Test Conditions for Preventive Termite Treatments for New Construction.

(1) Performance Standards for Preventive Termite Treatments for New Construction.

The registrant of any pesticide product containing a label statement that includes directions for use as a preventive treatment for subterranean termites for new construction shall provide data to the Department demonstrating that the product meets the performance standard specified for the type of pesticide product listed below. For products registered prior to the effective date of the rule, the registrant shall have one year from the effective date of the rule to provide the data required to meet the performance standards or the period of time specified to meet the test conditions herein, whichever is greater. When data generation requires more than one (1) year, the registrant shall provide annual reports to the Department. In the event that a performance standard is not met during the test period, the provisions of 487.041(4)(e) shall apply.

(a) For soil applied residual treatments:

1. In field plot tests, subterranean termite damage to wood in the test must equal a rating of 9 or higher under the Standard Test Method of Evaluating Wood Preservatives by field tests with stakes, 1996, ASTM D1758-96 scale (available from ASTM International, 100 Barr Harbor Drive, P. O. Box C700, West Conshohocken, Pennsylvania, USA 19428-2959), in at least 90% of test samples for a minimum of five years. For products registered before the effective date of this rule, the test must equal a scale rating of 1 or better using the United States Department of Agriculture Forest Service wood damage rating scale,(modified from Verrall, A.F. 1959. Preservative moisture-repellent treatments for wooden packing boxes. For. Prod. J. 9: 1-22, available from Wood Products Insect

Research Unit, 201 Lincoln Green, Starkville, MS 39759) or an ASTM scale rating of 9 or higher using ASTM D1758-96 in at least 90% of test samples for a minimum of five years.

2. In field plot tests, if the data meet the conditions of (1)(a)1. above, then the product tested shall be considered to meet the requirement that it protects the structure and its contents from subterranean termite damage.

(b) For products formulated for use in stand-alone bait systems:

1. General. Formulated bait products submitted for registration after the effective date of this rule must be tested in field plot tests and building tests that meet the acceptable test condition requirements of (2)(b) below, and must meet the performance standards for field plot tests specified in (1)(b)2., below, and for building tests specified in either (1)(b)3., or (1)(b)4., below. For products registered prior to the effective date of this rule, formulated bait products must be tested in building tests that meet the requirements of (2)(b) and must meet the performance standards in either (1)(b)3., or (1)(b)4., below to be re-registered. For products registered after the effective date of the rule, the Department shall not grant permission in Florida for a building test until (1)(b)2., below is met.

2. Field plot tests. Field plot tests must reduce each baited termite population by a minimum of 50% or reduce wood consumption by a minimum of 50% in at least 75% of baited population colonies within 12 months of initiation of feeding on bait active ingredient; and the minimum required reduction must be maintained for at least 6 months.

3. Building Tests with Existing Infestation. Building tests with existing infestation of the building by subterranean termites must show:

a. Independent Monitors. At least a 90% reduction of termite activity in at least 90% of the test buildings where independent monitors are used as measured by independent monitoring of termite populations within 12 months after initiation of feeding on a formulated bait; and,

b. Building Monitoring. The cessation of the live termite activity in at least 90% of the test buildings within twelve months after initiation of feeding on the formulated bait and:

i. No re-infestation may occur within two years as verified by visual inspection, or

ii. No re-infestation may occur within 12 months as verified by the use of a combination of research and visual inspection techniques to delineate the location of infestation such as bath trap inspection ports, moisture meters, acoustic detection, chemical detection, microwave technology, canine detection, fiber optics or infrared technology, or

iii. For building tests conducted prior to the effective date of the rule, verification of no re-infestation within 12 months using a combination of the techniques set forth in (1)(b)3.ii. above is sufficient.

4. Building Tests with No Existing Infestation. Building tests where all buildings used in the test had no existing infestation but demonstrated termite activity within 10 feet from the structure, must show:

a. Independent Monitors. At least a 90% reduction of termite activity in at least 90% of the test buildings as measured by independent monitoring of termite populations within 12 months after initiation of feeding on a formulated bait; and,

b. Building Monitoring.

i. No infestation can occur in a minimum of 90% of test buildings within three years of initiation of feeding on baiting system, or

ii. Within 12 months if a 100% reduction of termite activity in the independent monitors at a minimum of 90% of the test buildings within 12 months after initiation of feeding on a formulated bait as documented using termite population delineation techniques such as mark/recapture, DNA analysis or cuticular hydrocarbon analysis and, no infestation in at least 98% of the test buildings is verified using a combination of research and visual inspection techniques to delineate the location of infestation such as bath trap inspection ports, moisture meters, acoustic detection, chemical detection, microwave technology, canine detection, fiber optics or infrared technology for 12 months after the elimination of the population.

(c) For pesticides applied to wood.

1. Field plot tests and building tests must be conducted.

2. In field plot tests, subterranean termite damage to both treated and untreated wood in the test must equal a rating of 9 or higher under the Standard Test Method of Evaluating Wood Preservatives by field tests with stakes, 1996, ASTM D1758-96 scale (available from ASTM International, 100 Barr Harbor Drive, P. O. Box C700, West Conshohocken, Pennsylvania, USA 19428-2959), in at least 90% of test samples for a minimum of five years. For products registered before the effective date of this rule, the test must equal the USDA Forest Service scale rating of 1 or better using the United States Department of Agriculture Forest Service wood damage rating scale,(modified from Verrall, A.F. 1959. Preservative moisture-repellent treatments for wooden packing boxes. For. Prod. J. 9: 1-22, available from Wood Products Insect Research Unit, 201 Lincoln Green, Starkville, MS 39759) or a ASTM scale rating of 9 or higher using ASTM D1758-96 in at least 90% of test samples for a minimum of five years.

3. Building tests must show no infestation in a minimum of 90% of buildings in the test within five years of the treatment.

(d) For systems that use combinations of pesticides or application techniques otherwise not covered by sections above.

1. Systems registered after the date of the rule claiming to protect structures by affecting termite populations shall conduct field plot tests and building tests as specified in (2)(b) below and shall meet the performance standard for baits in field plot tests (1)(b)2., and building tests (1)(b)3., or (1)(b)4., above. Systems registered prior to the effective date of the rule claiming to protect structures by affecting termite populations shall conduct the building tests as specified in (2)(b) below and shall meet the performance standards in (1)(b)3., or (1)(b)4., above.

2. Building tests must be conducted for all products other than those in section (1)(d)1. above. Building tests must show no infestation in at least 90% of buildings in the test within five years of treatment.

(2) ACCEPTABLE TEST CONDITIONS FOR PREVENTIVE TERMITE TREATMENTS FOR NEW CONSTRUCTION.

Acceptable test conditions for the development of data showing that the product meets the performance standard shall be as specified for the type of pesticide listed below:

(a) For soil applied residual treatments:

1. Field plot tests shall be conducted in conditions which approximate Florida conditions with respect to rainfall, temperature, soil types and termite species.

2. Field plot tests shall be conducted with at least ten replications of the treatment tested. If more replications have been used, the results of all the replications shall be reported.

3. Wood used in the tests shall not be treated to resist termite attack or shall not be wood resistant to termites as defined in Section 2304.1.1.1 of the Florida Building Code (2001 Edition, available from the Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399).

4. Field plot tests data shall be collected from tests:

a. Accepted by the United States Environmental Protection Agency (USEPA) as in compliance with USEPA's Product Performance Testing Guidelines for Structural Treatments (OPPTS 810.3600, EPA 712-C-98-424, March 1998, available from US EPA Office of Prevention, Pesticides, and Toxic Substances, 1200 Pennsylvania Avenue, N. W., Washington, DC 20460); or,

b. Conducted by the United States Department of Agriculture /Forest Service using their soil residual treatment testing protocol published February 11, 1994, RWU-4502-2-1994, available from the Wood Products Insect Research Unit, 201 Lincoln Green, Starkville, MS 39759; or,

c. Conducted in accordance with Department approved protocols.

(b) For Stand-Alone Bait Systems:

1. Field plot tests evaluate the effect of the bait active ingredient on the population of termites. The existence of foraging population and feeding activity must be demonstrated prior to the introduction of the bait active ingredient. Field plot tests must evaluate a minimum of three (3) separate baited termite colonies and one (1) un-baited termite colony. Effect on foraging activity can be quantified by measuring consumption of foraging monitors, estimation of population size by mark/recapture techniques, or numbers of termite attacks on monitors.

2. Field plot tests and building tests shall be conducted in conditions which approximate Florida conditions with respect to rainfall, temperature, soil types and termite species.

3. For building tests conducted after the effective date of the rule, 10% of buildings with known existing infestations of subterranean termites or 10% of buildings known not to have existing infestations of subterranean termites, or ten (10) sites of each type (whichever is greater) must use independent monitors deployed in the same manner as the bait to quantify termite activity. A minimum of twenty (20) building tests must be conducted. Termite activity can be measured as wood consumption in the independent monitors, numbers of termite attacks on independent monitors, a population estimate using mark/recapture techniques, DNA analysis, or cuticular hydrocarbon analysis.

4. For all building tests initiated after the effective date of the rule, tests shall be conducted on buildings which have not been treated with a soil applied residual treatment within 5 years of the initiation of tests.

5. For building tests conducted prior to the effective date of the rule:

a. Building Tests with Existing Infestation. For building tests with existing infestation, 20% of buildings in the data set provided to the Department must have records for a minimum of two years of monitoring termite activity after the initiation of termite feeding on the formulated bait; or monitoring using a combination of research and visual inspection techniques to delineate the location of infestation such as bath trap inspection ports, moisture meters, acoustic detection, chemical detection, microwave technology, canine detection, fiber optics or infrared technology, for a minimum of 12 months after the initiation of feeding on the formulated bait.

b. Building Tests with No Existing Infestation. For building tests with no existing infestation, 20% of buildings in the data set provided to the Department must have either:

i. Records for a minimum of three years of monitoring of termite activity after the initiation of termite feeding on formulated bait; or

ii. Records using termite population delineation techniques such as mark/recapture, DNA analysis or cuticular hydrocarbon analysis for a minimum of 12 months after initiation of feeding on a formulated bait and monitoring using a combination of research and visual inspection techniques to delineate the location of infestation such as bath trap inspection ports, moisture meters, acoustic detection, chemical detection,

microwave technology, canine detection, fiber optics or infrared technology, for a minimum of 12 months after the initiation of feeding on the formulated bait.

6. For tests conducted after the effective date of the rule:

a. Building tests with existing infestations must be documented with collection of termites from the test site and preservation for identification.

b. Building test inspections must include a combination of visual and research inspection methods including bath trap inspection ports, moisture meters, acoustic detection, chemical detection, microwave technology, canine detection, fiber optics or infrared technology.

c. Data from field plot and building tests must be developed under Good Laboratory Practices Standards (40 CFR Part 160, revised 2001), a United States Environmental Protection Agency Quality Assurance Agreement, or using a Department approved protocol.

7. Building tests must use the bait as formulated for registration and must follow directions for use on the registered label or the label proposed for registration.

(c) For pesticides applied to wood:

1. Field plot tests and building tests shall have been conducted in conditions which approximate Florida conditions with respect to rainfall, temperature, soil types and termite species.

2. Field plot tests shall have been conducted with at least ten (10) replications of the treatment tested. If more replications have been used, the results of all the replications shall have been reported.

3. Field plot tests shall include at least one untreated control for each ten (10) replications.

4. Wood used in building and field plot tests that is treated shall be treated in accordance with the directions for use on the registered label or label proposed for registration.

5. Wood used in the tests shall be a species commonly used in wood frame construction in Florida.

6. For field plot tests, test units shall incorporate untreated wood placed on top of the treated wood to demonstrate that the treatment will protect untreated building components from attack by subterranean termites that require ground-soil contact.

7. For building tests conducted after the effective date of the rule, building test inspections must include bath trap inspection ports, moisture meters, acoustic detection, chemical detection, microwave technology, canine detection, fiber optics, or infrared technology.

8. Field plot tests or building test data shall be collected from tests:

a. Accepted by the United States Environmental Protection Agency (USEPA) as in compliance with USEPA's Product Performance Test Guidelines for Structural Treatments (OPPTS 810.3600, EPA 712-C-98-424, March 1998, available from US EPA Office of Prevention, Pesticides, and Toxic Substances, 1200 Pennsylvania Avenue, N. W., Washington, DC 20460); or

b. Conducted in accordance with Department approved protocols.

9. Building tests prior to the date of the rule, shall be on a minimum of twenty-five (25) buildings with wood framed exterior walls and treatment shall have been applied according to the label or proposed label directions for use with documented annual inspections.

10. Building tests after the date of the rule shall be on a minimum of twenty-five (25) buildings with wood framed exterior walls and a minimum of ten (10) of the buildings shall have demonstrated termite activity within ten (10) feet of the structure, and treatment shall be applied according to the label or proposed label directions for use.

(d) For systems that use combinations of pesticides or application techniques otherwise not covered by sections above:

1. Systems registered after the date of the rule claiming to protect structures by affecting termite populations shall conduct field plot tests and building tests that meet the acceptable test conditions specified in (2)(b) above.

2. Systems registered prior to the effective date of the rule claiming to protect structures by affecting termite populations shall conduct building tests that meet the acceptable test conditions specified in (2)(b) above.

3. All other systems shall meet the acceptable test conditions specified in (2)(c) above.

(3) DEPARTMENT REVIEW OF DATA SUBMISSIONS.

(a) Publication of Results.

The Department shall publish the results of its review of data submitted to comply with this rule within 90 days of receipt of a complete set of data developed under the acceptable test conditions established in (2) above. When the Department determines that the product tested does not meet the performance standard in (1), the data submitter will be allowed 90 days to provide supplemental data and data interpretations for the Department's consideration. The Department shall review an earlier determination of failure to meet product performance standards based on this supplemental data only if additional data meets the conditions of (2) above, or shall review an earlier determination based on a data interpretation only if that interpretation demonstrates that the data developed under (2) above meets the performance standards established in (1) above.

(b) Data from field plot tests or building tests conducted prior to the effective date of the rule.

Data from field plot tests or building tests conducted prior to the effective date of the rule shall be acceptable for review by the Department if any of the following conditions are met:

1. Data and results reported are from all field plots or buildings in a study conducted in accordance with acceptable test conditions; or,

2. Data and results reported are a subset of field plots or buildings with acceptable test conditions from the entire data set where all plots or buildings met acceptable test conditions, provided data were selected in a statistically random manner from the entire data set, represent a minimum of fifty (50) sites, and the method used for selection is reported and documented; or,

3. Data and results reported are from all field plots or buildings with acceptable test conditions, however the entire study included plots or buildings that do not meet acceptable test conditions; or,

4. Field plots or buildings reported were selected in a statistically random manner from the set of existing sites for which records that meet the acceptable test conditions requirements of (2) above exist, and the results of fifty (50) sites are reported, and a description of the statistical method used is included in the data submission. Field plots or buildings reported that are a subset of field plots or buildings with acceptable test conditions from the entire data set where some plots or buildings do not meet acceptable test conditions, providing data were selected in a statistically random manner from the set of existing plots or buildings that meet acceptable conditions, represent a minimum of fifty (50) sites, and method used for selection is reported and documented.

(c) Use of Termiticide efficacy protocol review process.

Termiticide efficacy protocol review process for field and building tests shall be reviewed by the Department using the Protocol Review Process for Efficacy Tests of Termiticides for Preventive Treatment for New Construction dated November 13, 2002 and hereby adopted by reference.

(d) Department Publication Following Grant of Registration.

Upon granting of a registration, Department will publish the following information:

1. A description of the testing used to evaluate the product's efficacy, including test locations and who conducted the testing.

2. The results of the efficacy testing relative to the applicable performance standards.

3. Information about which test standards and methods were used to evaluate the registration.

4. Any potential limitations to evaluating product efficacy associated with using this test methods and data.

5. Any additional information that would assist the public in evaluating the product's efficacy.

Specific Authority 487.041(4)(e) FS. Law Implemented 487.041(4)(e) FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Steve Dwinell, Assistant Division Director, Division of Agriculture Environmental Services, Department of Agriculture and Consumer Services.

NAME OF PERSON OR SUPERVISOR WHO APPROVED THE PROPOSED RULE: Steve Rutz, Director, Division of Agriculture Environmental Services, Department of Agriculture and Consumer Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 3, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 21, 2001

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Mosquito Control Program Administration 5E-13

RULE TITLE: RULE NO.:
Mosquito Control Aircraft Registration, Inspection, Security, Storage, Transactions, Recordkeeping, Area-of-Application Information and Forms 5E-13.0371

PURPOSE, EFFECT AND SUMMARY: The purpose of the rule development is to establish requirements governing aircraft used for the mosquito control aerial application of pesticides, including requirements for recordkeeping, annual aircraft registration, secure storage when not in use, area of application information, and reporting of any sale, lease, purchase, rental, or transfer of ownership.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No SERC 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: 570.07(23), 388.361(2)(b) FS.

LAW IMPLEMENTED: 388.361(2)(b) FS.

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

TIME AND DATE: 10:00 a.m., January, 9, 2003

PLACE: George Eyster Auditorium, 3125 Conner Blvd., Tallahassee, Florida 32399-1650

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Steven Rutz, Director, Department of Agriculture and Consumer Services, Room 130, 3125 Conner Blvd., Tallahassee, Fl 32399-1650

THE FULL TEXT OF THE PROPOSED RULE IS:

5E-13.0371 Mosquito Control Aircraft Registration, Inspection, Security, Storage, Transactions, Recordkeeping, Area-of-Application Information and Forms.

(1) Registration. Each mosquito control aircraft used for aerial pesticide application, must be annually registered with the department. Application for registration shall be on form DACS- 13354, New 01/02, provided by the department. The completed registration form shall be submitted to the Pesticide Certification Office, 3125 Conner Blvd., Bldg. 8 (L29), Tallahassee, Florida 32399-1650. The registration shall be submitted to the Department on or before June 30 of each year.

(2) Inspection. Authorized department representatives may inspect mosquito control aircraft required to be registered with the department as to equipment relating to aerial pesticide application under this rule during normal working hours without prior notification or as determined necessary when an emergency has been declared as contained in paragraph (7) herein.

(3) Security. Each mosquito control aircraft used for aerial application of any pesticide shall be secured when not in use. Secured storage shall include the aircraft being: within a locked building, locked in place securely, mechanically disabled from flying, or any other reasonable method which would prevent or deter theft or unauthorized use.

(4) Storage. All pesticides on the premises owned or controlled by any mosquito control applicator or mosquito control district shall be stored and maintained in a manner such that they are not accessible to unauthorized persons. Secured storage shall include: fences with a minimum 6 feet height, door locks, valve locks, electronic security systems, disabling of mobile storage units, blocking of access, ingress or egress; or any other reasonable method to prevent or deter theft or unauthorized use. Buildings used to store pesticides must be of rigid construction so unauthorized entry can not be achieved without the use of heavy machinery or equipment. If a portable building is used for storage of pesticides, the building must be secured in place so it can not be towed or otherwise removed by unauthorized persons.

(5) Transactions. Any purchase, sale, rental, leasing, or transfer of ownership of a mosquito control aircraft required to be registered with the department pursuant to paragraph (1) above shall be transmitted to the department on (1) Florida Department of Revenue form DR-42 Rev-06/99 Ownership Declaration and Sales and Use Tax Report on Aircraft or (2) Aircraft Bill of Sale Form AC 8050-2 (09/92) or (3) Report of Aircraft Transaction Form DACS-13355, New 01/02 within 24 hours of the transaction.

(6) Recordkeeping. Aerial mosquito control applicators shall maintain records relating to each application of pesticide during a declared emergency. Such records generated during the emergency shall be retained for a period of two (2) years and shall be maintained in a manner that is accessible by the department upon request. Mosquito control aircraft operating as public aircraft not regulated by the FAA are exempt from the records referencing FAA numbers.

(a) Name and FAA license number of the licensee responsible for the pesticide application;

(b) Date and time of treatment;

(c) Location of treatment area, which may be recorded using any of the following designations:

1. County, range, township and section;

2. An identification system utilizing maps and/or written descriptions which accurately identify the location and distinguish the treatment area from other sites;

3. The legal property description; or

4. Global Positioning Satellite (GPS) coordinates or Longitude/Latitude points which delineate the treated area.

(d) Name of the person requesting or authorizing the application,

(e) Aircraft manufacturer, make and model.

(f) FAA aircraft registration number.

(g) Originating airport/airstrip.

(7) Area-of-Application Information. The information listed in (6)(a) through (6)(g) is required only when a declaration of an Executive Order pursuant to the emergency powers granted to the Governor or the Commissioner of Agriculture declaring an emergency in the State of Florida. Such information shall be provided and filed with the Department in a manner determined by the department.

(8) Forms. The following forms are hereby incorporated by reference. These forms may be obtained from the Florida Department of Agriculture and Consumer Services, Pesticide Certification Office, 3125 Conner Boulevard, Building 8 (L29), Tallahassee, Florida 32399-1650, telephone (850)488-3314.

(a) Application for Aircraft Registration (DACS-13354), New 01/02.

(b) Ownership Declaration and Sales and Use Tax Report on Aircraft (DR-42), Rev. 06/99.

(c) Aircraft Bill of Sale AC Form 8050-2 (09/92).

(d) Report of Aircraft Transaction (DACS-13355), New 01/02.

Specific Authority 570.07(23) FS., Ch. 2001-360, Laws of Florida. Law Implemented 570.07(23), 388.361(2)(b) FS., Ch. 2001-360, Laws of Florida. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Wayne Gale, Chief, Bureau of Entomology and Pest Control, Division of Agricultural Environmental Services, Department of Agriculture and Consumer Services

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Steven J. Rutz, Director, Division of Agricultural Environmental Services, Department of Agriculture and Consumer Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 29, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 9, 2002

DEPARTMENT OF REVENUE

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
General; Procedures	12-3
RULE TITLES:	RULE NOS.:
Definitions	12-3.0012
Adoption of Materials That Contain Departmental Procedures	12-3.0017

PURPOSE AND EFFECT: The amendments to Rule 12-3.0012, F.A.C. (Definitions), define the terms "adequate records" and "voluminous records" to ensure taxpayers are told how these terms apply to the examination of their records by the Department. The effect of amending this rule is to educate taxpayers about records that are subject to review by the Department. The creation of Rule 12-3.0017, F.A.C. (Adoption of Materials That Contain Departmental Procedures) adopts publications, training manuals, and other materials that establish procedures the Department employs when auditing taxpayers.

SUMMARY: Proposed amendments to Rule 12-3.0012, F.A.C.: The proposed changes to this rule define the terms "adequate records" and "voluminous records." "Adequate records" means sufficient and accurate books and accounts that are usually maintained by a prudent businessperson engaged in a specific type of business. "Voluminous records" means information that is some numerous and extensive that the provision of such records by the businessperson, as well as their review by the Department, would best be accomplished by a sampling methodology.

Proposed new Rule 12-3.0017, F.A.C.: A) adopts the Department's training manual on stratified statistical sampling procedures for electronic records (GT400116), which instructs the Department's auditors on how to define the population of data to be sampled, how to establish the pilot sample, how to complete the sample, and how to project and allocate the results of the sample; B) adopts the Department's training manual on basic electronic auditing procedures (GT400514), which instructs the Department's auditors on how to choose candidates for electronic auditing, the appropriate electronic audit techniques, and how to determine if stratified statistical sampling is appropriate; C) adopts the Department's taxpayer information booklet on auditing in an electronic environment (GT300034), which explains to audit candidates the benefits of electronic auditing, the Department's statutory authority for conducting such audits, the confidentiality of taxpayer information reviewed during the audit, how the Department determines if a taxpayer is an electronic audit candidate, and what electronic auditing techniques the Department uses; D) adopts the Department's discussion of adequate vs. inadequate records (GT400515) for the purpose of determining during a review of a taxpayer's sales and use tax or discretionary sales surtax records if such records are adequate or inadequate; and, E) adopts the General Tax Administration Program's procedures bulletin on assignment of rights (GTAPB 02(A)-001), which addresses how to handle overpayments of sales and use tax or discretionary sales surtax when a purchaser has paid tax to a dealer.

The effect of creating this new rule is to ensure compliance with the requirements of the Administrative Procedure Act and to inform the public about the Department's audit procedures.

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

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

SPECIFIC AUTHORITY: 213.06(1) FS.

LAW IMPLEMENTED: 95.091(3), 212.12, 212.13, 213.34, 213.345, 213.35 FS.

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

TIME AND DATE: 11:00 a.m., January 15, 2003

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Larry Green, Tax Law Specialist, Rules and Policy Administrative Process, Office of the General Counsel, Department of Revenue, P. O. Box 6668, Tallahassee, Florida 32314-6668; telephone (850)922-4830, e-mail address greenl@dor.state.fl.us

These proposed rules are available on the Department's web site: www.myflorida.com/dor/rules

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in this hearing is asked to advise the Department at least 48 hours before the hearing by contacting Nancy Purvis at (850)488-0712. If you are hearing or speech impaired, please contact the Department by using the Florida Relay Service, which can be reached at (800)955-8700 (voice) and (800)955-8771 (TDD).

THE FULL TEXT OF THE PROPOSED RULES IS:

12-3.0012 Definitions.

The following terms apply to the Department's administration of the programs delegated to it by statute. These terms shall have the meaning given to them in this section, except where the context clearly indicates a different meaning.

(1) through (2) No change.

(3) "Adequate records" means sufficient and accurate books and accounts ordinarily maintained by the average prudent businessperson engaged in the same activity that can be used to determine the correct amount of any tax liability or overpayment, pursuant to section 213.35, F.S. Sufficient and accurate records must be comprehensive, authentic, and systematic. In addition, to be determined to be adequate, records and documents must be retained for as long as they are legally required pursuant to section 95.091(3), F.S. The requirements of s. 95.091(3), F.S., may be met by a taxpayer even though his or her records are not totally complete. Business considerations, materiality, third-party confirmations, and other corroborating evidence that includes related supporting documentation, may be used to establish that the taxpayer has adequate records. When determining if a taxpayer's records are adequate, the Department will consider the following factors and guidelines:

(a) For records to be adequate, they must be kept and maintained as provided in Part II of Rule Chapter 12-24, F.A.C. Records must be sufficient to document: gross receipts and revenue from all sources, taxable or not; deductions, exemptions, or credits; and purchases, assets, and liabilities; and they must be supported by documentation that complies with the requirements of Part II of Rule Chapter 12-24, F.A.C.

(b) A recordkeeping system kept in an orderly fashion includes a summary of business transactions, such as accounting journals and ledgers, and returns or reports required to be filed with government or regulatory entities. This system indicates gross income, deductions, and credits, and contains supporting documentation such as sales slips, paid bills, invoices, receipts, deposit slips, and cancelled checks. The components of an adequate recordkeeping system will vary according to the size and type of business.

1. Example: A one-man office bills clients only at the end of the month. Billings provide sufficient information to determine the customer, customer address, taxability of item or service sold, delivery of item, and tax collected. Information concerning sales to a client are stored by client name. No inventory is carried by the business. Purchase invoices and other billings are collected and sorted at the end of the year. Other records available are customer contracts, deposit slips, check registers, cash receipts book, bank statements, lease agreements, loan documents, and federal income tax returns. Billings can be traced to deposit slips, bank statements, and cash receipts book. Most purchase invoice, lease, loan, and other expense payments can be traced to the check register. Gross receipts reported on the federal income tax returns can be reconciled to customer contracts, deposit slips, bank statements, cash receipts books, and billings. Expenses on the federal returns can be reconciled to the check register, purchase invoices, billings, lease agreements, and loan documents. The records described in this example are adequate.

2. Example: A manufacturer sells merchandise at retail and wholesale. The merchandise is sold both in-state and out-of-state. Sales invoices are sequentially numbered and all invoices are accounted for. Controls are in place to ensure that inventory is not removed without a sales invoice. Sales journals, purchase journals, and other summary accounting records are kept electronically. Sale invoices, resale certificates, exemption certificates, shipping documents, purchase invoices, and other expense billing records are stored on microfiche and the original documents are not retained. Expenses, gross sales, and other income and deductions reported on federal income tax returns and financial statements can be reconciled through the various journals and intermediary records to the source documents stored on microfiche. Amounts reported on the monthly sales tax returns could also be reconciled to the source documents stored on microfiche. Source documents on microfiche can be traced to the federal income tax returns and financial statements. The records described in this example are adequate, pursuant to the requirements of this rule and Part II of Rule Chapter 12-24, F.A.C.

(c) Records include schedules or working papers used to prepare tax returns and financial statements. Records also include: resale certificates; agricultural certificates; and other approved certificates received when making sales. The normal books of account include: bills; receipts; contracts; invoices; cash register tapes; cancelled checks; bank statements; or other documents of original entry supporting the entries in the books of account. Additional necessary records may include: bills of lading; contracts; leases; and notes.

(d) As appropriate to the business size and type, adequate records include:

1. A daily record of all cash and credit sales, including information as to financing or installment plans, and tax collected;

2. A record of the amount of all merchandise and services purchased, including all bills of lading, invoices, and purchase orders;

3. A record of all deductions and exemptions claimed in filing sales or use tax returns, including exemption and resale certificates;

4. A record of all tangible and intangible purchases used or consumed in the conduct of the business; and,

5. An accurate annual inventory of stock on hand and its cost.

(e) Section 212.12(6)(b), F.S., does not allow the Department to use a sample to project an overpayment when the records are inadequate.

(4) "Voluminous records" means records maintained by the taxpayer pursuant to s. 213.35, F.S., that are so numerous and extensive that their provision by the taxpayer and review by the Department would be most effectively and

expeditiously accomplished by using a sampling methodology to determine what records must be provided for review and will be included in the review.

Specific Authority 213.06(1) FS. Law Implemented 95.091(3), 212.12(6), 213.345, 213.35 FS. History–New 4-2-00, Amended _____.

12-3.0017 Adoption of Materials That Contain Departmental Procedures.

(1) The following subsections of this rule describe materials and publications which contain procedures used by the Department in performing its statutory responsibilities, and these materials and publications are hereby incorporated by reference in this rule. A copy of these materials and publications may be obtained by one or more of the following methods:

(a) Writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or,

(b) Faxing the Distribution Center at (850)922-2208; or,

(c) Using a fax machine telephone handset to call the Department's automated Fax On Demand system at (850)922-3676; or,

(d) Visiting any local Department of Revenue Service Center to personally obtain a copy; or,

(e) Calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or,

(f) Downloading selected forms from the Department's Internet site at the address shown inside the parentheses (www.myflorida.com/dor). Persons with hearing or speech impairments may call the Department's TDD at 1 (800)367-8331.

(2) GT400514, Basic Electronic Auditing Manual (e-Auditing) (n. 3/02), which instructs the Department's auditors on electronic audit techniques.

(3) GT400116, Stratified Statistical Sampling Manual (n. 3/02), which instructs the Department's auditors on how to perform a stratified statistical sample of a taxpayer's books and records.

(4) GT300034, Auditing in an Electronic Environment (e-Auditing) and Stratified Statistical Sampling (n. 3/02), which explains to audit candidates (taxpayers) the benefits of electronic auditing and what techniques the Department can use.

(5) GT400515, Adequate vs. Inadequate Records; Sales and Use Tax; Discretionary Sales Surtaxes (n. 3/02), which explains how the Department will determine if a taxpayer's records are adequate or inadequate for review purposes.

(6) GTA Procedure Bulletin 02(A)-001 (n. 3/02), which addresses how to handle overpayments of sales and use tax or discretionary sales surtax when a purchaser has paid tax to a dealer.

Specific Authority 213.06(1) FS. Law Implemented 212.12, 212.13, 213.35 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Larry Green, Tax Law Specialist, Rules and Policy Administrative Process, Office of the General Counsel, Department of Revenue, Post Office Box 6668, Tallahassee, Florida 32314-6668; telephone number (850)922-4830, e-mail address greenl@dor.state.fl.us

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Sylvan Strickland, Senior Attorney, Rules and Policy Administrative Process, Office of the General Counsel, Department of Revenue, Post Office Box 6668, Tallahassee, Florida 32314-6668; telephone number (850)922-4711

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 3, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 3, 2002, Vol. 28, No. 18, pp. 1988-1990. A workshop was held on May 20, 2002. Testimony was received during the workshop and written comments were submitted. The Department made changes to the proposed rules based on these comments.

DEPARTMENT OF TRANSPORTATION

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Highway Beautification and Landscape Management	14-40
RULE TITLES:	RULE NOS.:
Grant Process	14-40.020
Funding, Construction, and Maintenance of Beautification Projects	14-40.021
Florida Highway Beautification Council Grant Process	14-40.022
Funding, Construction, and Maintenance of Beautification Projects	14-40.023

PURPOSE AND EFFECT: This amendment to Part II of Rule Chapter 14-40 includes a restructuring of the rules. The definitions are expanded to include additional terms, which are subsequently referred to by the defined term only. The order of the rules within Part II of Rule Chapter 14-40, is being changed by repealing Rule 14-40.021 and then adopting it as a new Rule 14-40.023. The Award of Grants and Execution of Grants sections in Rule 14-40.020 also are deleted in that rule and moved to Rule 14-40.022.

SUMMARY: This is a restructuring of Part II of Rule Chapter 14-40 covering the Florida Highway Beautification Council.

SPECIFIC AUTHORITY: 334.044(2), 337.2505(1), 339.2405 FS.

LAW IMPLEMENTED: 335.167, 337.405, 339.2405 FS.

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.

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

TIME AND DATE: 1:00 p.m., January 23, 2003

PLACE: Department of Transportation, 605 Suwannee Street, Suwannee Room, Room 250, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: James C. Myers, Management Analyst 4, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULES IS:

PART II FLORIDA HIGHWAY BEAUTIFICATION COUNCIL GRANTS

14-40.020 Grant Process.

(1) Definitions.

(a) "Applicant" means a local governmental entity, as defined in Section 11.45(1)(d), Florida Statutes, or a local highway beautification council.

(b) "Department" means the Florida Department of Transportation.

(c) "FHBC" means the Florida Highway Beautification Council.

(d) "Grant" means funds provided by the Department to Applicants, pursuant to this Rule Chapter.

(e) "Grant Agreement" means the contract between the Applicant and the Department setting forth the terms of the Grant.

(f) "Grant Application" means the Florida Highway Beautification Council Grant Application, Form 850-060-01, Rev. 03/03, incorporated herein by reference. Copies of the Florida Highway Beautification Council Grant Application form (grant application), Form 850-060-01, Rev. 03/03, incorporated herein by reference, and instructions for completing the grant application may be obtained from Department District Maintenance Offices, District Public Information Offices, Area Maintenance Offices, Central Public Information Office, by writing to the Environmental Management Office, 605 Suwannee Street, Mail Station 37, Tallahassee, Florida 32399-0450, or through the Department website at http://www11.myflorida.com/emo/.

(g) "Grant Coordinator" means the Department District FHBC employee responsible for the program.

(2) Grant Application ~~Process~~.

(a) Grant a~~A~~pplications for highway beautification grants from the FHBC must be filed and processed in accordance with this Rule Chapter. When preparing an application for the next fiscal year, applicants should meet and work with the Grant Coordinator on or about October 1, to give adequate time for review and revisions before the February 1, application deadline.

(b)~~(a)~~ Previous recipients of grants are eligible to submit a grant application if their previous FHBC grant projects are maintained according to the terms of grant agreements, and any construction or maintenance agreements. ~~Prior to submitting a grant request, applicants must prepare a landscape plan and have it reviewed by the District Landscape Manager for compliance with Part I of this rule chapter. Following the review, the applicant must make any plan revisions required by the District Landscape Manager prior to approval. The Department's landscape plan review, revision, and approval process may require up to 120 days.~~

(c)~~(b)~~ The ~~After the landscape plan has been approved by the District Landscape Manager, in accordance with paragraph (a) above, the~~ applicant must submit grant requests on a completed grant application ~~Florida Highway Beautification Council Grant Application, Form 850-060-01, Rev. 09/01, (hereinafter "grant application") incorporated herein by reference,~~ to the Department District Maintenance Engineer having jurisdiction over the state highway on which the beautification project is proposed. ~~Copies of the grant application form and instructions for completing the grant application may be obtained from Department District Maintenance Offices, District Public Information Offices, Area Maintenance Offices, Central Public Information Office, or by writing to the Environmental Management Office, 605 Suwannee Street, Mail Station 37, Tallahassee, Florida 32399-0450. The grant application must designate the Department fiscal year in which the grant applicant would like the application considered.~~ The grant application must be accompanied by the following supporting documents: location map, photographs of existing conditions, one page written project narrative, written or graphic conceptual plan (in accordance with Part I of this Rule Chapter), one paragraph descriptions of each evaluation attribute, photographs or sketches of examples of proposed improvements, list of proposed plant species (scientific and botanical names) and anticipated quantities, anticipated maintenance schedule, proposed means of providing supplemental water, project schedule, and resolutions required in section (g) below ~~plans which were approved in accordance with subsection 1. above~~.

~~(c) The grant application must be complete and must contain all of the information required in Section 339.2405(11), Florida Statutes. The applicant may make corrections, additions, or deletions to the grant application and resubmit the grant application at any time prior to the due date as required in subparagraph 4. below.~~

(d) ~~Grant applications may be submitted at any time of the year.~~ In order for the FHBC to consider a grant application for any Department fiscal year, ten paper copies or an electronic file copy of the completed grant application and supporting documents must be received by the Grant Coordinator ~~appropriate District Maintenance Engineer~~ by February 1 of the ~~prior~~ Department fiscal year. When requested by the Grant Coordinator ~~District Maintenance Engineer~~, additional copies will be provided. Incomplete grant applications, or grant applications that do not comply with state or federal regulations, will be returned to the applicant. An applicant may amend and resubmit any returned grant application by the February 1 deadline ~~for consideration for a future fiscal year~~. ~~Grant applications which are not accompanied by an approved set of plans will not be considered complete~~. ~~Accordingly, it is the responsibility of the applicant to submit plans for approval under subsection 1. in time to allow approval prior to the grant application submittal deadline for the appropriate Department fiscal year.~~

(e) In accordance with Section 215.01, Florida Statutes, the Department's fiscal year begins on July 1 and ends on June 30.

(f) Applicants may submit an unlimited number of grant applications ~~requests~~, for any number of project sites.

(g) The applicant's governing body must have passed a resolution approving the grant application and authorizing the individual who signs the grant application for the applicant ~~local government~~ to execute agreements and documents associated with the grant ~~request~~, including a ~~Highway Beautification~~ g~~G~~rant a~~A~~greement. A copy of such resolution must ~~shall~~ be included with the application.

~~(3) Award of Grants.~~

~~(a) The FHBC must provide the Department a list of prioritized projects with recommended funding levels by the first day of the fiscal year. In order to distribute the available funds to the greatest number of applicants, each grant award must be limited to a maximum of 10% of the total FHBC grants budget, or $25,000, whichever is greater.~~

~~(b) Offers of grant awards must be made by the Department by certified letter to the applicant named in the grant application, detailing the grant award.~~

~~(c) An applicant must accept a grant by sending a letter of acceptance by certified mail to the Department's District Secretary, with copies to the Department's District Maintenance Engineer and the FHBC staff coordinator, within 15 days from the date of receipt of the offer of the award.~~

~~(d) No funds will be released by the Department until the Grant Agreement and any construction and maintenance agreements are executed.~~

~~(e) All funding of grants is contingent upon legislative appropriations.~~

~~(4) Execution of Grant Agreement.~~

~~(a) It will be the responsibility of the applicant to ensure that the Grant Agreement and any other construction and maintenance agreements associated with the grant proposal are fully executed by the applicant within 90 days after the agreements are sent to the applicant by the District. Failure to comply with this requirement will result in the grant offer being withdrawn. The grant may be awarded to another applicant. Grant applications from an applicant who fails to comply with this subsection will not be accepted for a period of two grant years.~~

~~(b) The Grant Agreement between the applicant and the Department must state:~~

~~1. The intended use of the grant, as described in the grant application.~~

~~2. The payment terms for the grant (e.g., lump sum reimbursement or progress payments for long term work).~~

~~3. Any actions which the Department will take in the event of noncompliance by the applicant.~~

~~4. The methods to be used by the Department to determine compliance with the terms of the grant and the agreement.~~

Specific Authority 339.2405 ~~334.044(2), 337.2505(1)~~ FS. Law Implemented ~~335.167, 337.405,~~ 339.2405 FS. History–New 1-19-99, Amended 11-22-01, _____.

14-40.021 Funding, Construction, and Maintenance of Beautification Projects.

Specific Authority 334.044(2), 337.2505(1) FS. Law Implemented 335.167, 337.405, 339.2405 FS. History–New 1-19-99, Amended 11-22-01, Repealed _____.

14-40.022 Florida Highway Beautification Council Grant Process.

~~This rule sets forth the FHBC's process for evaluating and ranking applications for grants, pursuant to Section 339.2405(7)(a)4., Florida Statutes.~~

(1) The FHBC will consider ~~develop a prioritized list, ranked in numerical order, of~~ all grant applications submitted by each Grant Coordinator ~~reported to be sufficient by the Department's District Maintenance Engineer~~.

(a) The FHBC will evaluate the applications based on the following attributes:

1. Aesthetic value, imaginative concept and ~~Appropriateness of the~~ design ~~for the location~~.

2. Level of local support and community involvement. ~~Use of desirable native, hybrid native, or naturalized plant materials.~~

3. Cost effectiveness. ~~Use of wildflowers.~~

4. Feasibility of installation and maintenance. ~~Irrigation requirements matched to plant needs and water conservation requirements, including Xeriscape practices.~~

5. Contribution to improvement of environmental conditions, including litter prevention, erosion control, visual screening, and noise abatement. ~~Emphasis on low maintenance requirements.~~

6. Use of Florida native wildflowers, and diversity of other desirable native, hybrid native, or noninvasive plant species. ~~Aesthetic values.~~

7. Emphasis on low maintenance, irrigation, and water conservation. ~~Contribution to noise abatement, visual screening, litter prevention, or the correction of other environmental problems.~~

8. Use of recycled materials such as mulch, reuse water, or solid yard waste compost. ~~Evidence of local governmental and community support.~~

9. Contribution to an area wide or regional beautification plan. ~~Use of imaginative design concepts.~~

~~10. Provisions for minimal impacts on traffic safety during maintenance operations.~~

~~11. Contribution to an area wide or regional beautification plan.~~

~~12. Cost effectiveness.~~

~~13. Feasibility of installation and maintenance.~~

~~14. Demonstration of the use of environmentally sensitive materials, such as solid yard waste compost or the use of reuse water, in the construction or maintenance of the project for which a Florida Department of Environmental Protection permit is required.~~

10.~~15.~~ Value to the community.

(b) The FHBC will assign a numerical score to each application by:

1. Reviewing each application and assigning a numerical score using the established ~~Establishing a~~ range of 0 to 10 points for each attribute for a total possible score of 100 ~~150~~ points.

~~2. Reviewing each application and assigning a numerical score in the established range for each attribute.~~

2.~~3.~~ Totaling ~~Summing~~ all the attribute scores for a total application numerical score.

(c) Applications will be ranked in priority by numerical score, the highest numerical score being ranked the highest priority.

~~(d) Applicants that have not maintained their landscape projects according to the terms of a Grant Agreement, and any construction or maintenance agreements, and have not corrected deficiencies within the allotted time addressed by the agreement, shall not be eligible for a grant for a two-year period.~~

(2) The FHBC will provide the Department with a list of prioritized applications ~~projects~~, with recommended funding levels, and conditions for grant awards, by the first day of the fiscal year in which the funds are available.

Specific Authority 339.2405 FS. Law Implemented ~~335.167,~~ 339.2405~~(7)(a)4.~~ FS. History–New 3-9-99, Amended 11-22-01, _____.

14-40.023 Funding, Construction, and Maintenance of Beautification Projects.

(1) Award of Grants.

(a) Each grant will be limited to a maximum of 10% of the total Department's FHBC grants budget. Applicants are encouraged to submit applications for projects supported with equal (50%) matching funds from other sources. Other match percentages will be considered.

(b) Official notice of each grant award will be made by the Department by certified mail to the applicant named in the grant application.

(c) To accept a grant, an applicant must send a letter of acceptance by certified mail to the Grant Coordinator within 15 days from the date of receipt of the offer of the award.

(d) Funds will be released by the Department when the grant agreement and any construction and maintenance agreements are executed, the project is constructed as per plans approved by the Department (see Part I of this Rule Chapter), there is written final acceptance by the Department, and receipts for grant expenses are reviewed and approved by the Department.

(e) All funding of grants is contingent upon legislative appropriations.

(2) Execution of Grant Agreements.

(a) The applicant must execute a grant agreement within 90 days after the agreement is received from the Grant Coordinator. Construction and maintenance agreements associated with the grant must be executed within one year from date of grant agreement, and meet the requirements of paragraph 14-40.003(3)(c), F.A.C. Failure to execute the required agreements will result in the grant award being withdrawn. Future grant applications from an applicant who fails to comply with this subsection will not be accepted for a period of two fiscal years.

(b) The grant agreement between the applicant and the Department must state:

1. The intended use of the grant, as described in the grant application.

2. The payment terms for the grant (e.g., lump sum reimbursement or progress payments for long term work).

3. Any actions which the Department will take in the event of noncompliance by the applicant.

4. The methods to be used by the Department to determine compliance with the terms of the grant and the agreement.

(c) The individual(s) who sign the agreements on behalf of the grant applicant, or the grant applicant's designee, shall certify that the project is implemented as specified in the grant agreement, and any construction and maintenance agreements, and shall provide a certification of completion before the final invoices are submitted for the project.

Specific Authority 339.2405 FS. Law Implemented 339.2405 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jeff Caster, State Transportation Landscape Architect

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Thomas F. Barry, Jr., P.E., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 5, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 8, 2002

DEPARTMENT OF CORRECTIONS

RULE TITLE:	RULE NO.:
Inmate Grievances – Training Requirements	33-103.003

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to correct an office title and provide a cross-reference for a previously incorporated form.

SUMMARY: The proposed rule provides correction of an office title and a cross-reference for a previously incorporated form.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 20.315, 944.09 FS.

LAW IMPLEMENTED: 944.09 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

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

THE FULL TEXT OF THE PROPOSED RULE IS:

33-103.003 Inmate Grievances – Training Requirements.

(1) Staff Training. The staff development section within the Bureau of Human Resources ~~Staff Development~~ shall develop and implement a standardized plan to train staff in the use of the inmate grievance procedure. The training shall be designed to familiarize staff with the provisions of Chapter 33-103, F.A.C., and the standardized forms utilized in the grievance procedure. Staff training is governed by Chapter 33-209, F.A.C.

(a) through (b) No change.

(c) The provision of training shall be documented on Form DC2-901, Training Attendance Report. Form DC2-901 is incorporated by reference in Rule 33-103.019, F.A.C.

(2) No change.

Specific Authority 20.315, 944.09 FS. Law Implemented 944.09 FS. History–New 10-12-89, Amended 1-15-92, 4-10-95, 12-7-97, Formerly 33-29.003, Amended 8-1-00, 10-11-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Celeste Kemp

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 2, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 15, 2002

DEPARTMENT OF CORRECTIONS

RULE TITLES:	RULE NOS.:
Youthful Offenders – Definitions	33-601.220
Youthful Offender Program Participation	33-601.226

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify definitions used in conjunction with the youthful offender program and the process for making requests for sentence modification.

SUMMARY: The proposed rule clarifies definitions used in conjunction with the youthful offender program and the process for making requests for sentence modification.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 958.11 FS.

LAW IMPLEMENTED: 958.11, 958.12 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

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

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.220 Youthful Offenders – Definitions.

(1) through (3) No change.

(4) Inmate Management Plan (IMP) – refers to the individualized plan developed for each inmate based upon information collected from various risk and needs assessments and other documents or reports that identify deficiencies ~~ICT decisions~~. The plan establishes specific goals and performance objectives for meeting assessed needs in program, work and adjustment areas ~~is used to make priority program or work placement recommendations, develop objectives and set timelines for accomplishments~~.

(5) Release Placement ~~Management~~ Plan – refers to a report prepared by the Office of Community Corrections field office staff outlining information relative to the inmate's proposed employment, residence, family ties or support system, financial resources and other resources available to the inmate upon release.

(6) No change.

(7) Institutional Classification Team (ICT) – refers to the team consisting of the warden or assistant warden, classification supervisor, and chief of security ~~and other necessary staff when appointed by the warden or designated by rule,~~ which is responsible for making work, program, housing and inmate status ~~classification~~ decisions at a facility and for making other recommendations to the State Classification Office (SCO).

(8) No change.

(9) Youthful Offender – where used herein, refers to any person who is sentenced as such by the court or is classified as such by the department pursuant to s. 958.04, F.S.

Specific Authority 944.09, 958.11 FS. Law Implemented 944.09, 958.11 FS. History – New 3-13-01, Formerly 33-506.100, Amended _____.

33-601.226 Youthful Offender Program Participation.

(1) through (2) No change.

(3) Successful participation in all phases of the youthful offender extended day program and successful completion of the offender management plan and reclassification to minimum or community custody will result in an evaluation by the ICT to determine the inmate's eligibility for a recommendation to the court for a modification of sentence at any time prior to the scheduled expiration of sentence as provided in s. 958.04(2)(d), F.S. Requests for sentence modification will not be made before successful completion of the extended day program.

(a) After the youthful offender has successfully participated in the youthful offender program and completed the IMP as developed, a complete evaluation of the case shall be initiated. The evaluations shall include a review and summary of the following areas:

1. through 3. No change.

4. Work assignments which would assist the youthful offender in obtaining future employment;

5. through 9. No change.

(b) The evaluation of the youthful offender's eligibility for a recommendation for a modification of sentence shall be coordinated by the institutional classification staff and incorporated into a complete progress report ~~assessment~~. The completed progress report ~~assessment~~ shall be reviewed and, once approved, signed by the ICT and a representative of the SCO.

(c) Prior to making a recommendation for sentence modification, the inmate's classification officer shall send a Victim Input Statement, Form DC1-701B, to the victim(s) or the victims' family for comments regarding the release of the inmate. Form DC1-701B 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 _____.

(d) Once the inmate has been approved by the ICT and the SCO for a recommendation for sentence modification, a request for initiation of a Youthful Offender's Release Placement Plan, Form DC6-121, shall be made to the community corrections office in the county where the inmate plans to reside. The community corrections office in the county where the inmate plans to reside shall complete the placement release plan and return it to the requesting institution. Form DC6-121 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 _____.

(e) The sentence modification package shall include at a minimum the following:

1. The completed release placement plan that has been verified by community corrections field staff;

2. The completed victim input statement forms;

3. A progress report with justification for sentence modification;

4. An order of modification of sentence placing defendant on probation prepared by the classification officer for the judge's signature;

5. A completed Defendant's Waiver of Rights to Modify Sentence and Place Defendant on Probation, Form DC3-235. Form DC3-235 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 _____.

(f) The completed sentence modification package shall be forwarded to the Bureau of Classification and Central Records for review by the central office screening committee.

(g)~~(c)~~ ~~Upon the approval of the ICT and SCO, recommendation for sentence modification shall be forwarded to the Chief of the Bureau of Classification and Central Records for review by~~ T~~t~~he central office screening committee ~~who~~ shall review the sentence modification request for completeness and shall make a written recommendation~~. If approved by the central office screening committee, the recommendation will be forwarded~~ to the Deputy Director of the Office of Institutions (classification) to approve or disapprove the request ~~for review~~.

1. If the Deputy Director concurs with the recommendation for sentence modification, the Chief of the Bureau of Classification shall transmit a written request ~~recommendation~~ to the sentencing judge to consider modifying the inmate's sentence ~~court for consideration~~.

2. If the Deputy Director does not concur with the recommendation for sentence modification, the Chief of Classification will notify the ICT at the facility where the inmate is housed. The ICT will notify the inmate of the decision.

(h)~~(d)~~ No change.

Specific Authority 958.11(1) FS. Law Implemented 958.11, 958.12 FS. History–New 10-11-95, Amended 9-11-97, Formerly 33-33.013, Amended 3-13-01, Formerly 33-506.106, Amended 4-2-02, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jerry Vaughan

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 2, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 8, 2002

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Construction Industry Licensing Board

RULE TITLE: RULE NO.:

Fees 61G4-12.009

PURPOSE AND EFFECT: The Board proposes to revise the existing rule to bifurcate the fees for application and examination and reduce the fee charged for subsequent examination.

SUMMARY: The rule amendments will divide the fee for application for certification between the examination cost component and the application component. The applicant will pay the examination fee directly to the contract vendor of the examination and the remaining portion of the fee will be paid directly to the Department. The initial application and examination fee has been reduced to Three Hundred Thirty-Eight dollars ($338.00) while the fee for taking a subsequent examination after initial failure has been reduced from $200 to $138.

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

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

SPECIFIC AUTHORITY: 455.213(2), 455.217(2), 455.219(1), 455.271(8), 489.108, 489.118 FS.

LAW IMPLEMENTED: 119.07(1)(a), 455.213(2), 455.217(2), 455.219(1), 455.271(7),(8), 489.109 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Robert Crabill, Executive Director, Construction Industry Licensing Board, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G4-12.009 Fees.

The following fees are prescribed by the Board:

(1) Application for Certification by Examination; Refund.

(a) The application and examination fee for an applicant for certification ~~the certification examination~~ shall be three hundred thirty-eight dollars ($338) ~~fifty dollars ($350.00)~~ and shall be nonrefundable. Said fee shall cover both the processing of the application for certification and the administration of the examination. The applicant will pay one hundred thirty-eight dollars ($138) directly to the examination vendor upon scheduling of the examination. The applicant will pay the Department two hundred dollars ($200) to cover examination administration and for processing of the application after they have successfully passed the examination.

(b) For an unsuccessful examinee or approved applicant who failed to appear at the examination, the fee for the next subsequent examination shall be one hundred thirty-eight dollars ($138) and paid directly to the examination vendor upon scheduling of the examination ~~three hundred dollars $300)~~. The one hundred thirty-eight dollar ($138) ~~three hundred dollar ($300)~~ fee shall be nonrefundable.

(2) The application fee for registration shall be $100.

(3) Biennial Renewal; Fees.

(a) The biennial renewal fee for certification and registration shall be two hundred dollars ($200).

(b) The biennial renewal for certification and registration on inactive status shall be fifty dollars ($50).

(c) The biennial renewal for certification and registration where said licensees are building code administrators, plans examiners or inspectors certified pursuant to Part XII of Ch. 468, F.S., who are employed by a local government, and who are not allowed by the terms of such employment to maintain a certificate on active status, shall be fifty dollars ($50).

(4) Initial License; Fees.

(a) The initial certification or registration fee for registrants shall be two hundred dollars ($200). However, any initial certification or registration fee for registrants remitted within the second year of a biennium shall be one hundred

dollars ($100). Said fee shall apply to the partial period only; all subsequent biennial renewal fees shall be in accordance with subsection (3) above.

(b) The initial designation fee for financially responsible officers shall be two hundred dollars ($200).

(5) The fee to transfer a license from one business entity to another shall be fifty ($50.00) dollars.

(6) The application fee for reactivation of an inactive certification or registration shall be one hundred dollars ($100).

(7) The fee for the review of an examination pursuant to the provisions of Chapters 455 and 489, Florida Statutes, shall be seventy-five dollars ($75.00).

(8) The fee for a duplicate copy of a previously issued license shall be twenty-five dollars ($25.00).

(9) The fee to transfer a registration or certification from active to inactive status shall be fifty ($50.00) dollars.

(10) Certification and Registration of Business Organizations.

(a) The application and initial issue of certification or registration for a business organization shall be fifty dollars ($50.00).

(b) The biennial renewal fee for a certification or registration issued to a business organization shall be fifty dollars ($50.00).

(11)(a) Pursuant to Section 455.271(7), F.S., the delinquency fee for certification or registration shall be one hundred dollars ($100.00).

(b) Pursuant to Section 455.271(7), F.S., the delinquency fee for qualified business organizations shall be fifty dollars ($50.00).

(12)(a) Pursuant to Section 455.271(8), F.S., the fee for processing a licensee's request to change licensure status at any time other than at the beginning of a licensure cycle shall be fifty ($50.00) dollars.

(b) Pursuant to Section 455.271(8), F.S., the fee for processing a request for a change of status for a qualified business organization at any time other than at the beginning of a licensure cycle shall be fifty ($50.00) dollars.

(13) The application fee for certification of a registered contractor pursuant to Section 489.118, F.S. shall be $100.00.

Specific Authority 455.213(2), 455.217(2), 455.219(1), 455.271(8), 489.108, 489.118 FS. Law Implemented 119.07(1)(a), 455.213(2), 455.217(2), 455.219(1), 455.271(7),(8), 489.109 FS. History–New 10-1-79, Formerly 21E-12.01, Amended 1-6-80, 12-16-80, 3-15-81, 5-31-81, 11-14-82, 4-3-84, Formerly 21E-12.09, Amended 2-4-87, 1-26-88, 6-21-88, 9-19-88, 4-18-89, 5-23-89, 8-23-89, 5-29-90, 3-20-91, 12-21-92, 1-28-93, 7-14-93, Formerly 21E-12.009, Amended 7-18-94, 6-27-95, 8-29-95, 9-18-96, 2-4-98, 2-10-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Construction Industry Licensing Board

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Construction Industry Licensing Board.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 11, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 18, 2002

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Construction Industry Licensing Board

RULE TITLE: RULE NO.:
Qualification for Certification 61G4-15.001

PURPOSE AND EFFECT: The Board proposes to change the existing rule to clarify the language regarding applicants for certification.

SUMMARY: The amendments to the rule establish that eligibility for certification as a contractor will be established at the time of application for certification not at the time of applying to sit for the certification examination.

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

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

SPECIFIC AUTHORITY: 489.111 FS.

LAW IMPLEMENTED: 489.111 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Executive Director, Construction Industry Licensing Board, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G4-15.001 Qualification for Certification.

(1) An applicant who for ~~who wishes to take the~~ certification ~~examination~~ must, as a precondition thereto, submit proof that he meets the eligibility requirements set forth in Section 489.111(2)(c), Florida Statutes, for the particular category in which he seeks to qualify. An applicant who seeks to meet the educational standard set forth in Section 489.111(2)(c)1., 2., or 3., Florida Statutes, must direct the college, university, junior college, or community college which he attended to submit proof to the Department that the applicant received the requisite amount of education. Active experience in the category in which the applicant seeks to qualify shall be verified by affidavits prepared or signed by a state certified Florida contractor, or an architect or engineer who is licensed in good standing or a licensed building official employed by a political subdivision of any state, territory or possession of the United States who is responsible for

inspections of construction improvements, listing chronologically the active experience in the trade, including the name and address of employers and dates of employment (which may be corroborated by investigation by the Board). Said affidavit shall be subscribed to in front of a notary.

(2)(a) In the case of applicants for ~~wishing to take the~~ certification ~~examination~~ in the general or building contractor categories, the phrases "active experience" and "proven experience" as used in Section 489.111(2)(c)1., 2., or 3., Florida Statutes, shall be defined to mean construction experience in four or more of the following areas:

1. Foundation/Slabs
2. Masonry walls
3. Steel erection
4. Trusses
5. Structural wood framing (excluding platform framing)
6. Column erection
7. Formwork for structural reinforced concrete

(b) An applicant (other than those contractors designated in Section 489.111(2)(c)4.b. and c.) for ~~wishing to take the~~ certification ~~examination~~ in the general contractor classification must submit proof that he possesses at least one year of "active experience" or "proven experience" as defined above in the construction of structures not less that four stories in height.

(3) In the case of applicants for ~~wishing to take the~~ certification ~~examination~~ in the residential contractor category, the phrases " active experience" and "proven experience" as used in Section 489.111(2)(c)1., 2., or 3., Florida Statutes, shall be defined to mean construction experience in four or more of the following areas:

(a) Foundation/Slabs

(b) Masonry Walls

(c) Trusses

(d) Structural Wood Framing (excluding platform framing)

(e) Column erection

(f) Formwork for structural reinforced concrete

(4) In the case of applicants for ~~wishing to qualify for the~~ certification ~~examination~~ under the standard set forth in Section 489.111(2)(c)1., Florida Statutes, the baccalaureate degrees in building construction architecture, or engineering which are considered to be appropriate to the particular classification for which certification is sought shall be as follows:

(a) General, Building, and Residential Classifications: Civil Engineering; Building Construction; Architecture.

(b) Sheet Metal; Class A and B Air Conditioning; Residential Solar Water Heating; Mechanical Classifications: Mechanical Engineering.

(c) Plumbing Classification: Mechanical Engineering or Sanitary Engineering.

(d) Commercial, Residential, and Servicing Pool Classifications: Building Construction or Civil Engineering.

(e) Underground Utility Classification: Building Construction; Civil or Mechanical Engineering.

Specific Authority 489.111 FS. Law Implemented 489.111 FS. History–New 1-6-80, Amended 12-16-80, 6-30-82, 4-11-83, Formerly 21E-15.01, Amended 12-11-90, 8-21-91, 4-16-92, Formerly 21E-15.001, Amended 7-18-94, 12-16-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Construction Industry Licensing Board

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Construction Industry Licensing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 10, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 18, 2002

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Construction Industry Licensing Board

RULE TITLE: RULE NO.:
Examination and Reexamination 61G4-16.009

PURPOSE AND EFFECT: The Board proposes to amend the existing rule to change the time periods for reexamination and to change certain requirements for reexamination.

SUMMARY: The amendments to the existing rule will modify the method of re-examination from being limited by number of attempts to a limit of passing all tests within one year of initial taking of the test; the minimum time period within which to apply for re-taking a failed examination is reduced from sixty to thirty days prior to the exam date; the application to sit for the examination is sent to the examination vendor rather than the Department; submission requirements for personal identification have been changed; and all exam fee references have been amended to cite to the Board's fee rule.

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

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

SPECIFIC AUTHORITY: 455.217(2), 455.219(1), 489.108, 489.129 FS.

LAW IMPLEMENTED: 455.217, 489.109, 489.111 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Executive Director, Construction Industry Licensing Board, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G4-16.009 Examination and Reexamination.

(1)(a) The general areas of competency to be covered by the examination for general, building, residential, sheet metal, roofing, class A and B air conditioning, mechanical, commercial pool/spa, residential pool/spa, swimming pool/spa servicing, plumbing, underground utility and excavation, specialty structure, solar, pollutant storage, gypsum drywall, and gas line contractors, and the relative weight to be assigned in grading each area tested shall be as specified in Rule 61G4-16.001, Florida Administrative Code.

(b) Reexamination.

1. An applicant who fails any of the tests referenced to in paragraph (1)(a) or in Rule 61G4-16.001, F.A.C., above shall be required to pay the reexamination fee as set forth in paragraph (3)(c) below.

2. An applicant shall be required to retake only the tests on which he or she failed to achieve a passing score. However, an applicant must pass all tests within three hundred sixty–five (365) days of the first attempt ~~three attempts of said tests~~; after which time all past test scores of the applicant shall be considered invalid and he or she shall be required to take all parts of the test as specified in Rule 61G4-16.001, Florida Administrative Code ~~to make to make an original application and pay all appropriate fees~~. ~~All three attempts must be completed within a three hundred sixty-five (365) day period. An applicant may avail himself or herself of a maximum of three (3) examination attempts in a three hundred sixty-five (365) day period.~~ This section shall have no effect upon the application requirements set forth in Rule 61G4-12.009 and 16.002, Florida Administrative Code.

3. An applicant who fails the examination in whole or in part may apply to the examination vendor ~~Department~~ to retake said examination no less than thirty (30) ~~sixty (60)~~ days prior to the next administration date provided he or she pays all appropriate fees as set forth in paragraph (3) below.

(2) Manner of Application for Examination. An original application for examination must be received by the examination vendor ~~the Board office~~ at least thirty (30) ~~sixty 60~~ days prior to the administration of the examination the applicant wishes to take. All applicants must present a valid picture identification issued by a governmental agency at the examination site prior to taking the examination. ~~The examination application submitted must be accompanied by the submission of two recent photographs of the applicant (said photos to be no older than twelve (12) months and 1 1/2 x 1 1/2 inches in size).~~

(3) Fees.

(a) All application and examination fees submitted for examination administration are non-refundable.

(b) The original application and examination fee ~~for examination administration~~ shall be the same as specified in Rule 61G4-12.009(1)(a), Florida Administrative Code ~~three hundred fifty ($350)~~. Said fee shall cover both the processing of the application and the administration of the examination.

(c) The reexamination fee shall be the same as specified in Rule 61G4-12.009(1)(b), Florida Administrative Code ~~three hundred dollars ($300)~~. Said fee shall cover both the processing of the application and the administration of the examination.

(d) The fee for initial licensure shall be the same as specified in Rule 61G4-12.009(4), Florida Administrative Code. Said fee may be submitted along with the application for the examination and is refundable should the applicant fail to pass said examination.

(4) The only paper that shall be graded in a certification examination is the official answer sheet. No credit shall be given for answers written in an examinee's booklet.

Specific Authority 455.217(2), 455.219(1), 489.108, 489.129(2) FS. Law Implemented 455.217, 489.109, 489.111 FS. History–New 2-25-93, Formerly 21E-16.009, Amended 10-17-93, 7-20-94, 11-25-97, 9-15-99, 4-26-00, 10-24-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Construction Industry Licensing Board

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Construction Industry Licensing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 10, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 18, 2002

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Employee Leasing Companies

RULE TITLE: RULE NO.:

Notification of Initiation or Termination of Contractual Relationship 61G7-10.0013

PURPOSE AND EFFECT: The Board proposes to amend the rule to incorporate an updated form DBPR-EL-4502 – Client Initiation or Termination Form.

SUMMARY: This rule sets out the statutory requirements for notification by and employee leasing company to the Division of Workers' Compensation and the Division of Unemployment Compensation of the Department of Labor and Employment Security, of the initiation or termination of any contractual relationship with a client company.

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

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

SPECIFIC AUTHORITY: 468.522 FS.

LAW IMPLEMENTED: 468.520, 468.529(3) FS., as amended by s. 42, Chapter 94-119, Laws of Florida.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Leon Biegalski, Executive Director, Board of Employee Leasing Companies, 1940 North Monroe Street, Tallahassee, FL 32399-0767

THE FULL TEXT OF THE PROPOSED RULE IS:

61G7-10.0013 Notification of Initiation or Termination of Contractual Relationship.

To facilitate each employee leasing company's compliance with its responsibilities under s. 468.529(3), F.S., within a 30-day period each licensed employee leasing company must notify their workers' compensation carrier, the Division of Workers' Compensation and the Division of Unemployment Compensation of the Department of Labor and Employment Security, of the initiation or termination of any contractual relationship with a client company on Form DBPR EL-4502 ~~– DPR/EL-002,~~ entitled ~~"Employee Leasing Company~~ Client Initiation or Termination Form," Effective _____ ~~10-19-94~~, which is incorporated herein by reference and may be obtained by contacting the Board's office.

Specific Authority 468.522 FS. Law Implemented 468.520, 468.529(3) FS., as amended by s. 42, Chapter 94-119, Laws of Florida. History–New 7-20-92, Formerly 21EE-6.005, Amended 10-19-94, Formerly 61G7-6.005, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Employee Leasing Companies

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Employee Leasing Companies

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 18, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 7, 2002

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Engineers

RULE TITLE:	RULE NO.:
Design of Structures Utilizing Prefabricated Wood Trusses	61G15-31.003

PURPOSE AND EFFECT: The Board proposes to update its wood components (Wood Truss) rule based upon a consultant's study and workshops and meetings involving the Board, its consultant and representatives of the Wood Truss industry.

SUMMARY: The amendments to the rule clarify the responsibilities of the Structural Engineer of Record and the Truss Designer while confirming the responsibility requirements for truss design and a signed and sealed truss placement plan.

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

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

SPECIFIC AUTHORITY: 471.008, 471.033(2) FS.

LAW IMPLEMENTED: 471.033(1)(g) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Natalie Lowe, Board Administrator, Florida Board of Professional Engineers, 2507 Callaway Road, Suite 200, Tallahassee, Florida 32303

THE FULL TEXT OF THE PROPOSED RULE IS:

61G15-31.003 Design of Structures Utilizing Prefabricated Wood Trusses ~~Components~~.

(1) When a Structural Engineer of Record (Building Designer) and a Delegated Engineer (Truss Designer) exist as may be determined by applicable Florida law, the ~~A~~apportionment of responsibilities between the Structural Engineer of Record (Building Designer) and the Delegated Engineer (Truss Designer) shall be as set forth in Chapter 2 of ANSI/TPI 1-1995. When there is no Structural Engineer of Record (Building Designer), then the engineer responsible for the design of prefabricated wood trusses is not a Delegated Engineer and shall be governed by applicable provisions of Chapter 61G15, F.A.C.

(2) In the case of a truss design package, a cover or index sheet may be signed and sealed in lieu of signing and sealing each individual sheet, provided that the cover or index sheet contains the following information:

(a) The name, address and license number of the Structural Engineer of Record (Building Designer) and the Delegated Engineer (Truss Designer). If there is no Structural Engineer of Record (Building Designer), the name, address and license number of the engineer responsible for the design of the trusses shall be included ~~Engineer of Record for the truss design package~~.

(b) Identification of the project by address or by lot number, block number, section or subdivision and city or county ~~name of the authority having jurisdiction (City, County), the loads, and the name and date of the applicable building code that the truss design is intended to meet and all loads imposed on the structure~~.

(c) Identification of the applicable building code and chapter(s) that the truss design is intended to meet**.** Truss engineering design criteria and truss design loading shall be included ~~with full identification of the source of the criteria. The source will be either the Engineer of Record (if there is an Engineer of Record for the structural engineering documents), or the engineer employed by the truss manufacturer. If there is an Engineer of Record for the structural engineering documents, that engineer shall be identified with his/her name, license number and address, along with a check mark to ensure that the drawings have been reviewed as required by Rule 61G15-30.006(3), F.A.C.~~

~~(d) A truss layout plan by the Engineer of Record showing the location and designation of each component.~~

(d)~~(e)~~ Identification of the computer program used for engineering the trusses.

(e)~~(f)~~ An index of the attached truss design drawings. The naming and numbering system utilized for the drawings shall be clear as to how many drawings there are in the set and the date and sequence number of each of these drawings shall be included.

(f)~~(g)~~ Each of the drawings in the package shall include ~~bear~~ a title block bearing the printed name, address, and license number of the engineer responsible for the design of the trusses ~~Engineer of Record for the truss design~~ and the date of the drawing.

(3) A truss placement plan showing the location and designation of each component shall accompany the truss design package**.** The truss placement plan shall be signed and sealed by either the Structural Engineer of Record (Building Designer) or by the Delegated Engineer (Truss Designer) when a Structural Engineer of record (Building Designer) exists. When no Structural Engineer of Record (Building Designer) exists, the truss placement plan shall be signed and sealed by the engineer in responsible charge of the design of the trusses and/or the preparation of the truss placement plan.

(4) When there is a Structural Engineer of Record (Building Designer), he shall provide design requirements in writing to the Delegated Engineer (Truss Designer) and shall review the Delegated Engineering Documents for conformance to his written instructions in accordance with Chapter 61G15-30.005, F.A.C.

Specific Authority 471.008, 471.033(2) FS. Law Implemented 471.033(1)(g) FS. History–New 1-26-93, Formerly 21H-31.003, Amended 6-16-99, 3-21-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Professional Engineers

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 22, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 18, 2002

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DOCKET NO.: 02-31R

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Water Resource Implementation Rule	62-40
RULE TITLES:	**RULE NOS.:**
Declaration and Intent	62-40.110
Department Rules	62-40.120
Definitions	62-40.210
General Policies	62-40.310
Water Supply Protection and Management	62-40.410
Water Shortage	62-40.411
Water Conservation	62-40.412
Water Reuse and Recycling	62-40.416
Interdistrict Transfer	62-40.422
Watershed Management	62-40.425
Water Quality	62-40.430
Stormwater Management Program	62-40.431
Surface Water Management Regulation	62-40.432
Flood Protection	62-40.450
Floodplain Protection	62-40.458
Natural Systems Protection and Management	62-40.470
Minimum Flows and Levels	62-40.473
Reservations	62-40.474
Protection Measures for Surface Water Resources	62-40.475
Florida Water Plan	62-40.510
District Water Management Plans	62-40.520
Regional Water Supply Plans	62-40.531
Water Data	62-40.540
Review and Application	62-40.610

PURPOSE, EFFECT AND SUMMARY: The proposed rule will substantively amend most sections of Chapter 62-40, the Water Resources Implementation Rule, to incorporate statutory changes enacted in 1997, 1998 and 1999 relating to watershed management, "local sources first," minimum flows and levels, and regional water supply planning. New sections are proposed to address water shortages (62-40.411), watershed management (62-40.425), reservations of water (62-40.474), and regional water supply plans (62-40.531). Additional amendments are proposed to address topics including water conservation, reuse of reclaimed water, water supply, the Florida Water Plan, and District Water Management Plans. Rule 62-40.475 concerning the implementation of protection measures for surface water resources is repealed because the concepts are integrated into the rule elsewhere in this chapter.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Yvonne Zola, Florida Department of Environmental Protection, 2600 Blair Stone Road, Mail Station 46, Tallahassee, Florida 32399-2400, (850)245-8676, e-mail yvonne.zola@dep.state.fl.us, facsimile (850)245-8686

Pursuant to Section 120.551, F.S., the full text of this notice is published in the Department's official notice Internet site at www.dep.state.fl.us under the link titled "Official Notices."

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DOCKET NO.: 02-11R

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Drinking Water Standards,
Monitoring, and Reporting 62-550

RULE TITLE: RULE NO.:
Consumer Confidence Reports 62-550.824

SUMMARY: The Department is developing rule amendments to clarify and update consumer confidence report (CCR) requirements for public water systems.

Rule 62-550.824 is being amended to make this rule consistent with 40 CFR 141, Subpart O – Consumer Confidence Reports, to clarify the reporting of analytical results, to include informational and educational statements, to incorporate by reference the *FRWA/DEP CCR Template Instructions and Template*, to clarify reporting requirements for community water systems issued variances and exemptions, to revise requirements for Internet distribution of CCRs, and to clarify CCR distribution requirements. A Notice of Proposed Rulemaking is being issued concurrently with this notice for proposed revisions to Forms 62-555.900(19) and (21).

The full text of this notice is published on the Internet at the Department of Environmental Protection's home page at http://www.dep.state.fl.us/ under the link or button titled "Official Notices."

For more information, contact: Greg Parker, P.E., (850)245-8635.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DOCKET NO.: 02-12R

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Permitting and Construction of
Public Water Systems 62-555

RULE TITLE: RULE NO.:
Forms and Instructions 62-555.900

SUMMARY: The Department is developing rule amendments to clarify and update consumer confidence report (CCR) requirements for public water systems. Changes to Forms 62-555.900(19) and (21) will be necessary to reflect the proposed amendments.

The full text of this notice is published on the Internet at the Department of Environmental Protection's home page at http://www.dep.state.fl.us/ under the link or button titled "Official Notices."

For more information, contact: Greg Parker, P.E., (850)245-8635.

DEPARTMENT OF HEALTH

Biomedical Research Advisory Council

RULE TITLE: RULE NO.:
Biomedical Research Grant Applications 64H-1.001

PURPOSE AND EFFECT: Amendment to this rule is necessary to incorporate the updated manual and forms required to apply for research grants under the Florida Biomedical Research Program, pursuant to the provisions of Section 215.5602, F.S. The documents were amended for the 2002 grant application process. Language in the rule that specifies types of research is being stricken because there are other types of research being added to the program.

SUMMARY: The proposed rule amendment incorporates updated versions of the Grant Application Manual and the Grant Application Form and strikes language to accommodate additional types of research for which application may be made.

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

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

SPECIFIC AUTHORITY: 215.5602(9) FS.

LAW IMPLEMENTED: 215.5602(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:

TIME AND DATE: 1:00 p.m. – 2:00 p.m. (EST), January 13, 2003

PLACE: Department of Health, Prather Building, Conference Room 135Q, 2585 Merchants Row Boulevard, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Susan Phillips, Florida Biomedical Research Program, Department of Health, 4052 Bald Cypress Way, Bin #A07, Tallahassee, FL 32399-1708, (850)245-4527

THE FULL TEXT OF THE PROPOSED RULE IS:

64H-1.001 Biomedical Research Grant Applications.

Grant applications ~~for Investigator-Initiated Research Projects and New Investigator Research Projects~~ shall be conducted in accordance with the Grant Application Manual dated September 9, 2002 ~~January 2002~~, incorporated by reference herein. Application must be submitted on the Biomedical Research Program Grant Application Form DH 2117, 7/02 ~~2/01~~, incorporated by reference herein.

Specific Authority 215.5602(9) FS. Law Implemented 215.5602(5) FS. History–New 3-11-02, Amended _____.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Economic Self-Sufficiency Program

RULE TITLE: RULE NO.:
Food Stamp Program Issuance 65A-1.604

PURPOSE AND EFFECT: Section 409.942, F.S., established the Electronic Benefit Transfer (EBT) program. This rule amendment changes food stamp issuance policies to reflect the Electronic Benefit Transfer (EBT) system as the department's method of benefit issuance. The EBT system is a means of electronically providing state administered food stamp benefits to eligible participants. The EBT system was gradually implemented in Florida beginning in 1997, with statewide implementation completed in 1998.

SUMMARY: This rule amendment updates the process for the issuance of food stamps to the EBT system. Under the Electronic Benefit Transfer system, the participant uses a machine-readable access card to authorize the transfer of government benefits from a federal or state account to a retailer account to pay for products received.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 414.45 FS.

LAW IMPLEMENTED: 409.942, 414.31 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., December 23, 2002

PLACE: 1317 Winewood Boulevard, Building 3, Room 100, Tallahassee, Florida 32399-0700

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND ECONOMIC STATEMENT IS: Audrey Mitchell, Program Administrator, Public Assistance Policy, Policy Support Unit, 1317 Winewood Boulevard, Building 3, Room 406-A, Tallahassee, Florida 32399-0700, telephone (850)488-3090

THE FULL TEXT OF THE PROPOSED RULE IS:

(Substantial rewording of Rule 65A-1.604 follows. See Florida Administrative Code for present text.)

65A-1.604 Food Stamp Program Issuance.

(1) Food Stamps are issued through the Electronics Benefits Transfer (EBT) system.

(2) Benefit Availability.

(a) Food stamp availability dates will be staggered over the first 15 days of each month. Benefit availability to assistance groups (AGs) is based on the terminal digits of the AG's case number. AGs are able to receive their monthly allotment on their assigned availability date or any subsequent day in that month. Food stamp benefits placed in the EBT account may be accessed for 365 days following their being made available in the account.

(b) The EBT system supports mass overrides of benefit availability dates in instances of disasters or other emergencies, in which an executive decision approves override of benefit availability policies. This permits clients in areas where hurricanes or other disasters are threatening to be able to access their benefits earlier to prepare for such events.

Specific Authority 414.45 FS. Law Implemented 414.31 FS. 409.924 FS. History–New 1-31-94, Formerly 10C-1.604. Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rodney Mcinnis, Operations Review Specialist

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Audrey Mitchell, Program Administrator, Public Assistance Policy, (850)488-3090

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 14, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 13, 2002

FLORIDA HOUSING FINANCE CORPORATION

RULE TITLES:	RULE NOS.:
Definitions	67-21.002
Application and Selection Process for Loans	67-21.003
Applicant Administrative Appeal Procedures	67-21.0035
Federal Set-Aside Requirements	67-21.004
Public Policy Criteria Requirements and Qualified Resident Programs	67-21.0041
Determination of Method of Bond Sale	67-21.0045
Selection of Qualified Lending Institutions as Credit Underwriters, Originators or Servicers	67-21.005
Development Requirements	67-21.006
Fees	67-21.007
Terms and Conditions of Loans	67-21.008
Interest Rate on Mortgage Loans	67-21.009
Issuance of Revenue Bonds	67-21.010
No Discrimination	67-21.011
Advertisements	67-21.012
Private Placements of Multifamily Mortgage Revenue Bonds	67-21.013
Credit Underwriting Procedures	67-21.014
Use of Bonds with Other Affordable Housing Finance Programs	67-21.015
Compliance Procedures	67-21.016
Transfer of Ownership	67-21.017
Refundings and Troubled Development Review	67-21.018
Issuance of Bonds for 501(c)(3) Entities	67-21.019

PURPOSE AND EFFECT: The purpose of this rule chapter is to establish the procedures by which the Corporation shall administer the Application process, determine bond allocation amounts and implement the provisions of the Multifamily Mortgage Revenue Bond (MMRB) Program authorized by Section 42 of the Code and Section 420.509, Florida Statutes.

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

SUMMARY: Prior to the opening of an Application Cycle, the Corporation (1) researches the market need for affordable housing throughout the state of Florida and (2) evaluates prior Application Cycles to determine what changes or additions should be added to the rule and/or Application. The proposed amendments to the rule and adopted reference material include changes that will create a formulated process for selecting Developments that will apply in the 2003 Application Cycle.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 420.507, 420.508 FS.

LAW IMPLEMENTED: 420.507, 420.508, 420.509 FS.

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

TIME AND DATE: 9:00 a.m., January 10, 2003

PLACE: Tallahassee City Hall, Commission Chambers, 891 South Adams Street, Tallahassee, Florida 32301

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

THE FULL TEXT OF THE PROPOSED RULES IS:

67-21.002 Definitions.

(1) "Acknowledgment Resolution" means the official action taken by Florida Housing to reflect its intent to attempt to finance a Development provided that the requirements of Florida Housing, the terms of the Loan Commitment, and the terms of the Credit Underwriting Report are met. Such official action shall not be taken until Florida Housing has received the information necessary to make the findings required by the Code and the Act.

(2) "Act" means the Florida Housing Finance Corporation Act, Chapter 420, Part V, F.S., as amended.

(3) "Address" means the address assigned by the United States Postal Service and must include address number, street name, city, state and zip code. If the address has not yet been assigned, include, at a minimum, street name and closest designated intersection, city, state and zip code.

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

(5) "Annual Recertification" means the compilation of the gross income of all persons or families in a given development qualified as lower-income residents to continue to meet the requirements established in section 142(d) of the Code.

(6) "Annual Household Income" means the gross income of a person, together with the gross income of all persons who intend to permanently reside with such person in the Development to be financed by Florida Housing, as of the date of occupancy shown on the Income Certification promulgated by Florida Housing.

(7) "Applicant" means any person or entity, for profit or not-for profit, that is seeking a loan from Florida Housing for a multifamily Development and that by submitting an Application has agreed to subject itself to the regulatory powers of Florida Housing.

(8) "Application" means, with respect to the MMRB Program, the completed forms from the Universal Application Package, together with all exhibits submitted to Florida Housing in accordance with the provisions of this rule chapter in order to apply for the Program.

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

(10) "Application Period" means a period during which Applications shall be accepted, as posted on Florida Housing's web site and with a deadline no less than thirty days from the beginning of the Application Period.

(11) "Assisted Living Facility" or "ALF" means a Florida licensed living facility that complies with Sections 400.401 through 400.454, F.S., and Rule Chapter 58A-5, F.A.C.

(12) "Board" or "Board of Directors" means the Board of Directors of Florida Housing.

(13) "Bond Counsel" means the attorney or law firm retained by Florida Housing to provide the specialized services generally described in the industry as the role of bond counsel.

(14) "Bonds" or "Revenue Bonds" means the Bonds of Florida Housing issued to finance Mortgage Loans, including any Bond, debenture, note, or other evidence of financial indebtedness issued by Florida Housing under and pursuant to the Act.

(15) "Bond Trustee" or "Trustee" means a financial institution with trust powers which acts in a fiduciary capacity for the benefit of the bond holders, and in some instances Florida Housing, in enforcing the terms of the Program Documents.

(16) "Calendar Days" means, with respect to computing any period of time allowed by this Rule, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

(17) "Catchment Area" means the geographical area covered under a Local Homeless Assistance Continuum of Care Plan, as designated and revised as necessary by the State Office on Homelessness, in accordance with Section 420.624, F.S.

(18) "Code" is the Internal Revenue Code of 1986, as in effect on the date of this rule chapter, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the Treasury Department or Internal Revenue Service of the United States, and is adopted and incorporated herein by reference.

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

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

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

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

(21) "Contact Person" means the person with whom Florida Housing will correspond concerning the Application and the Development. This person cannot be a third part consultant.

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

(23) "Cost of Issuance Fee" means the fee charged by Florida Housing to the Applicant for the payment of the costs and expenses associated with the sale of Bonds and the loaning of the proceeds, including a fee for Florida Housing.

(24) "Credit Enhancement or Guarantee Instrument" means a letter of credit, third party guarantee, insurance contract or other collateral or security pledged to Florida Housing or its Trustee for a minimum of ten years by a third party Credit Enhancer or financial institution securing, insuring or guaranteeing the repayment of the mortgage loan or Bonds under Florida Housing's Program. A Credit Enhancement or Guarantee Instrument of less than ten years must be approved by the Board prior to being accepted to secure any Bonds.

(25) "Credit Enhancer" means a financial institution, insurer or other third party which provides a Credit Enhancement or Guarantee Instrument acceptable to Florida Housing securing repayment of the Mortgage Loan or Bonds issued pursuant to Florida Housing's Program.

(26) "Credit Underwriter" means the independent contractor under contract with Florida Housing having the responsibility for providing credit underwriting services. Such services shall include, for example, a comprehensive analysis of the Applicant, the real estate, the economics of the Development, the ability of the Applicant and the Development team to proceed, and the evidence of need for affordable housing in order to determine that the Development meets the Program requirements. The Credit Underwriter shall determine a recommended Bond amount that should be made to a Development, whether an initial loan or a refunding.

(27) "Credit Underwriting" means an in-depth analysis of post-cure period information and all documents submitted in connection with the Application to produce the Credit Underwriting Report.

(28) "Credit Underwriting Report" means a report for a particular Development that is produced by the Credit Underwriter designated by Florida Housing and includes a thorough analysis of the proposed Development and a statement as to whether a loan is recommended, and if so, the amount recommended. The Credit Underwriter or Florida Housing may request such additional information as is necessary to properly analyze the credit risk being presented to Florida Housing and the bondholders. The Applicant shall pay the cost of such Credit Underwriting in addition to any other fees payable to Florida Housing in conjunction with the Application and Program financing.

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

(30) "Developer" means the individual, association, corporation, joint venturer or partnership identified as such in the Application. The Developer, as identified in an Application, may not change until the construction of the Development is complete.

(31) "Developer Fee" means the fee earned by the Developer. Such fee shall be limited to 18 percent of Total Development Cost excluding land and, for rehabilitation, building acquisition costs. A Developer Fee on the building acquisition cost shall be limited to 4% of the cost of the building(s) exclusive of land cost. Consulting fees, if any, must be paid out of the Developer Fee. Consulting fees include, but are not limited to, payments for Application consultants, construction management or supervision, or local government consultants. ~~Fees for the Applicant's and Developer's attorney(s) which are in excess of an amount equal to the greater of $40,000 or 0.75% of the total amount of the bonds must also be paid out of the Developer Fee.~~ Fees of the Applicant's or Developer's attorney(s) awarded in conjunction with litigation against Florida Housing with respect to a Development shall also not be included in Total Development Costs. Fees for services provided by architects, accountants, appraisers, engineers or Financial Advisors may be included as part of the Total Development Costs, except that those fees for a Financial Advisor that are in excess of $18,000 must be paid out of the Developer Fee. In the event of extraordinary circumstances, Applicant may petition the Board for relief from the attorney fee and Financial Advisor caps. For the purpose of the HUD Risk Sharing Program, if there exists an Identity of Interest relationship as defined herein between the Applicant or Developer and the General Contractor, the allowable fees shall in no case exceed the amount allowed for the Developer Fees pursuant to the HUD subsidy layering regulations. Florida Housing shall not authorize fees to be paid for duplicative services or duplicative overhead.

(32) "Development" means any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing, whether new construction, the acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing housing, which is intended for use as multifamily rental housing, together with such related non-housing facilities as Florida Housing determines to be necessary, convenient, or desirable. A Development shall constitute a "project" within the meaning of the Act.

(33) "Development Cost" means the total of all costs incurred in the completion of a Development excluding Developer Fee, acquisition cost of existing developments, and total land cost as shown in the Development Cost line item on the development cost pro forma within the Application.

(34) "Difficult Development Area" <u>or "DDA"</u> means any area designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income in accordance with section 42(d)(5) of the Code. <u>A list of the DDAs is adopted and incorporated by reference. A copy of such list is available on FHFC's web site www.floridahousing.org.</u>

(35) "Disclosure Counsel" means the Special Counsel designated by Florida Housing to be responsible for the drafting and delivery of Florida Housing's disclosure documents such as preliminary official statements, official statements, re-offering memorandums or private placement memorandums and continuing disclosure agreements. The fees of Disclosure Counsel shall be set by contract with Florida Housing and shall be paid from the Cost of Issuance Fee or from the Good Faith Deposit submitted with the Loan Commitment.

(36) "Elderly" means persons 62 years of age or older or qualified persons pursuant to the Federal Fair Housing Act and Section 760.29(4), F.S.

(37) "Elderly Housing", "Elderly Development", or "Elderly Unit" means housing or a unit being occupied or reserved for qualified persons pursuant to the Federal Fair Housing Act and Section 760.29(4), F.S., provided that such development meets the requirements for an Elderly Development as set forth in the Universal Application Package.

(38) "Family" or "Family Household" describes a household composed of one or more persons.

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

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

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

(40) "Farmworker Development" means a Development:

(a) Of not greater than 160 units, at least 60% of the total residential units of which are occupied or reserved for Farmworker Households;

(b) For which independent market analysis demonstrates a local need for such housing, and;

(c) For which the Applicant has developed a detailed plan to attract, serve and keep the targeted population.

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

(42) "Financial Advisor" means, with respect to an issue of Bonds, a professional who is either under contract to Florida Housing or is engaged by the Applicant who advises on matters pertinent to the issue, such as structure, timing, marketing, fairness of pricing, terms, bond ratings, cash flow, and investment matters.

(43) "Financial Beneficiary" means any Developer and its principals or the principals of the Applicant entity who receives or will receive a financial benefit of:

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

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

The definition does not include third party lenders, third party management agents or companies, housing credit syndicators, credit enhancers who are regulated by a state or federal agency and who do not share in the profits of the Development or building contractors whose total fees are within the limit described in subsection 67-21.002(48), F.A.C.

(44) "Florida Housing" or "FHFC" means the Florida Housing Finance Corporation as created by the Act.

(45) "Florida Keys Area" means all lands in Monroe County, except:

(a) That portion of Monroe County included within the designated exterior boundaries of the Everglades National Park and areas north of said Park;

(b) All lands more than 250 feet seaward of the mean high water line owned by local, state, or federal governments; and

(c) Federal properties.

(46) "Funding Cycle" means the period of time established by the Corporation pursuant to this rule chapter and concluding with the issuance of allocations or Loans to Applicants who applied during a given Application Period.

(47) "General Contractor" means an entity duly licensed in the State of Florida which to be eligible for the maximum 14% fee, must meet the following conditions:

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

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

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

(d) Payment and performance bond (or approved alternate security for General Contractor's performance, such as a letter of credit or other guarantee acceptable to Florida Housing) must be issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.;

(e) None of the General Contractor duties to manage and control the construction of the Development may be subcontracted; and

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

(48) "General Contractor's Fee" means a fee inclusive of general requirements, profit and overhead. General Contractor's Fees shall be limited to 14 percent of hard costs, excluding any hard cost contingencies. For the purpose of the HUD Risk Sharing Program, if there exists an Indentity of Interest as defined herein between the Applicant and the General Contractor, the allowable fees shall in no case exceed the amount allowable pursuant to the HUD subsidy layering review requirements. Additionally, fees shall be allowed to be paid only to the person or entity that actually meets the definitional requirements to be considered a General Contractor. Florida Housing shall not allow fees for duplicative services or duplicative overhead.

(49) "Geographic Set-Aside" means, with respect to a MMRB Development, the amount of allocation that has been designated by Florida Housing for Developments located in specific geographical regions within the State of Florida.

(50) "Good Faith Deposit" means a total deposit equal to one percent of the Loan amount reflected in the Loan Commitment paid by the Applicant to Florida Housing at the times required by this rule chapter. If the Good Faith Deposit is exhausted, the Applicant shall be required to pay, within three days of notice, an additional deposit to ensure payment of the expenses associated with the processing of the Application, the sale of the Bonds, including document production and the securitization of the Loan. The Good Faith Deposit shall be remitted by certified check or wire transfer.

(51) "HC" or "Housing Credit Program" means the Low-Income or Very Low-Income rental housing program administered by Florida Housing in accordance with section 42 of the Code and Section 420.5099, F.S., under which Florida Housing is designated the Housing Credit Agency for the State of Florida within the meaning of section 42(h)(7)(A) of the Code, and Rule Chapter 67-48, F.A.C.

(52) "Homeless" or "Homeless Household" means an individual or Family who lacks a fixed, regular, and adequate nighttime residence or an individual or Family who has a primary nighttime residence that is:

(a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing;

(b) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term does not refer to any individual imprisoned or otherwise detained pursuant to state or federal law.

(53) "HUD" means the U.S. Department of Housing and Urban Development.

(54) "HUD Risk Sharing Program" means the program authorized by section 542(c) of the Housing and Community Development Act of 1992, which is adopted and incorporated herein by reference.

(55) "Identity of Interest" means, for the purpose of the HUD Risk Sharing Program, any person or entity that has a one percent or more financial interest in the Development and in any entity providing services for a fee to the Development. Unless otherwise excluded, persons or entities that share in the net profits of the Development shall be construed as having an ownership interest to the extent that they share in Development or project revenues. The Identity of Interest definition shall not apply to the tax credit syndicator, limited partner investors, or professionals who are retained pursuant to a negotiated fee arrangement consistent with industry standards and which fee arrangement does not incorporate the payment of fees from Development operating revenues.

(56) "Income Certification," "Tenant Income Certification" or "Form TIC-1" means the form which is adopted and incorporated herein by reference, and which shall be used to certify the income of all tenants residing in a Set-Aside unit in a Development. A copy of such form is available on FHFC's web site at www.floridahousing.org.

(57) "Issuer" means the Florida Housing Finance Corporation.

(58) "Land Use Restriction Agreement," "LURA" or "Regulatory Agreement" means that agreement among Florida Housing, the Bond Trustee and the Applicant which sets forth certain restrictions on the use of the Development to comply with the Code, the Act, the rules and policies of Florida Housing and any requirements of a Credit Enhancer. Such document shall be recorded prior to the Mortgage in the public records in the county where the Development is located, unless the Board expressly agrees to subordinate the LURA to facilitate the financing.

(59) "Lead Agency" means a Local Government or Non-Profit serving as the point of contact and accountability to the State Office on Homelessness with respect to the Local Homeless Assistance Continuum of Care Plan, in accordance with Section 420.624, F.S.

(60) "Loan" means the loan made by Florida Housing to the Applicant from the proceeds of the Bonds issued by Florida Housing.

(61) "Loan Agreement" means the Program Documents or Loan Documents wherein Florida Housing and the Applicant agree to the terms and conditions upon which the proceeds of the Bonds shall be loaned, and the terms and conditions for repayment of the Loan.

(62) "Loan Commitment" means the Program Documents or Loan Documents executed by Florida Housing and the Applicant after the issuance of a favorable Credit Underwriting Report that defines the conditions under which Florida Housing agrees to lend the proceeds of the Bonds to the Applicant for the purpose of financing all or a portion of a Development and is filed with Florida Housing along with full payment of the Good Faith Deposit before substantive work commences on Program Documents other than the Loan Commitment.

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

(64) "Local Homeless Assistance Continuum of Care Plan" means a plan for developing and implementing a framework for a comprehensive and seamless array of housing and services to address the needs of homeless persons and persons at risk for homelessness, in accordance with Section 420.624, F.S.

(65) "Local Public Fact Finding Hearing" means a public hearing requested by any person residing in the county or municipality in which the proposed Development is located and which is conducted by Florida Housing for the purpose of receiving public comment or input regarding the financing of a proposed Development with Bonds by Florida Housing.

(66) "Lower Income Residents" means individuals or families whose annual income does not exceed either 50 percent or 60 percent depending on the minimum Set-Aside elected of the area median income as determined by HUD with adjustments for household size. In no event shall occupants of a Development unit be considered to be Lower Income Residents if all the occupants of a unit are students as defined in section 151(c)(4) of the Code or if the residents do not comply with the provisions of the Code defining Lower Income Residents. (See section 142 of the Code.) If Taxable Bonds, other than Taxable Bonds issued simultaneously with Tax-Exempt Bonds, in which case the above referenced provisions apply, or Bonds that do not require State Bond Allocation are being used to finance the Development, Lower Income Residents shall be defined as an individual or family with an Annual Household Income not in excess of 80 percent of the state or county median income, whichever median income is higher. In the event Bonds are issued on behalf of a corporation organized under section 501(c)(3) of the Code, the Set-Aside shall not be less than that required by the section 501(c)(3) documents.

(67) "Mortgage" means the instrument securing the Loan which creates a first, co-equal or acceptable subordinate lien on the Development, subject to permitted encumbrances.

(68) "Mortgage Loan" means the Loan secured by the Mortgage and evidenced by a Note or Mortgage Note.

(69) "Note" means a unilateral agreement containing an express and absolute promise to pay to Florida Housing a principal sum of money for the Loan together with interest on a specified date. The Note will provide the interest rate and will be secured by a mortgage.

(70) "Principal" means any individual acting in their individual capacity or acting as president, vice president, treasurer or secretary, member of the board of directors or the legal or beneficial owner of 10% or more of any class of stock of a corporation which is a general partner of a limited partnership Applicant or Developer; or the general partner of a limited partnership that is the general partner of a limited partnership Applicant or Developer; or is a partner in a general partnership or joint venture acting alone or as a part of another entity that is an Applicant or Developer. With respect to a limited liability company either acting alone or as a part of another entity that is an Applicant or Developer, each manager and each member is a principal. With respect to a registered limited liability partnership either acting alone or as a member of another entity that is an Applicant or Developer, each partner is a principal. With respect to a trust either acting alone or as a part of another entity that is an Applicant or Developer, any individual or entity owning 10% or more of the beneficial interest in the trust is a principal. A General Contractor, management agent, architect/engineer, attorney that participates on an arms-length fee arrangement are not considered Principals of the Applicant entity.

(71) "Private Placement" or "Limited Offering" means the sale of Florida Housing Bonds directly or through an underwriter or placement agent to 35 or fewer initial purchasers who are not purchasing the Bonds with the intent to offer the Bonds for retail sale and who are Qualified Institutional Buyers.

(72) "Program" means Florida Housing's Multifamily Mortgage Revenue Bond (MMRB) Program.

(73) "Program Documents or Loan Documents" means the Loan Commitment, Loan Agreement, Note, Mortgage, Credit Enhancement or Guarantee Instrument, Land Use Restriction Agreement, Trust Indenture, Preliminary and Final Official Statements, Intercreditor Agreement, Assignments, Bond Purchase Agreement, Compliance Monitoring Agreement, Mortgage Servicing Agreement and such other ordinary and customary documents necessary to issue and secure repayment of the Bonds and Mortgage sufficient to protect the interests of the Bond owners and Florida Housing.

(74) "Program Report" or "Form PR-1" means the report format which is required to be completed and submitted to Florida Housing pursuant to this rule chapter, and is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter. A copy of such form is available on FHFC's web site at www.floridahousing.org.

(75) "Public Policy Criteria and Qualified Resident Programs" means the requirements and guidelines established by Florida Housing and set forth in Rule 67-21.004, F.A.C., and the Universal Application package. The programs and requirements shall be incorporated in the Loan Commitment and Program Documents. Such Public Policy Criteria and Qualified Resident Programs have been adopted for the purpose of accomplishing the programmatic goals of the Code, Florida Housing and the Act.

(76) "Qualified Institutional Buyer" is sometimes called a "sophisticated investor" and specifically includes the following:

(a) Any of the following entities, acting for its own account or the accounts of other Qualified Institutional Buyers that, in the aggregate, own and invests on a discretionary basis at least $100 million in securities of issuers that are not affiliated with the entity:

1. Any insurance company as defined in section 2(13) of the Securities Exchange Act, which is adopted and incorporated herein by reference;

2. Any investment company registered under the Investment Company Act or any business development company as defined in section 2(a)(43) of that Act, which is adopted and incorporated herein by reference;

3. Any Small Business Investment Company licensed by the U.S. Small Business Administration under sections 301(c) or (d) of the Small Business Investment Act of 1958, which is adopted and incorporated herein by reference;

4. Any plan established and maintained by a state or state agency or any of its political subdivisions, on behalf of their employees;

5. Any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, which is adopted and incorporated herein by reference;

6. Trust funds of various types, except for trust funds that include participants' individual retirement accounts or H.R. 10 plans;

7. Any business development company as defined in section 202(a)(22) of the Investment Advisors Act of 1940, which is adopted and incorporated herein by reference;

8. Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation (except a bank or savings and loan defined in section 3(a)(2) or 3(a)(5)(A) of the Securities and Exchange Act, which is adopted and incorporated herein by reference, or a foreign bank or savings and loan or similar institution), partnership, Massachusetts or similar business trust, or any investment adviser registered under the Investment Advisors Act, which is adopted and incorporated herein by reference.

(b) Any dealer registered under section 15 of the Securities Exchange Act, which is adopted and incorporated herein by reference, acting on its own behalf or on the behalf of other Qualified Institutional Buyers who in the aggregate own and

invest at least $10 million of securities of issuers not affiliated with the dealer (not including securities held pending public offering).

(c) Any dealer registered under section 15 of the Securities Exchange Act, which is adopted and incorporated herein by reference, acting in a riskless principal transaction on behalf of a Qualified Institutional Buyer.

(d) Any investment company registered under the Investment Company Act, which is adopted and incorporated herein by reference, that is part of a family of investment companies that together own at least $100 million in securities of issuers, other than companies with which the investment company or family of investment companies is affiliated.

(e) Any entity, all of whose equity owners are Qualified Institutional Buyers.

(f) Any bank or savings and loan defined in section 3(a)(2) or 3(a)(5)(A) of the Securities Exchange Act, which is adopted and incorporated herein by reference, or foreign bank or savings and loan or similar institution that, in aggregate with the other Qualified Institutional Buyers, owns and invests in at least $100 million in securities of affiliates that are not affiliated with it and that has an audited net worth of at least $25 million as demonstrated during the 16 to 18 months prior to the sale.

(77) "Qualified Census Tract" or "QCT" means any census tract which is designated by the Secretary of Housing and Urban Development as having either 50% or more of the households at an income which is less than 60% of the area median gross income, or a poverty rate of at least 25%, in accordance with section 42(d)(5)(C) of the Code. A list of the QCTs is adopted and incorporated by reference. A copy of such list is available on FHFC's web site www.floridahousing.org.

(78) "Qualified Lending Institution" means any lending institution designated by Florida Housing.

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

(80) "Recap of Tenant Income Certification Information" or "Form AR-1" means a report format which is required to be completed and submitted to the Corporation pursuant to this rule chapter and is adopted and incorporated by reference, effective on the date of the latest amendment to this rule chapter. A copy of such form is available on FHFC's web site at www.floridahousing.org.

(81) "Received" as it relates to delivery of a document by a specified deadline means, unless otherwise indicated, delivery by hand, U.S. Postal Service, or other courier service, in the office of the Corporation no later than 5:00 p.m., Eastern Time, on the deadline date.

(82) "Rehabilitation Development" means a Development, the Rehabilitation Expenditures with respect to which equal or exceed 15% of the portion of the cost of acquiring such Development to be financed with Bond proceeds.

(83) "Rehabilitation Expenditures" has the meaning set forth in section 147(d)(3) of the Code.

(84) "Scattered Sites" means two or more parcels in the same county, contiguous to one another, sharing at least one common boundary between them, or within such reasonable proximity to each other as to appear to the public to be under the dominion and control of the Applicant.

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

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

(b) For Tax-exempt Bonds – 20 percent or more of the residential units in the Development shall be occupied or held available for occupancy by a Family whose Annual Household Income does not exceed 50 percent of the State or county median income whichever is higher, or 40 percent or more of the residential units in the Development shall be occupied by or held available for a Family whose Annual Household Income does not exceed 60 percent of the State or county median income, whichever is higher, or that which is required by the Code at the time of issuance of the Bonds or required by Florida Housing to meet its programmatic purposes.

(86) "Single Room Occupancy" or "SRO" means housing consisting of single room dwelling units that is the primary residence of its occupant or occupants. An SRO does not include facilities for students.

(87) "Special Counsel" means any attorney or law firm retained by Florida Housing, pursuant to an RFQ, to serve as counsel to Florida Housing, including Disclosure Counsel.

(88) "State Board of Administration" or "SBA" means the State Board of Administration created by and referred to in s. 9, Article XII of the State Constitution.

(89) "State Bond Allocation" means the allocation of the State private activity bond volume limitation pursuant to Chapter 159, Part VI, F.S., administered by the Division of Bond Finance and allocated to Florida Housing for the issuance of its Tax-exempt Bonds.

(90) "State Office on Homelessness" means the office created within the Department of Children and Family Services under Section 420.622, F.S.

(91) "Student" means an individual who is considered a full-time student by the educational institution being attended or will be a full-time student at an educational institution with regular facilities and students other than correspondence school, during five months of the certification year.

(92) "Taxable Bonds" means those Bonds on which the interest earned is included in gross income of the owner for federal income tax purposes pursuant to the Code.

(93) "Tax-exempt Bonds" means those Bonds on which all or part of the interest earned is excluded from gross income of the owner for federal income tax purposes pursuant to the Code.

(94) "Tie-Breaker Measurement Point" means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For Scattered Site Developments, the Applicant must select a single point on one Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development.

(95) "TEFRA Hearing" means a public hearing held pursuant to the requirements of the Code and in accordance with the Tax Equity and Fiscal Responsibility Act (TEFRA), section 147(f) of the Code, at which members of the public or interested persons are provided an opportunity to present evidence or written statements or make comments regarding a requested application for Tax-exempt financing of a Development by Florida Housing.

(96) "Total Development Cost" means the sum total of all costs incurred in the construction of a Development all of which shall be subject to the approval by the Credit Underwriter and shall be approved by Florida Housing as reasonable and necessary. Such costs may include, but not be limited to:

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

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

(c) Any expenses relating to the issuance of Tax-exempt Bonds or Taxable Bonds by Florida Housing related to the particular Development.

(d) Fees in connection with the planning, execution, and financing of the Development, such as those of architects, engineers, attorneys, accountants, Financial Advisors and Florida Housing. The fees for attorneys and Financial Advisors are limited pursuant to subsection 67-21.002(43), F.A.C.

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

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

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

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

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

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

(97) "Universal Application Package" or "UA1016 Rev. /03" means the forms and instructions, obtained from Florida Housing at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, which shall be completed and submitted to Florida Housing in accordance with this rule chapter in order to apply for the MMRB Program. The Universal Application Package is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter.

(98) "Urban In-Fill Development" means a Development (i) in a site or area that is targeted for in-fill housing or neighborhood revitalization by the local, county, state or federal government as evidenced by its inclusion in a HUD Empowerment/Enterprise Zone, a HUD-approved Neighborhood Revitalization Strategy, Florida Enterprise Zone, area designated under a Community Development Block Grant (CDBG) or area designated as a HOPE VI or Front Porch Florida Community or a Community Redevelopment Area as described and defined in the Florida Community Redevelopment Act of 1969, or the proposed Development is located in a Qualified Census Tract and the development of which contributes to a concerted community revitalization plan, and (ii) in a site which is located in an area that is already developed and part of an incorporated area or existing urban service area.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.503, 420.507, 402.508 FS. History–New 12-3-86, Amended 2-22-89, 12-4-90, 11-23-94, 2-6-97, 1-7-98, Formerly 9I-21.002, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, _____.

67-21.003 Application and Selection Process for Loans.

(1) All Applications must be complete, legible and timely when submitted, except as described below. Corporation staff may not assist any Applicant by copying, collating, or adding documents to an Application nor shall any Applicant be permitted to use the Corporation's facilities or equipment for purposes of compiling or completing an Application.

(2) Failure to submit an Application completed in accordance with the Application instructions and these rules will result in rejection of the Application or a score less than the maximum available in accordance with the instructions in the Application and this rule chapter.

(3) Each submitted Application shall be evaluated and preliminarily scored using the factors specified in the Universal Application Package and these rules. Preliminary scores shall be transmitted to all Applicants ~~along with the scoring sheets and threshold report~~.

(4) Applicants who wish to notify the Corporation of possible scoring errors relative to another Applicant's Application must file with the Corporation, within 10 Calendar Days of the date of receipt of the preliminary scores, a written Notice of Possible Scoring Error (NOPSE). Each NOPSE must specify the assigned Application number and the scores in question, as well as describe the alleged deficiencies in detail. Each NOPSE is limited to the review of only one Application's score. Any NOPSE that seeks the review of more than one Application's score will be considered improperly filed and ineligible for review. There is no limit to the number of NOPSEs that may be submitted. The Corporation's staff will review each written NOPSE timely received.

(5) The Corporation shall transmit to each Applicant the NOPSEs submitted by other Applicants with regard to its Application. The notice shall also include the Corporation's decision regarding the NOPSE, along with any other items identified by the Corporation to be addressed by the Applicant.

(6) Within 7 ~~15~~ Calendar Days of receipt of the notice set forth in subsection (5) above, each Applicant shall be allowed to submit additional documentation, revised pages and such other information as the Applicant deems appropriate to address the issues raised pursuant to subsections (3) and (5) above that could result in rejection of the Application or a score less than the maximum available. Where specific pages of the Application are revised, changed or added, each new page(s) must be marked as "revised," and submitted. Failure to mark each new page(s) "revised" will result in the Corporation not considering the revisions, changes or additions to that new page. Pages of the Application that are not revised or otherwise changed may not be resubmitted, except that documents executed by third parties must be submitted in their entirety even if only a portion of the original document was revised. Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant shall also be required in its submittal to make such other changes as necessary to keep the Application consistent as revised. The Applicant shall submit an original and three copies of all additional documentation and revisions. Only revisions, changes and other information received by the deadline set forth herein will be considered. Any subsequent revision submitted prior to the deadline shall include a written request from the Applicant for withdrawal of any previously submitted revision(s).

(7) Within 7 ~~10~~ Calendar Days of the deadline for receipt by the Corporation of the documentation set forth in subsection (6) above, all Applicants may submit to the Corporation a Notice of Alleged Deficiencies (NOAD) in any other Application. Each NOAD is limited only to issues created by documents revised and/or added by the Applicant submitting the Application pursuant to subsection (6) above. Each NOAD must specify the assigned Application number, the pages and the documents in question, as well as describe the alleged deficiencies in detail. Each NOAD is limited to the review of only one Applicant's submission. However, there is no limit to the number of NOADs that may be submitted. NOADs that seek the review of more than one Applicant's submission will be considered improperly filed and ineligible for review. The Corporation will only review each written NOAD timely received.

(8) The Corporation shall transmit a copy of all NOADs to the affected Applicant.

(9) Following the receipt and review by the Corporation's staff of the documentation described in subsections (5), (6) and (7) above, the Corporation's staff shall then prepare final scores. In determining such final scores, no Application shall be rejected or receive a point reduction as a result of any issues not previously identified in the notices described in subsections (3), (4) and (5) above. However, inconsistencies created by the Applicant as a result of information provided pursuant to subsections (6) and (7) above will still be justification for rejection or reduction of points as appropriate. Notwithstanding the foregoing, any deficiencies in the mandatory elements set forth in subsection (14) below can be identified at any time prior to sending the final scores to Applicants and will result in rejection of the Application. The Corporation shall then transmit final scores to all Applicants.

(10) Based on the order of the ranked Applications after informal appeals and the availability of State Bond Allocation designated by the Board for multifamily housing, the Board shall designate Applications for funding and offer the opportunity to enter Credit Underwriting, and shall designate those that are below the funding line on the MMRB ranked list. Any additional 2002 allocation designated by the Board for MMRB shall be applied to the next unfunded Application(s) on the ranked list, but only to the extent said Application's request can be fully funded. Any remaining 2002 allocation designated by the Board for multifamily housing, which as of December 1, 2002 is insufficient to fully fund the next ranked Application

shall be offered to the next ranked Applicant, continuing down the ranked list until sufficient to fully fund a proposed Development. After December 1, Applicants shall be permitted to downsize their allocation request by up to 15% of the original allocation request for the purpose of becoming fully funded but may not reduce the number of units or the unit sizes in the development. Any unused allocation shall, at the option of the Board, be carried over and applied to the 2003 calendar year allocation or applied to single family housing. Florida Housing may, after the cure period and upon a determination that such is necessary to assure timely processing of Applicants, invite Applicants who meet threshold into Credit Underwriting at their own risk. Applicants shall be notified in writing of the opportunity to enter Credit Underwriting. A detailed timeline for submitting required fees and information to the Credit Underwriter shall be included. Failure to meet the deadlines established by such timeline shall result in the immediate termination of Credit Underwriting activities and the Application shall be moved to the bottom of the ranked list. Applicants electing to proceed to Credit Underwriting without designation for funding do so at their own risk, and said opportunity does not ensure that the Application will be funded. Any Applicant that declines invitation to Credit Underwriting, when invited by the Board, shall be removed from the ranked list.

(11) Applications shall be limited to one submission per subject property with the exception that Local Government-issued Tax-Exempt Bond-Financed Developments may submit a separate Application for noncompetitive Housing Credits. Two or more Applications with the same Financial Beneficiary for Developments that are contiguous with the property of another Application, or that are divided by a street or easement, or if it is readily apparent from the two Applications, proximity, chain of title or other information available to the Corporation that the properties are part of a common or related scheme of development, the Applications will be considered to be submissions for the same Development site and the Corporation will reject all such Applications except the Application with the highest (worst) lottery number. Two Applications by Applicants with common Financial Beneficiaries for Developments that are contiguous, or that are divided by a street or easement, or that are otherwise part of a common or related scheme of development, will not be considered to be submissions for the same Development site if one of the Applicants applies for SAIL only.

(12) If the Board determines that any Applicant or any Affiliate of an Applicant:

(a) Has engaged in fraudulent actions;

(b) Has materially misrepresented information to the Corporation regarding any of its Developments, or within the current Application or in any previous applications for financing or an allocation of Housing Credits administered by the Corporation;

(c) Has been convicted of fraud, theft or misappropriation of funds;

(d) Has been excluded from federal or Florida procurement programs; or

(e) Has been convicted of a felony~~.~~ and ~~Upon a determination by the Board~~ that such action substantially increases the likelihood that the Applicant will not be able to produce quality affordable housing, the Applicant and any of the Applicant's Affiliates will be ineligible for funding or allocation in any program administered by the Corporation for a period of up to two years, which will begin from the date the Board makes such determination. Such determination shall be either pursuant to a proceeding conducted pursuant to Sections 120.569 and 120.57, Florida Statutes, ~~factual hearing before the Board at which the Applicant shall be entitled to present evidence~~ or as a result of a finding by a court of competent jurisdiction ~~law or recommended order of an administrative law judge~~.

(13) The Corporation shall reject an Application if, following the submission of the additional documentation, revised pages and other information as the Applicant deems appropriate as described in subsection (6) above:

(a) The Development does not conform to the Application requirements specified in this rule chapter;

(b) The Applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application and Application instructions;

(c) The Applicant fails to ~~provide all required copies and~~ file all applicable Application pages and exhibits that are provided by the Corporation and adopted under this rule chapter;

(d) An Applicant or any Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer is in arrears for any financial obligation it has to the Corporation and/or any agent or assignee of the Corporation.

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(a) Name of the Applicant;

(b) Name of the Developer;

(c) Program(s) applied for;

(d) Number of units;

(e) Site for the Development;

(f) Type of Development category;

(g) Designation selection ~~Whether the Development design constitutes a High Rise~~;

(h) County;

~~(i) Demographic or Area Commitment or targeted demographic area;~~

(i)~~(j)~~ Funding request, except for Taxable Bonds and as provided in subsection 67-21.003(10), F.A.C.; notwithstanding the foregoing, requested amounts exceeding the Corporation and Program funding limits can be reduced by the Applicant to reflect the maximum request amount allowed (and no other changes to this amount will be allowed;

(j)~~(k)~~ The total set-aside percentage of the Total Set-Aside Commitment;~~.~~

(k) Submission of the required number of copies of the Application by the Application Deadline;

(l) Payment of the required Application fee and TEFRA fee by the Application Deadline.

(15) A Development will be withdrawn from funding and any outstanding commitments for funds will be rescinded if at any time the Board determines that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or to the market to be served by the Development.

(16) If an Applicant or any Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer has any existing Developments participating in any Corporation programs that remain in non-compliance with the Code, this rule chapter, or applicable loan documents, and any applicable cure period granted for correcting such non-compliance has ended as of the time of submission of the Application or at the time of issuance of a Credit Underwriting Report, the requested allocation will, upon a determination by the Board that such non-compliance substantially increases the likelihood that such Applicant will not be able to produce quality affordable housing, be denied and the Applicant and the Affiliates of the Applicant or Developer will be prohibited from new participation in any of the Corporation's programs for the subsequent cycle and continuing until such time as all of their existing Developments participating in any Corporation programs are in compliance.

(17) With respect to MMRB Program Applications, when two or more Applications receive the same numerical score, the Applications will be ranked as outlined in the ~~Universal~~ Application instructions ~~Package~~.

(18) At no time during the Application, scoring and appeal process may Applicants or their representatives contact Board members concerning their own Development or any other Applicant's Development. At no time from the Application Deadline until after issuance of the final scores as set forth in subsection (9) above, may Applicants or their representatives verbally contact Corporation staff concerning their own Application or any other Applicant's Application. If an Applicant or its representative does contact a Board member in violation of this section, the Board shall, upon a determination that such contact was deliberate, disqualify such Applicant's Application.

(19) The name of the Development provided in the Application may not be changed or altered after submission of the Application during the history of the Development with the Corporation unless the change is mandated by local, state or federal governmental authorities, or otherwise approved by the Corporation. Evidence of such mandate must be submitted to the Corporation within 30 Calendar Days of notification by the local, state or federal authorities.

(20) Prior to instituting any change resulting in any modification or deviation from the Application or Credit Underwriting Report, Applicant shall notify the Corporation. All changes to the Development plans, resident programs and other specifications which were used to describe the Development in accordance with this rule chapter and the Universal Application Package and represented to the Credit Underwriter and Development servicer are affected by this prior notification requirement. Failure to obtain the Corporation's approval prior to implementing any such changes shall result in the Applicant and any of the Applicant's Affiliates being ineligible to participate in any program administered by the Corporation for a period of two years, which shall begin from the date the Board approves disqualification of the Applicant and its Application.

(21) Florida Housing shall initiate TEFRA Hearings on the proposed Developments whose Applications were received by the Application Deadline. Neither the TEFRA Hearing, the invitation into Credit Underwriting, nor the Acknowledgment Resolution obligate Florida Housing to finance the proposed Development in any way.

(22) Upon receipt of the Credit Underwriting Report, Florida Housing shall submit the Application to its Financial Advisor for a preliminary recommendation of the method of bond sale for each Development pursuant to Rule 67-21.0045, F.A.C.

(23) Proposed Developments that are ranked, but not selected by the Board to enter Credit Underwriting, shall remain on the ranked list in the event State Bond Allocation becomes available to fund additional Developments. If the current year's State Bond Allocation designated by the Board for multifamily housing is insufficient to fully finance a Development, subject to the provisions of subsection 67-21.003(10), F.A.C., permitting reduction of the requested amount, a new Application must be filed to be eligible for a future year's State Bond Allocation.

(24) Florida Housing shall notify the Applicant, in writing, of the Board's determination related to approval of the Credit Underwriting Report and require the Applicant to submit one-half of the Good Faith Deposit within 7 Calendar Days from the receipt of such notice. Developments designated for a portion of the current year's State Bond Allocation shall be

required to close at such time as set forth in such notification. In the event the loan does not close within the designated time frame and the closing date is not extended in writing by Florida Housing, then the State Bond Allocation shall be forfeited.

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

(26) Following receipt of one-half of the Good Faith Deposit, Florida Housing's assigned counsel shall begin preparation of the Loan Commitment.

(27) Upon execution of a Loan Commitment, Applicant shall pay the balance of the Good Faith Deposit and Florida Housing shall authorize bond counsel and special counsel to prepare the Program Documents.

(28) The Corporation may disqualify an Applicant if, after a hearing before the Board, the Board determines that the Applicant or its principal(s):

(a) Has been convicted of fraud, theft or misappropriation of funds; or

(b) Has made material misrepresentations to the Corporation; or

(c) Has been excluded from federal or Florida procurement programs; or

(d) Has been convicted of a felony.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(4), (13), (14), (18), (19), (20), (21), (24), 420.508 FS. History–New 12-3-86, Amended 12-4-90, 11-23-94, 9-25-96, 1-7-98, Formerly 9I-21.003, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, _____.

67-21.0035 Applicant Administrative Appeal Procedures.

(1) At the conclusion of the review and scoring process established by Rule 67-21.003, each Applicant will be provided with its final score and notice of rights, which shall constitute the point of entry to contest any issue related to the Applicant's Application for the Program.

(2) Each Applicant that wishes to contest its final score must file a petition with the Corporation on or before the 21st Calendar Day after the date Applicant receives its notice of rights. The petition must conform to subsection 28-106.201(2) or 28-106.301(2), F.A.C., as applicable, and specify in detail each issue and score sought to be challenged. Submission by facsimile or other electronic means will not be accepted. If the petition does not raise a disputed issue of material fact, the challenge will be conducted pursuant to Section 120.57(2), F.S. If the petition raises one or more disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), F.S. At the conclusion of any administrative hearing, a recommended order shall be entered by the designated hearing officer which will then be considered by the Board.

(3) Any Applicant who wishes to challenge the findings and conclusions of the recommended order entered pursuant to a Section 120.57(2), F.S., proceeding concerning its own Application shall be allowed the opportunity to submit written arguments to the Board. Any written argument should be typed and double-spaced with margins no less than one inch in either Times New Roman 14-point or Courier New 12-point font and may not exceed five pages. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m., Eastern Time, on the date contained in the recommended order. Submission by facsimile or other electronic means will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to recommended orders. The Board shall consider all recommended orders and written arguments and enter the appropriate final orders.

(4) Following the entry of final orders in all petitions filed pursuant to Section 120.57(2), F.S., and in accordance with Rule Chapter 67-21, F.A.C., the Corporation shall issue final rankings. For an Applicant that filed a petition pursuant to Section 120.57(1), F.S., which challenged the scoring of its own Application but has not had a final order entered as of the date the final rankings are approved by the Board, the Corporation shall, if any such Applicant ultimately obtains a final order that modifies the score so that its Application would have been in the funding range of the applicable final ranking had it been entered prior to the date the final rankings were presented to the Board, provide the requested allocation from the next available allocation, whether in the current year or a subsequent year. Nothing contained herein shall affect any applicable credit underwriting requirements.

(5) Each Applicant will be provided with a final ranking of all Applications and notice of rights, which shall constitute the point of entry to contest any ranking or scoring issue related to any other Applications for the Program. An Applicant that wishes to contest the final ranking or score of another Applicant may do so only if:

(a) The competing Applicant files a petition on or before the 21st Calendar Day after the receipt of the notice of rights pursuant to this subsection (5). Submission by facsimile or other electronic means will not be accepted. The petition must

conform to subsection 28-106.201(2) or 28-106.301(2), F.A.C., as applicable, and specify in detail each issue, score or ranking sought to be challenged.

(b) For any Application cycle closing after January 1, 2002, if the contested issue involves an error in scoring, the contested issue must (i) be one that could not have been cured pursuant to subsection 67-21.003(14), F.A.C., or (ii) be one that could have been cured, if the ability to cure was not solely within the Applicant's control. The contested issue cannot be one that was both curable and within the Applicant's sole control to cure. With regard to curable issues, a petitioner must prove that the contested issue was not feasibly curable within the time allowed for cures in subsection 67-21.003(6), F.A.C.

(c) The competing Applicant alleges facts in its petition sufficient to demonstrate that, but for the specifically identified threshold, scoring or ranking errors in the challenged Application, its Application would have been in the funding range at the time Florida Housing provided the Applicant with its final ranking.

(d) If the petition does not raise a disputed issue of material fact, the appeal will be conducted pursuant to Section 120.57(2), F.S. If the petition raises one or more disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), F.S. At the conclusion of any administrative hearing, a recommended order shall be entered which will then be considered by the Board.

(6) Any Applicant who wishes to challenge the findings and conclusions of the recommended order entered pursuant to a Section 120.57(2), F.S., proceeding as described in subsection (5) above concerning the final ranking of another Application, shall be allowed the opportunity to submit written arguments to the Board. Any written arguments should be typed and double-spaced with margins no less than one inch in either Times New Roman 14-point or Courier New 12-point font and may not exceed five pages. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m., Eastern Time, on the date contained in the recommended order. Submission by facsimile or other electronic means will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to recommended orders. The Board shall consider all recommended orders and written arguments and enter the appropriate final orders.

(7) For those Applicants that have filed a petition pursuant to subsection (5) above, the Corporation shall, if any such Applicant ultimately obtains a final order that demonstrates that its Application would have been in the funding range of the applicable final ranking, provide the requested allocation from the next available allocation, whether in the current year or a subsequent year. Nothing contained herein shall affect any applicable credit underwriting requirements. The filing of a petition pursuant to subsection (5) above shall not stay the Corporation's provision of funding to Applicants per the final rankings referenced in subsection (4) above.

Specific Authority 420.507, 420.508 FS. Law Implemented 120.57, 120.569(2)(b), 420.502, 420.507, 420.508 FS. History–New 11-14-99, Amended 2-11-01, 3-17-02, 10-8-02, 12-4-02, Repromulgated _____.

67-21.004 Federal Set-Aside Requirements.

Each Application shall designate one of the following minimum federal Set-Aside requirements that the Development shall meet commencing with the first day on which at least 10 percent of the units in the property are occupied:

(1) Twenty percent of the residential units in the Development shall be occupied by or reserved for occupancy by one or more persons or a family whose Annual Household Income does not exceed 50 percent of the area median income limits adjusted for Family size (the 20/50 Set-Aside); or

(2) Forty percent of the residential units in the Development shall be occupied by or reserved for occupancy by one or more persons or a family whose Annual Household Income does not exceed 60 percent of the area median income limits adjusted for Family size (the 40/60 Set-Aside).

(3) For Developments financed solely through the issuance of Taxable Bonds or refundings of Tax-exempt Bonds originally issued under section 103(b)(4)(A) of the Internal Revenue Code of 1954, as amended, which is adopted and incorporated herein by reference, 20 percent of the residential units in the Development shall be occupied by or reserved for occupancy by one or more persons or a family whose Annual Household Income does not exceed 80 percent of the area median income limits adjusted for Family size (the 20/80 Set-Aside).

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(4),(6),(12),(13),(14),(18),(19),(21), 420.508 FS. History–New 12-3-86, Amended 2-22-89, 12-4-90, 11-23-94, 9-25-96, 2-6-97, 1-7-98, Formerly 9I-21.004, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated _____.

67-21.0041 Public Policy Criteria Requirements and Qualified Resident Programs.

(1) An Applicant may commit to provide Qualified Resident Programs as provided for in the Universal Application Package.

(2) An Applicant may irrevocably commit to Set-Aside units in the Development for a longer period of time than that required by Rule 67-21.004, F.A.C.

(3) All Public Policy Criteria and Qualified Resident Programs and factors selected by the Applicant shall be verified beginning with Credit Underwriting and continuing through the Qualified Project Period. Any proposed changes to the Public Policy Criteria and Qualified Resident Programs selected by the Applicant and identified in its Application may

be only changed to other Public Policy Criteria and Qualified Resident Programs set forth in Rule 67-21.0041, F.A.C., and the Universal Application Package and must be submitted to Florida Housing for prior approval. Florida Housing may grant such approval only if it would not alter the Application ranking.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(4),(6),(12),(13),(14),(18),(19),(21), 420.508 FS. History–New 2-11-01, Amended 3-17-02, Repromulgated _____.

67-21.0045 Determination of Method of Bond Sale.

(1) Florida Housing may sell Bonds for the purpose of financing a proposed Development through a negotiated sale, competitively bid sale or Private Placement. Prior to the sale of Bonds for a Development, the Board shall authorize a resolution specifying the method of sale.

(2) With the exception of Applicants who are seeking a Private Placement, following receipt of the Credit Underwriting Report, staff shall provide Florida Housing's Financial Advisor copies of such report for review and preparation of a written recommendation for the method of Bond sale.

(3) In preparing a recommendation for the method of sale to the Board, the Financial Advisor shall consider the following:

(a) The cost components of the sale, including interest costs and financing costs. The purpose of the analysis is to determine how these costs are affected by the alternative forms of sale.

(b) The anticipated credit and security structure of the transaction.

(c) The proposed financing structure of the transaction.

(d) The financing experience of the Applicant.

(e) Florida Housing's programmatic objectives.

(f) Market stability.

(g) Other factors identified by staff, counsel, or the Applicant.

(4) The written recommendation shall include an identification of the Development, the recommended method of sale, and a summary statement as to why the particular method of sale is being recommended.

(5) For those transactions that Florida Housing's Financial Advisor recommends as candidates for a competitive sale, Florida Housing shall engage a structuring agent. The Applicant may, at its sole expense, engage a Financial Advisor for the transaction. Any cost to the Applicant for the Financial Advisor in excess of $18,000 must be paid out of Developer Fee, in accordance with subsection 67-21.002(31), F.A.C.

(6) For those transactions that Florida Housing's Financial Advisor recommends for a negotiated sale, Florida Housing shall appoint an investment banker.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507(4),(13),(19),(20), 420.508, 420.509(12) FS. History–New 1-7-98, Formerly 9I-21.0045, Amended 1-26-99, Repromulgated 11-14-99, 2-11-01, Amended 3-17-02, Repromulgated _____.

67-21.005 Selection of Qualified Lending Institutions as Credit Underwriters, Originators or Servicers.

(1) Qualified Lending Institutions shall be selected by Florida Housing to credit underwrite, participate in the origination of and service eligible Mortgage Loans.

(2) The criteria which shall be considered by Florida Housing for selection of Qualified Lending Institutions to participate in the Program shall include:

(a) The statutory requirement that the lending institution be a bank or trust company, mortgage banker, savings banker, savings bank, credit union, national banking association, building and loan association, insurance company, the Florida Housing Development Corporation, or other financial institution or governmental agency that is authorized to transact business in the State of Florida pursuant to statutory authority and which customarily provides service or otherwise aids in the financing of mortgages on real property located in the State of Florida.

(b) The credit underwriting and loan servicing experience and financial condition of the Qualified Lending Institution.

(c) Marketability of the Bonds using the Qualified Lending Institution as Credit Underwriter and servicer.

(d) Requirements of any rating agency rating the Bonds applicable to a Credit Underwriter and servicer.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502(20), 420.507(4),(6),(13),(18),(19),(20),(21), 420.508 FS. History–New 12-3-86, Amended 9-25-96, 1-7-98, Formerly 9I-21.005, Amended 1-26-99, Repromulgated 11-14-99, 2-11-01, Amended 3-17-02, Repromulgated _____.

67-21.006 Development Requirements.

A Development shall at a minimum meet the following requirements or an Applicant shall be able to certify that the following requirements shall be met with respect to a Development:

(1) Must provide safe, sanitary and decent multifamily residential housing for lower, middle and moderate income persons or families.

(2) Must be owned, managed and operated as a Development to provide multifamily residential rental property comprised of a building or structure or several proximate buildings or structures, each containing four or more dwelling units and functionally related facilities, in accordance with section 142(d) of the Code.

(3) The Development shall consist of similar units, containing complete facilities for living, sleeping, eating, cooking and sanitation for a Family.

(4) None of the units in the Development shall be used on a transient basis, nor shall they be knowingly leased for a period of less than 180 days unless a determination is made by Florida Housing that there is a specific need in that particular

area for leasing arrangements of less than 180 days, but in no event shall a lease be for a period less than 30 days, nor shall a Development be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home or rest home or trailer court or park.

(5) All of the dwelling units shall be rented or shall be available for rent on a continuous basis to members of the general public, and the Applicant shall not give preference to any particular class or group in renting the dwelling ~~dewelling~~ units in the Development, except to the extent that dwelling units are required to be occupied in compliance with the Code or are being held for Elderly Persons, Commercial Fishing Workers, Homeless Persons or Farmworkers.

(6) The Applicant shall have no present plan to convert the Development to any use other than the use as affordable residential rental property.

(7) None of the units shall at any time be occupied by the owner of the Development or an individual related to the owner as such terms are defined by the Code; provided, however, that in Developments containing more than 50 residential units, such owner or related person may occupy up to one unit per each 100 units in a Development and such owner or related person must reside in a unit that is in a building or structure which contains at least five residential units.

(8) Commencing with the date on which at least 10 percent of the units in the Development are occupied:

(a) At least 20 percent or 40 percent, whichever is applicable based on Applicant's selection of the minimum federal Set-Aside, of the occupied and completed residential units in the Development shall be occupied by Lower Income Residents, prior to the satisfaction of which no additional units shall be rented or leased, except to a Family that is also a Lower Income Resident;

(b) All of the Public Policy Criteria and Qualified Resident Programs selected in the Application must be met; and

(c) After initial rental occupancy of such residential units by Lower Income Residents, at least 20 percent or 40 percent, whichever is applicable based on Applicant's selection of the minimum federal Set-Aside, of the completed residential units in the Development at all times shall be rented to and occupied by Lower Income Residents as required by section 142(d) of the Code, if the Development is financed with the proceeds of Tax-exempt Bonds, or as required by the Act, if the Development is financed with the proceeds of Taxable Bonds, or held available for rental if previously rented to and occupied by a Lower Income Resident.

(9) The Applicant shall obtain and maintain on file income certifications from each Lower Income Resident immediately prior to initial occupancy and at least annually thereafter.

(10) The Applicant shall not take, permit, or cause to be taken any action which would adversely affect the exemption from federal income taxation of the interest on Tax-exempt Bonds, nor shall the Applicant fail to take any action which is necessary to preserve the exemption from federal income taxation of the interest on Tax-exempt Bonds.

(11) The Applicant shall take such action or actions as shall be necessary to comply fully with the Code, F.S., and Florida Housing Rules.

(12) The Applicant may limit the leasing of units in a Development to Elderly Persons, Commercial Fishing Workers, Homeless Persons or Farmworkers as permitted hereby.

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

(a) A viable marketing plan is submitted to and is acceptable to Florida Housing showing a good faith effort to market the unit as Elderly Housing.

(b) The Applicant demonstrates that a good faith effort was made to lease the unit as Elderly Housing and that such effort was made for at least six months after the certificate of occupancy for the relevant unit was issued.

(c) The Applicant has requested and received Board approval that the Development no longer qualifies as Elderly Housing.

(14) The Applicant and Developer of a proposed Rehabilitation Development shall make every effort to rehabilitate existing housing (i) without displacing existing tenants or (ii) by temporarily moving existing tenants to unaffected units within the Development until the renovation of affected units is completed.

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

(16) The Applicant shall use cost certifications with respect to each Development as required by the United States Department of Housing and Urban Development ("HUD") in connection with Developments financed by HUD, including the HUD Risk Sharing Program.

(17) The Applicant shall provide annually to the Trustee not later than 120 days after the end of the Applicant's fiscal year, audited financial statements prepared by an independent certified public accounting firm, consolidated or consolidating, on the Development and any other information required by Florida Housing to comply with continuing disclosure requirements imposed by law.

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

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.502, 420.507(9),(11),(14),(18),(19),(20),(21), 420.508 FS. History–New 12-3-86, Amended 2-22-89, 12-4-90, 9-25-96, 1-7-98, Formerly 9I-21.006, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated _____.

67-21.007 Fees.

In addition to the fees specified in the Universal Application Package, Florida Housing shall collect the following fees and charges in conjunction with the Program:

(1) TEFRA Fee: ~~At the time of submission of the Application,~~ Applicants shall submit a non-refundable TEFRA fee to Florida Housing in the amount of $500 by the Application Deadline. This fee shall be applied to the actual cost of publishing required newspaper advertisements and Florida Administrative Weekly notices of TEFRA Hearings. If the actual cost of the required publishing exceeds $500.00, Applicant shall be invoiced for the difference. If a Local Public Fact Finding Hearing is requested, the Applicant shall be responsible for payment of any fees incurred by Florida Housing. If the first TEFRA approval period has expired and a second TEFRA notice and hearing are required, Applicant is responsible for all costs associated with the additional TEFRA process.

(2) Credit Underwriting and Appraisal Fee: Applicants shall submit the required non-refundable Credit Underwriting and Appraisal Fee for each Development to the Credit Underwriter designated by Florida Housing within seven Calendar Days of the date of the invitation by Florida Housing to enter the Final Credit Underwriting process and prior to final credit review by the Credit Underwriter. The Final Credit Underwriting fee shall be determined pursuant to a contract between Florida Housing and the Credit Underwriter.

(3) Good Faith Deposit: The Applicant shall pay a total deposit equal to one percent of the aggregate principal amount of proposed Taxable and Tax-Exempt Bonds, or $50,000, whichever is greater, to Florida Housing, which deposit may be applied toward the Cost of Issuance Fee. The Good Faith Deposit is payable in two equal installments: the first installment (one-half of one percent) is due within seven Calendar Days of the date the Board approves the Credit Underwriting Report. The balance is payable no later than the date when the Applicant executes the Loan Commitment. In the event the Loan does not close, the unused portion of the Good Faith Deposit shall be refunded to the Applicant. Notwithstanding the foregoing, the Applicant is responsible for all expenses incurred in preparation for loan closing. Any and all costs of Florida Housing will be deducted from the Good Faith Deposit prior to refunding any unused funds to the Applicant. In the event that additional invoices are received by Florida Housing subsequent to a determination that the Loan will not close and refunding any unused funds to the Applicant, which invoices related to costs incurred prior to such determination and refunding, Applicant shall be responsible for payment of the balance due as invoiced.

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

(5) HUD Risk Sharing Fees: Applicants also using the HUD Risk Sharing Program for the Development shall be responsible for associated fees, as follows:

(a) Format II Environmental Review Fee – The fee the Applicant shall pay will be determined by contract between Florida Housing and the environmental professional.

(b) Subsidy Layering Review Fee – The fee the Applicant shall pay will be determined by the contract between Florida Housing and the Credit Underwriter.

(c) Fees of the Florida Housing Finance Corporation Affordable Housing Guarantee Program pursuant to Rule Chapter 67-39, F.A.C.

(6) Compliance Monitoring Fees: The annual monitoring fee the Applicant shall pay will be determined by contract between Florida Housing and the monitoring agent.

(7) Permanent Loan Servicing Fees: The annual servicing fee the Applicant shall pay will be determined by contract between Florida Housing and the servicer.

(8) Financial Monitoring Fees: The annual financial monitoring fee the Applicant shall pay will be determined by contract between Florida Housing and the monitoring agent.

(9) Other Florida Housing Program Fees:

(a) Housing Credit Fees – If Housing Credits are used for the Development, the Compliance Monitoring Fee for that program shall be collected from the Applicant in conjunction with the Compliance Monitoring Fee for the Program.

(b) Florida Affordable Housing Guarantee Program Fees – If the Guarantee Program is used in the Development, the same fee schedule described in Rule Chapter 67-39, F.A.C., shall apply and be paid by the Applicant to Florida Housing.

(10) Development Cost Pro Forma: All of the fees set forth above with respect to the Program and other Florida Housing programs are part of the Total Development Cost. These costs must be included in the Development cost pro forma.

(11) Failure to pay any fee on or before ten Calendar Days after the due date shall cause no further activity by Florida Housing or its agents with respect to the Loan.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507(4), (19) FS. History–New 12-3-86, Amended 1-7-98, Formerly 9I-21.007, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, _____.

67-21.008 Terms and Conditions of Loans.

(1) Each Mortgage Loan for a Development made by Florida Housing shall:

(a) Be evidenced by a properly executed Note or other evidence of indebtedness and be secured by a recorded Mortgage;

(b) Provide for a fully amortized payment of the Mortgage Loan in full beginning on the earlier of 36 months after closing, or stabilized occupancy, or conversion to permanent financing under the loan documents and ending no later than the expiration of the useful life of the property, and in any event, no later than 45 years from the date of the Mortgage Loan;

(c) Not exceed 95 percent of the Total Development Cost;

(d) If the Mortgage Loan is to provide financing for the construction of a Development, have each advance thereof secured, insured, or guaranteed in such manner as Florida Housing determines shall protect its interest and those of the Bond holders;

(e) Have the initial review, approval, and origination process accomplished by a Qualified Lending Institution;

(f) Be serviced by such Qualified Lending Institution or other private entity engaged in the business of servicing mortgage loans in Florida as Florida Housing shall approve; and

(g) Require the submission to Florida Housing of an annual audited financial statement for the Development, and for the Applicant if revenue from multiple projects is being pledged. An annual financial statement compiled or reviewed in accordance with Statement on Standards for Accounting and Review Services (SSARS) No. 1 may be submitted in lieu of an audited financial statement for the Development prior to the issuance of a certificate of occupancy for any unit in the Development, provided that the subsequent annual audited financial statement shall include all operations since inception.

(2) Upon approval, execution, and satisfaction of the terms of the Program Documents by the Applicant and Florida Housing, the Bond sale and the Loan shall be scheduled for closing.

(3) The Applicant may obtain construction financing from an alternative source with the Bond proceeds being invested in accordance with an investment agreement subject to the requirements of the Code for Tax-exempt Bonds.

(4) The Applicant shall also establish and maintain escrow deposits sufficient to pay any insurance premiums and applicable taxes.

(5) Florida Housing shall charge such Program administration fees as are required to pay the cost of administering the Program during the life of the Bonds and Loan.

(6) The interest rate on the Loan shall be determined by Florida Housing at the time of sale of the Bonds based on the financing structure and the interest rate on the Bonds.

(7) Prepayments shall be permitted only in accordance with the terms and conditions of the Program Documents.

(8) Florida Housing shall appoint a trustee and servicing agent when necessary to administer the Program and service the Loan.

(9) All Florida Housing Loans are contingent upon:

(a) The sale, issuance and delivery of the Bonds and the availability of Bond proceeds.

(b) The Applicant obtaining title insurance on the property.

(c) The Applicant obtaining all governmental approvals for constructing and operating the Development as a multifamily housing Development.

(d) The Applicant providing to Florida Housing, Bond Counsel and Special Counsel the Note, Mortgage, financing statements, survey, hazard insurance policies, liability insurance policies, escrow agreement, investment agreements, opinions of counsel including preference opinions, if required, and such other documents as are necessary to ensure that Florida Housing has a properly secured Mortgage as required under the Act and to protect the holders of the Bonds.

(e) If required by Bond Counsel in order to deliver their opinion in connection with the issuance of the Bonds or at the request of Florida Housing, the Bonds being validated pursuant to Chapter 75, F.S., and a certificate of no appeal issuing.

(f) Receipt of TEFRA approval for Tax-exempt Bonds.

(10) All Loans shall be reviewed and originated by a servicer designated by Florida Housing, in conformance with the Act.

(11) The Applicant shall agree to execute or cause to be executed all of the Program Loan Documents required by Florida Housing to secure the unconditional payment of the Loan and to retain the Tax-exempt status of the Bonds, if Bonds are issued as Tax-exempt Bonds.

(12) The Applicant shall, prior to the requested date for funding, or as requested during Credit Underwriting, supply in draft form to Florida Housing the following documents with respect to the Development being financed, together with any other documents required by the Loan Agreement:

(a) A survey, as described in the Application, dated within 90 days of the date submitted showing the location of all improvements, encroachments, easements and rights-of-way, and a site plan which has been approved by all governmental authorities.

(b) A fully completed, executed and sealed surveyors' certification to Florida Housing.

(c) Written evidence of appropriate zoning and governmental approvals.

(d) Plans and specifications bearing the seal of a licensed engineer.

(e) Policies of insurance and evidence of payment of premiums.

(f) Required opinions of counsel necessary for the issuance of the Bonds.

(g) A commitment for mortgagee title insurance in favor of Florida Housing or its Trustee or designated servicer, with only standard exceptions and such other exceptions as are usually permitted in mortgage loans of this nature and that are acceptable to Florida Housing. Such policy shall be in an amount not less than the Loan amount plus an amount sufficient to cover any debt service reserve required by Florida Housing.

(h) A copy of the deed or form of deed conveying the land for the Development to the Applicant, or a copy of the lease creating a long-term leasehold in favor of the Applicant acceptable to the Corporation and the Credit Underwriter.

(i) Evidence as to the status of liens, including mechanic's liens, recorded against the property and the permission of Florida Housing to allow any liens to remain recorded against the land or the Development.

(j) Such other documents as shall be reasonably required by Florida Housing, by the Loan Commitment, or by Florida Housing's respective counsel to protect the interest of Florida Housing in the financing.

(13) The Borrower shall not sell, transfer, nor otherwise assign any of its interest in the Development without the prior written consent of Florida Housing.

(14) Florida Housing shall require all Loans to be secured to the extent necessary to protect Florida Housing and Bond holders.

(15) Any Loan financed with proceeds of Tax-exempt Bonds shall provide that the portion of any debt service reserve fund associated therewith to be financed with Tax-exempt Bonds shall not exceed six months of debt service on the Bonds.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.502, 420.507(4),(6),(9),(11),(21), 420.508 FS. History–New 12-3-86,Amended 12-4-90, 11-23-94, 9-25-96, 1-7-98, Formerly 9I-21.008, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated _____.

67-21.009 Interest Rate on Mortgage Loans.

Florida Housing shall establish the interest rate on Mortgage Loans at the time of sale of the Bonds. The interest rate shall in no event exceed the arbitrage limit which is legally allowed without jeopardizing the tax exempt status of the Bonds, if Bonds are issued as Tax-exempt Bonds.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented Chapter 75, 420.507, 420.508 FS. History–New 12-3-86, Amended 1-7-98, Formerly 9I-21.009, Amended 1-26-99, 11-14-99, Repromulgated 2-11-01, 3-17-02, Repromulgated _____.

67-21.010 Issuance of Revenue Bonds.

Florida Housing shall fund Mortgage Loans with the proceeds from the sale of Revenue Bonds. The issuance and sale of the Bonds shall be governed by resolutions adopted by Florida Housing and by applicable law and rule. If Bonds cannot be sold or cannot be sold in an amount or at an interest rate or under conditions which satisfy the Credit Underwriting Report, as the same may be amended, Florida Housing shall terminate its Loan Commitment and such other agreements as were executed in conjunction with the proposed Loan.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507(6), 420.508, 420.509 FS. History–New 12-3-86, Amended 1-7-98, Formerly 9I-21.010, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated _____.

67-21.011 No Discrimination.

Florida Housing, its staff or agents, Applicants, or participants under the Program shall not discriminate against any person or family, on the basis of race, creed, national origin, age, religion, handicap, familial status or sex, against persons or families on the basis of their having minor children, except that nothing herein shall be deemed to preclude a Developer from discrimination based on age in renting Elderly Housing, from compliance with the provisions hereof with respect to a Farmworker Development, Commercial Fishing Worker or Homeless Development, or to preclude a Developer from discrimination based on income in renting units Set-Aside for Lower Income Residents in compliance with the requirements of the Code or with the requirements of Section 420.509(19), F.S., for Tax-exempt Bonds.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.502, 420.507(14) FS. History–New 12-3-86, Amended 2-22-89, 12-4-90, 1-7-98, Formerly 9I-21.011, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated _____.

67-21.012 Advertisements.

Florida Housing shall require the Applicant to withdraw from circulation advertisements with respect to the Development determined by Florida Housing to violate or be inconsistent with its policy of providing safe and sanitary affordable housing for low, moderate and middle income persons, families or persons or families with minor children.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507(9), (14) FS. History–New 12-3-86, Amended 1-7-98, Formerly 9I-21.012, Amended 1-26-99, 11-14-99, Repromulgated 2-11-01, 3-17-02, Repromulgated _____.

67-21.013 Private Placements of Multifamily Mortgage Revenue Bonds.

Any issuance of Revenue bonds by means of a negotiated Private Placement shall be sold only to a Qualified Institutional Buyer. Such Private Placements may only be utilized for financings where the Applicant has demonstrated that the utilization of a Private Placement produces a substantial benefit to the Development not otherwise available from credit enhancement structures. Florida Housing shall designate the placement agent with respect to such Bonds, who shall be on Florida Housing's approved bond underwriters list. A Qualified Institutional Buyer who is an underwriter may contract to immediately resell such Bonds to other Qualified Institutional Buyers, which transaction shall continue to constitute a Private Placement. The amount of any placement agent fee and any amounts paid by any third party to an initial Qualified Institutional Buyer which is an underwriter shall be subject to the approval of Florida Housing or its designee. Unless such Bonds are rated in one of the three highest rating categories by a nationally recognized rating service, such Bonds shall not be held in a full book-entry system (but may be DTC-Eligible) and shall comply with at least one of the following criteria:

(1) The Bonds shall be issued in minimum denominations of $100,000 (subject to reduction by means of redemption) and each purchaser of such Bond, including subsequent purchasers unless the requirements of (2) or (3) below are met, shall certify to Florida Housing prior to any purchase or transfer of any Bond that such purchaser is a Qualified Institutional Buyer; or

(2) The Bonds shall be issued in minimum denominations of $250,000 (subject to reduction by means of redemption) and an investment letter satisfactory to Florida Housing and its counsel shall be obtained from each initial purchaser of the Bonds (including any purchaser purchasing such Bonds in an immediate resale from an underwriter), but shall not be required of subsequent purchasers of the Bonds, to the effect that, among other things, such purchaser is a Qualified Institutional Buyer, is purchasing such Bonds for its own account and not for immediate resale to other than another Qualified Institutional Buyer, and has made an independent investment decision as a sophisticated or institutional investor; or

(3) The Bonds shall be issued in minimum denominations of $250,000 (subject to reduction by means of redemption) and an investment letter satisfactory to Florida Housing and its counsel shall be obtained from each initial purchaser of the Bonds and from each subsequent transferee of the Bonds prior to any transfer thereof, to the effect that such purchaser is a Qualified Institutional Buyer.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507(4), (5), (6), (9), (11), (14), (16), (18), (19), (20), (21) FS. History–New 11-23-94, Amended 1-7-98, Formerly 9I-21.013, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, _____.

67-21.014 Credit Underwriting Procedures.

(1) An invitation into Credit Underwriting shall require that the Applicant submit the Credit Underwriting and Appraisal Fee and information required to complete the Credit Underwriting, to the Credit Underwriter in accordance with the schedule established by Florida Housing upon the recommendation of the Credit Underwriter. Failure to submit the Credit Underwriting and Appraisal Fee or meet the deadlines as set forth in the schedule shall result in the immediate termination of Credit Underwriting activities and the Application shall be moved to the bottom of the ranked list.

(2) The Credit Underwriter shall in Credit Underwriting analyze and verify all information in the Application in order to make a recommendation to the Board on the feasibility of the Development, without taking into account the willingness of a Credit Enhancer to provide Credit Enhancement.

(a) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of normal underwriting procedures, the cost of such expertise shall be borne by the Applicant.

(b) The Credit Underwriter shall review the proposed financing structure to determine whether the Loan is feasible.

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

(d) Florida Housing shall consider the following when determining the need for construction completion guarantees based on the recommendations of the Credit Underwriter:

1. Liquidity of any guarantee provider.

2. Applicant's, Developer's and General Contractor's history in successfully completing Developments of similar type.

3. The past performance of the Applicant, Developer, General Contractor, or management agent, in developing, constructing or managing Developments financed by Florida Housing or its predecessor, including, by way of example and not limitation, nonpayment of fees and noncompliance with program requirements.

4. Percentage of Florida Housing funds utilized compared to Total Development Costs. At a minimum, the corporate general partner of the borrowing entity shall provide a personal guarantee for completion of construction. In addition, a letter of credit or payment and performance bond shall be required if Florida Housing determines upon recommendation of the Credit Underwriter after evaluation of conditions in subparagraphs 1. through 3., above, that additional surety is needed.

(e) The Credit Underwriter shall review and make a recommendation to Florida Housing whether the number of existing loans and construction commitments of the Applicant and its principals will impede its ability to proceed with the successful development of each proposed Florida Housing Development.

(f) The Credit Underwriter shall consider the appraisal of the Development and other market study documentation to make a recommendation as to whether the market exists to support both the demographic and income restriction Set-Asides committed to within the Application. The Credit Underwriter shall consider the market study and other documentation to make a recommendation of whether to approve or disapprove an allocation when the proposed Development would financially impair an existing Development previously funded by Florida Housing.

(g) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process to complete the Credit Underwriting Report, the Credit Underwriter shall notify Florida Housing and request the information from the Applicant. Such requested information shall be submitted within ten business days of receipt of the request therefor. Failure for any reason to submit required information on or before the specified deadline shall result in the Application being moved to the bottom of the ranked list.

(h) At a minimum, the Credit Underwriter shall require the following information during Credit Underwriting:

1. For Credit Enhancers, audited financial statements for their most recent fiscal year ended, if published; otherwise the previous year's audited statements will be provided until the current statements are published or Credit Underwriting is complete.

2. For Principals and Guarantors, audited financial statements or financial statements compiled or reviewed in accordance with Statement on Standards for Accounting and Review Services (SSARS) No. 1, which is adopted and incorporated herein by reference, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1 are not available, unaudited financial statements prepared within the last 90 days and reviewed by the Credit Underwriter in accordance with the Fannie Mae Multifamily Delegated Underwriting and Servicing (DUS) Guide, effective November 23, 1999, which is adopted and incorporated herein by reference, and the two most recent years tax returns.

3. For the General Contractor, audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100% of the total construction cost is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

4. For the Applicant and General Partner, audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If the entities are newly formed (less than 18 months in existence as of the date that Credit Underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules.

(i) Required appraisals, market studies, pre-construction analyses, and environmental studies (other than Phase I Environmental Site Assessments) shall be completed by professionals approved by Florida Housing's Credit Underwriters. Approval of appraisers and contractors to complete market and environmental studies shall be based upon review of qualifications, professional designations held, references and prior experience with similar types of Developments.

(j) A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice, which is adopted and incorporated herein by reference, and a separate market study shall be ordered by the Credit Underwriter from an appraiser qualified for the geographic area and product type not later than when an Application enters Credit Underwriting. The Credit Underwriter shall review the appraisals to properly evaluate the loan request in relation to the property value.

(k) Appraisals and separate market studies which have been ordered and submitted by third party Credit Enhancers or syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal or market study referenced above.

(3) The Applicant shall review and provide written comments on the draft Credit Underwriting Report to Florida Housing and the Credit Underwriter within the time frame established by Florida Housing. Florida Housing shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. The Credit Underwriter shall then review and incorporate Florida Housing's and, if deemed appropriate, the Applicant's comments and release the revised report to Florida Housing and the Applicant. Any additional comments from the Applicant shall be received by Florida Housing and the Credit

Underwriter within the established time frame. Then, the Credit Underwriter shall provide a final report, which shall address comments made by the Applicant to Florida Housing.

(4) After approval by the Board following presentation of the Credit Underwriting Report and payment of one-half of the Good Faith Deposit, the Board of Directors, Florida Housing staff and Florida Housing Counsel shall begin negotiations of the Loan Commitment.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507, 420.508, 420.508(3)(b)3., 420.509 FS. History–New 1-7-98, Formerly 9I-21.014, Amended 1-26-99, 11-14-99, 1-26-00, 2-11-01, 3-17-02, _____.

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

(1) Applicants may submit one Application for the MMRB Program, SAIL, competitive housing credits and non-competitive housing credits, subject to the restrictions set forth in the Universal Application Package.

(2) Applicants that receive funding from other programs and the Multifamily Mortgage Revenue Bond Program shall comply with the requirements of the applicable program rule and this rule.

Specific Authority 420.507(12), 420.508(3)(c) FS. Law Implemented 420.507, 420.508 FS. History–New 1-7-98, Formerly 9I-21.015, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated _____.

67-21.016 Compliance Procedures.

(1) Any duly authorized representative of Florida Housing shall be permitted at any reasonable time to inspect and monitor Development and tenant records and facilities. All tenant records shall be maintained by the owner of the Development within 50 miles of the Development site.

(2) Florida Housing or its representative shall conduct on-site Development inspections at least annually.

(3) Florida Housing must approve the selection or replacement of a management company prior to such company assuming responsibility for the Development, using the following criteria:

(a) Review of company information including key management personnel, management experience and procedures;

(b) Review of company forms such as application for apartment residence, income verification forms, lease, etc.;

(c) Key management company representative attendance at a Florida Housing compliance workshop; and

(d) A meeting between Florida Housing compliance staff and the key management company representative.

(4) Florida Housing shall document approval of the management company to the owner of the Development after successful completion of items (3)(a)-(d).

(5) The Owner of the Development shall maintain complete and accurate income records pertaining to each tenant occupying a Set-Aside unit. Records for each occupied Set-Aside unit shall contain the following documentation:

(a) The tenant's application containing the name or names of each household member, employment and income information for each household member, and other information required by the owner of the Development;

(b) An executed lease agreement listing the term of the tenancy and all of the tenants residing in the unit;

(c) Verification of the income of each tenant as is acceptable to prove income under section 8 of the U.S. Housing Act of 1937, which is adopted and incorporated herein by reference, as in effect on the date of this Rule Chapter;

(d) Information as to the assets owned by each tenant; and

(e) Income Certification Form TIC-1 for each tenant. A sample Form TIC-1 can be obtained from Florida Housing.

(6) The Applicant shall submit Program Reports pursuant to the following: The initial Program Report shall be submitted prior to the time of Loan closing, if the Development is occupied, or by the 25th of the month following rental of the initial unit in the Development. Subsequent Program Reports shall be submitted each month and are due no later than the 25th of each month thereafter. The Program Reports shall be accompanied by the Recap of Tenant Income Certification Information, Form AR-1, and the certificate of continuing program compliance and copies of all Tenant Income Certifications executed since the last Program Report and shall be sent to Florida Housing, the Trustee and the monitoring agent.

(7) The Developer shall, at least monthly, submit to Florida Housing, the Trustee and the monitoring agent, a certificate of continuing program compliance stating the percentage of dwelling units that are:

(a) Occupied by Lower-Income Residents.

(b) Being held vacant for occupancy by Lower-Income Residents.

(c) Occupied by other persons.

(8) Florida Housing shall monitor compliance of all terms and conditions of the Loan and in the Land Use Restriction Agreement, which Land Use Restriction Agreement shall be recorded in the public records of the county wherein the Development is located. The Land Use Restriction Agreement shall be recorded first. Violation of any term or condition of the documents evidencing or securing the Loan shall constitute a default during the term of the Loan. Florida Housing shall take legal action to effect compliance if a violation of any term or condition relative to the Set-Aside of units for Lower Income Residents is discovered during the course of compliance monitoring or by any other means.

(9) Borrowers shall annually certify that the household gross income of each household occupying a unit set aside for Lower Income Residents meets income requirements specified in the Code. Should the annual recertification of such households result in noncompliance with income occupancy

requirements, the next available unit must be rented to a qualifying household in order to ensure continuing compliance of the Development.

(10) The compliance monitoring for MMRB will begin following loan closing or, if the Development is occupied, prior to loan closing.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507(4),(13),(14), 420.508, 420.509 FS. History–New 1-7-98, Formerly 9I-21.018, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated _____.

67-21.017 Transfer of Ownership.

(1) Any transfer of ownership of any Development shall be subject to compliance with the provisions of Rule 67-21.017, F.A.C., provided that transfers of the limited partnership interest in the Developer to a tax credit syndicator, or the transfer of ownership to a creditor by means of foreclosure or deed in lieu of foreclosure, need not comply with this provision. The determination of whether a transfer of ownership of a Development shall be deemed to take place for purposes of this rule shall be made in accordance with the provisions of the Land Use Restriction Agreement and other Program Documents for such Development. Owners shall advise Florida Housing in writing of any change of ownership of the owner aggregating 50 percent or more of ownership interests in the owner within any six-month period.

(2) A request for transfer of ownership shall be submitted to Florida Housing in writing and include evidence that the current owner has agreed to the proposed sale. A detailed opinion letter from the Applicant's legal counsel describing the scope of the proposed transaction must also be provided. Florida Housing shall notify the current owner and potential purchaser of any additional information necessary for the Board to make an informed decision.

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

(4) Prior to the transfer of ownership:

(a) The prospective purchaser and the conditions of the assumption of the Program Documents must be approved by the Credit Underwriter as meeting the terms of its Credit Underwriting Report, Bond Counsel and Special Counsel as complying with all applicable legal requirements, and Florida Housing as meeting the stated purposes of Florida Housing,

(b) All outstanding fees owing to Florida Housing shall be paid,

(c) The Development shall be in compliance with all existing regulatory requirements imposed by Florida Housing or its predecessor, and

(d) If the Set-Aside requirements in the Land Use Restriction Agreement are expired or have less than 12 months remaining, such agreement shall be extended for a minimum of two years from the date of closing. The Credit Underwriter shall conduct a credit underwriting of the new owner upon any transfer of ownership. Additionally, the new owner shall be notified that any refunding of bonds associated with such Development shall require a full Credit Underwriting of the Development. All transfer of ownership transactions shall require a guarantee of recourse obligations and an environmental indemnity from the assuming owner.

(5) The prospective purchaser or current owner shall be responsible for payment of all fees for professional services rendered in association with the transfer of ownership.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507, 420.508, 420.508(3)(a) FS. History–New 1-7-98, Formerly 9I-21.017, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated _____.

67-21.018 Refundings and Troubled Development Review.

(1) Refunding of previously issued Bonds shall in all instances be at the option of Florida Housing and not an obligation of Florida Housing.

(2) Florida Housing shall endeavor where feasible to refund Bonds which are either in default or face a pending default.

(3) Approval by Florida Housing for a refunding of an issue of Bonds for reasons related to pending default shall be subject to the following:

(a) Determination of the likelihood of the impending default;

(b) Submission of a sworn certificate of impending default by the Developer or Credit Enhancer;

(c) Submission of sworn certificate from the Developer or Credit Enhancer that conditions causing default are likely to continue;

(d) Submission of certified information from a certified public accountant concerning cash contributions to the Development, financial condition of the Development, including analysis of tax benefits derived from Development losses, and the financial condition of the Developer or Credit Enhancer;

(e) Independent evidence of market conditions in the Development location;

(f) Evidence of effort by the Developer or Credit Enhancer to procure other sources of capital infusion;

(g) Statement by the Developer or Credit Enhancer of the continued public purpose to be achieved by refunding;

(h) Agreement by the Developer or Credit Enhancer to update the Land Use Restriction Agreement, including retention of state and federal income limits;

(i) New Credit Underwriting by Florida Housing, with new Bond amount determined by Florida Housing based upon real estate underwriting criteria and equal to the lesser of the

amount determined by Florida Housing or the Credit Enhancer, to provide assurance that a similar default condition will not present itself in the future;

(j) The full risk of refunding is taken by the Credit Enhancer through full indemnification of Florida Housing; with consideration given to personal indemnification from the Developer if sufficient financial strength can be demonstrated;

(k) All costs of refunding are paid by the Developer or the Credit Enhancer outside of Bond proceeds, including all applicable fees;

(l) Retention of annual fees by Florida Housing;

(m) Provision of other evidence of the immediacy of default;

(n) Retention of the Credit Enhancement; and

(o) Management of the Development is reviewed and approved by Florida Housing.

(p) The Set-Aside of an additional 10 percent of units for Lower Income Residents beyond the requirements of subsection 67-21.0041(1), F.A.C.

(4) In connection with all refundings, the following shall apply:

(a) All outstanding fees of Florida Housing shall be paid in connection with the refunding;

(b) The Set-Asides required by the original Land Use Restriction Agreement shall be extended for a period determined by Florida Housing;

(c) A Credit Underwriting and an existing property valuation report shall be required, which may incorporate any Credit Underwriting undertaken within the past twelve months in connection with a transfer of ownership of the same Development;

(d) A guarantee of recourse obligations and an environmental indemnity shall be required;

(e) Additional operating deficit or other guarantees and establishment of replacement reserves or increase in existing reserves may be required as specified in the Credit Underwriting report;

(f) The loan shall immediately on the earlier of 24 months after closing or stabilized occupancy in the case of major rehabilitation begin full amortization over the remaining life of the Bonds; and in no event shall exceed the economic remaining life of the property, provided that, in the case of a refunding relating to a pending default, such amortization may be delayed to the extent recommended in the Credit Underwriting Report;

(g) Any material changes to the underlying documents shall be deemed to constitute a refunding for purposes hereof.

(h) Any extension or extensions of maturity cumulatively exceeding 60 months shall be deemed to constitute a refunding for purposes hereof; and

(i) The owner of the Development must provide a written request for the refunding and a detailed opinion from Applicant's counsel describing the scope of the transaction. It shall not be necessary to complete an Application in connection with a refunding request.

Specific Authority 420.507(12), 420.508(3)(a) FS. Law Implemented 420.507, 420.508 FS. History–New 1-7-98, Formerly 9I-21.018, Amended 1-26-99, 11-14-99, 2-11-01, 3-17-02, Repromulgated _____.

67-21.019 Issuance of Bonds for 501(c)(3) Entities.

(1) Florida Housing shall entertain requests for it to serve as the issuer of Tax-exempt Bonds for the acquisition or construction of multifamily housing to be owned by a not-for-profit entity organized under section 501(c)(3) of the Code.

(2) In connection with all Bonds issued pursuant to Rule 67-21.019, F.A.C., Applicants shall be required to comply with the provisions of Rules 67-21.003, 67-21.0041 and 67-21.0045 through 67-21.018, F.A.C., as if the section 501(c)(3). Bonds are being issued as Tax-exempt Bonds under section 141 of the Code, except that at least one Qualified Resident Program shall be committed to in addition to the minimum federal Set-Aside.

(3) In addition, Applicant shall submit the following:

(a) An initial bond counsel fee of $1,000 along with IRS Form 1023, which is adopted and incorporated herein by reference, and all attachments and correspondence to and from the IRS relative to section 501(c)(3) status of the Applicant. A copy of IRS Form 1023 is available on the IRS web site at www.irs.gov; and

(b) An opinion from Applicant's counsel at Applicant's sole expense evidencing the Applicant's qualifications as a section 501(c)(3) entity and Applicant's authority to incur bond debt for multifamily housing; and

(c) If a Development to be acquired is intended to be exempt from ad valorem taxes, evidence that it has notified all local ad valorem taxing authorities of the acquisition of the proposed Development by a section 501(c)(3) entity.

(d) Specific information otherwise required to be submitted in an Application as requested by Florida Housing.

Specific Authority 420.507(12) FS. Law Implemented 420.502, 420.507(14),(24), 420.508 FS. History–New 11-14-99, Amended 2-11-01, 3-17-02, Repromulgated _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Wayne Conner, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mark Kaplan, Executive Director, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 6, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 28, No. 38, September 20, 2002

FLORIDA HOUSING FINANCE CORPORATION

RULE TITLES:	RULE NOS.:
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PURPOSE AND EFFECT: The purpose of this Rule Chapter is to establish the procedures by which the Corporation shall:

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

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

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

SUMMARY: Prior to the opening of an Application Cycle, the Corporation (1) researches the market need for affordable housing throughout the state of Florida and (2) evaluates prior Application Cycles to determine what changes or additions should be added to the Rule, Application and/or QAP. The proposed amendments to the Rule and adopted reference material include changes that will create a formulated process for selecting Developments that will apply in the 2003 Application Cycle.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 420.507 FS.

LAW IMPLEMENTED: 420.5087, 420.5089, 420.5099 FS.

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

TIME AND DATE: 9:00 a.m., January 10, 2003

PLACE: Tallahassee City Hall, Commission Chambers, 891 South Adams Street, Tallahassee, Florida 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Kerey Carpenter, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

THE FULL TEXT OF THE PROPOSED RULES IS:

PART I ADMINISTRATION

67-48.001 Purpose and Intent.

The purpose of this rule chapter is to establish the procedures by which the Corporation shall:

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

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

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089 (2), 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.001, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, Amended 3-17-02, Repromulgated _____.

67-48.002 Definitions.

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

(2) "Address" means the address assigned by the United States Postal Service and must include address number, street name, city, state and zip code. If address has not yet been assigned, include, at a minimum, street name and closest designated intersection, city, state and zip code.

(3) "Adjusted Income" means, with respect to a HOME Development, the gross income from wages, income from assets, regular cash or noncash contributions, and any other resources and benefits determined to be income by HUD, adjusted for family size, minus the deductions allowable under 24 CFR 5.611, which is adopted and incorporated herein by reference.

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

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

(6) "Annual Owner Compliance Certification Form" or "Form AOC-1" means, with respect to a Housing Credit Development, a report format which is required to be completed and submitted to the Corporation, pursuant to subsection 67-48.006(7)~~(6)~~, F.A.C., and is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter. A copy of such form is available on FHFC's web site www.floridahousing.org.

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

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

(9) "Application" means, with respect to the SAIL, HOME and HC Programs, the completed forms from the Universal Application Package together with all exhibits submitted to the Corporation in accordance with this rule chapter and the Universal Application Package instructions in order to apply for the SAIL, HOME ~~and/~~or HC Program(s). ~~"Application" means, with respect to the HOME Program, the completed forms from the HOME Rental Application Package together with all exhibits submitted to the Corporation in accordance with this rule chapter and the HOME Rental Application Package instructions in order to apply for the HOME Program.~~

(10) "Application Deadline" means 5:00 p.m., Eastern Time, on the final day of the Application Period.

(11) "Application Period" means a period during which Applications shall be accepted as posted on Florida Housing's web site and with a deadline no less than thirty days from the beginning of the Application Period.

(12) "Assisted Living Facility" or "ALF" means a Florida licensed living facility that complies with Sections 400.401 through 400.454, F.S., and Rule Chapter 58A-5, F.A.C.

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

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

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

(16) "Calendar Days" means, with respect to computing any period of time allowed by this rule, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

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

(18) "Catchment Area" means the geographical area covered under a Local Homeless Assistance Continuum of Care Plan, as designated and revised as necessary by the State Office on Homelessness, in accordance with Section 420.624, F.S.

~~(19) "Categorical Set-Aside" means, with respect to the SAIL Program, the reservation of funds for Commercial Fishing Workers or Farmworkers, Families, Elderly persons, and persons who are Homeless, in accordance with Section 420.5087, F.S. "Categorical Set-Aside" means, with respect to the Housing Credit Program, the amount of Allocation Authority which has been designated by the Corporation and the QAP as a set-aside.~~

(19)~~(20)~~ "Code" or "IRC" means the Internal Revenue Code of 1986, as in effect on the date of this rule chapter, together with corresponding and applicable final, temporary or proposed regulations, notices, and revenue rulings issued with respect thereto by the Treasury or the Internal Revenue Service of the United States, which is adopted and incorporated herein by reference.

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

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

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

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

(22)~~(23)~~ "Community Housing Development Organizations" or "CHDOs" means organizations that are organized pursuant to the "CHDO" definition in 24 CFR Part 92.

(23)~~(24)~~ "Competitive Housing Credits" or "Competitive HC" means those Housing Credits which come from Florida Housing's annual Allocation Authority.

(24)~~(25)~~ "Compliance Period" means, with respect to a SAIL Development, a minimum period of 15 years from the date the first residential unit is occupied; with respect to a HOME Development, a minimum period of 15 years for rehabilitation Developments and 20 years for new construction Developments, beginning from the date the first residential unit is occupied. However, for SAIL and HOME Developments which contain occupied units to be rehabilitated, the Compliance Period shall begin at closing of the SAIL or HOME loan. With respect to any building that is included in a Housing Credit Development, "Compliance Period" means a minimum period of 15 years beginning on the first day of the first taxable year of the Housing Credit Period with respect thereto in which a Housing Credit Development shall continue to maintain the Housing Credit Set-Aside chosen by the Applicant in the Application, pursuant to Section 42 of the Code.

(25)~~(26)~~ "Consolidated Plan" means the plan prepared in accordance with HUD Regulations, 24 CFR § 91, which is adopted and incorporated herein by reference, and which describes needs, resources, priorities and proposed activities to be undertaken with respect to certain HUD programs, including the HOME Program.

(26)~~(27)~~ "Contact Person" means the person with whom the Corporation will correspond concerning the Application and the Development. This person cannot be a third-party consultant.

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

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

(29)~~(30)~~ "Default Interest Rate" means the rate of interest charged when the borrower is in default of the terms and conditions of the loan documents.

(30)~~(31)~~ "Department" or "DCA" means the Department of Community Affairs of the State of Florida.

(31)~~(32)~~ "Developer" means any individual, association, corporation, joint venturer, or partnership which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable multifamily housing pursuant

to this rule chapter. The Developer, as identified in an Application, may not change until the construction of the Development is complete.

(32)~~(33)~~ "Development," "Project," or "Property" means any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing for persons or families, whether new construction, the acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing housing, together with such related non-housing facilities as the Corporation determines to be necessary, convenient, or desirable.

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

(34)~~(35)~~ "Development Cost" means the total of all costs incurred in the completion of a Development excluding developer fee, acquisition cost of existing developments, and total land cost as shown in the Development Cost line item on the development cost pro forma within the Application.

(35)~~(36)~~ "Development Expenses" means, with respect to SAIL Developments, usual and customary operating and financial costs, such as the compliance monitoring fee, the financial monitoring fee, replacement reserves, the servicing fee and the debt service reserves. As it relates to the application of Development Cash Flow described in subsection 67-48.010 (4), F.A.C., the term does not include extraordinary capital expenses, developer fees and other non-operating expenses.

(36)~~(37)~~ "Difficult Development Area" or "DDA" means any area designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income in accordance with Section 42(d)(5), of the Code ~~IRC~~. A list of the DDAs is adopted and incorporated herein by reference. A copy of such list is available on FHFC's web site www.floridahousing.org.

(37)~~(38)~~ "Document" means any written or graphic matter of any kind whatsoever, however produced or reproduced, including but not limited to records, reports, memoranda, minutes, notes, graphs, maps, charts, contracts, opinions, studies, analysis, photographs, financial statements and correspondence as well as any other tangible thing on which information is recorded.

(38)~~(39)~~ "Draw" means the disbursement of funds to a Development under the SAIL and HOME Programs.

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

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

(a) Requirements mandated by federal law.

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

(c) Whether the determination is for rental housing.

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

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

(41)~~(42)~~ "Executive Director" means the Executive Director of the Corporation.

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

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

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

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

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

(45)~~(46)~~ "Farmworker Household" means a household of one or more persons wherein at least one member of the household is a Farmworker at time of initial occupancy.

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

(47)~~(48)~~ "Final Cost Certification Application" or "Form FCCA" means, with respect to a Housing Credit Development, that Form FCCA which is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter, and which shall be used by an Applicant to itemize all expenses incurred in association with construction or rehabilitation of a Housing Credit Development. Such form will be made available from the Corporation and shall be completed, executed and submitted to the Corporation, as specified in subsections 67-48.023(6)-(7), F.A.C., along with the executed Extended Use Agreement, IRS Forms 8821 for all Financial Beneficiaries, a copy of the syndication agreement disclosing the rate and all terms, the required certified public accountant opinion letter, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in FCCA instructions. The Final Housing Credit Allocation will not be issued until such time as all items in the preceding sentence are received and processed by the Corporation. A copy of Form FCCA ~~such form~~ is available on FHFC's web site www.floridahousing.org. IRS Form 8821 is adopted and incorporated herein by reference and can be obtained from the Internal Revenue Service by calling 1(800)829-4477.

(48)~~(49)~~ "Final Housing Credit Allocation" means, with respect to a Housing Credit Development, the issuance of Housing Credits to an Applicant upon completion of construction or rehabilitation of a Development and submission to the Corporation by the Applicant of a completed and executed Form FCCA pursuant to subsections 67-48.023(6)-(7), F.A.C.

(49)~~(50)~~ "Financial Beneficiary" means any Developer and its principals and principals of the Applicant entity who receives or will receive a financial benefit of:

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

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

This definition does not include third party lenders, third party management agents or companies, Housing Credit Syndicators, credit enhancers who are regulated by a state or federal agency and who do not share in the profits of the Development or building contractors whose total fees are within the limit described in subsection 67-48.002(53)~~(54)~~, F.A.C.

(50)~~(51)~~ "Financial Institution" means a state or federal association, bank, trust company, international bank agency, representative office or international administrative office, or credit union.

(51)~~(52)~~ "Florida Keys Area" means all lands in Monroe County, except:

(a) That portion of Monroe County included within the designated exterior boundaries of the Everglades National Park and areas north of said Park;

(b) All lands more than 250 feet seaward of the mean high water line owned by local, state, or federal governments; and

(c) Federal properties.

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

(53)~~(54)~~ "General Contractor" means an entity duly licensed in the State of Florida which, to be eligible for the maximum 14% fee, must meet the following conditions:

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

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

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

(d) Payment and performance bond (or approved alternate security for General Contractor's performance, such as a letter of credit or other guarantee acceptable to Florida Housing) must be issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.;

(e) None of the General Contractor duties to manage and control the construction of the Development may be subcontracted; and

(f) Not more than 20 percent of the construction cost is subcontracted to any one entity unless otherwise approved by the Board for a specific Development.

(54)~~(55)~~ "Geographic Set-Aside" means the amount of Allocation Authority or funding which has been designated by the Corporation to be allocated for Developments located in specific geographical regions within the State of Florida.

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

(56)~~(57)~~ "HOME" or "HOME Program" means the HOME Investment Partnerships Program administered by the Corporation pursuant to HUD Regulation 24 CFR § 92, which is adopted and incorporated herein by reference, and Section 420.5089, F.S.

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

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

(59)~~(60)~~ "HOME Minimum Set-Aside Requirement" means the minimum set-aside requirement of 20% of the HOME-Assisted Units in the Development shall be rented to persons at 50% of the median income adjusted for family size and 80% of the HOME-Assisted Units in the Development shall be rented to persons at 60% of the median income adjusted for family size.

~~(61) "HOME Rental Application Package" or "HOMER1015" means the forms and instructions thereto, obtained from the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the HOME Programs. The HOME Rental Application Package is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter.~~

(60)~~(62)~~ "HOME Rental Development" means a Development proposed to be constructed or rehabilitated with HOME funds. A Development which is under construction may be eligible to apply for HOME funds only if the final building permit is dated no earlier than 6 months prior to the Application Deadline, ~~and~~ the Development is able to provide evidence of ~~certifies~~ compliance with federal labor standards (if 12 or more HOME-Assisted Units are developed under a single contract) for any work already completed, and compliance with HUD environmental requirements as well as all other federal HOME regulations as listed in Rule 67-48.014, F.A.C. and 24 CFR Part 92. The federal requirements may require completion of activities prior to submission of an Application for HOME funding.

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

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

(b) Low HOME rent means 20% of the HOME-Assisted Units in a Development must have rents set at no more than the lesser of the Section 8 Fair Market Rent (FMRs), or 30% of the gross income of a Family at 50% of the area median income, minus resident-paid utilities.

(62)~~(64)~~ "Homeless" or "Homeless Household" means an individual or Family who lacks a fixed, regular, and adequate nighttime residence or an individual or Family who has a primary nighttime residence that is:

(a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing;

(b) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term does not refer to any individual imprisoned or otherwise detained pursuant to state or federal law.

(63)~~(65)~~ "Housing Credit" means the tax credit issued in exchange for the development of rental housing pursuant to Section 42 of the Code and the provisions of this Rule Chapter 67-48, F.A.C.

(64)~~(66)~~ "Housing Credit Allocation" means the amount of Housing Credits determined by the Corporation as necessary to make a Development financially feasible and viable throughout the Development's Housing Credit Compliance Period pursuant to Section 42(m)(2)(A) of the Code.

(65)~~(67)~~ "Housing Credit Development" means the proposed or existing rental housing Development(s) for which Housing Credits have been applied or received.

(66)~~(68)~~ "Housing Credit Extended Use Period" or "Extended Use Period" means, with respect to any building that is included in a Housing Credit Development, the period that begins on the first day of the Compliance Period in which such building is part of the Development and ends on the later of: (i) the date specified by the Corporation in the Extended Use Agreement or (ii) the date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the Code.

(67)~~(69)~~ "Housing Credit Period" means with respect to any building that is included in a Housing Credit Development, the period of 10 years beginning with:

(a) The taxable year in which such building is placed in service; or

(b) At the election of the Developer, the succeeding taxable year.

(68)~~(70)~~ "Housing Credit Rent-Restricted Unit" means, with respect to a Housing Credit Development, a unit for which the gross rent does not exceed 30% of the imputed income limitation (Low-Income or Very Low-Income) applicable to such unit as chosen by the Applicant in the Application and in accordance with the Code. Gross rent must

be determined from the rent charts included in the Application and must correspond to the percentage of area median income committed to by the Applicant in the Application.

(69)~~(71)~~ "Housing Credit Set-Aside" means the number of units in a Housing Credit Development necessary to satisfy the percentage of Low-Income or Very Low-Income units chosen by the Applicant in the Application.

(70)~~(72)~~ "Housing Credit Syndicator" means a person, partnership, corporation, trust or other entity that regularly engages in the purchase of interests in entities that produce Qualified Low Income Housing Projects [as defined in Section 42(g) of the Internal Revenue Code] and provides at least one written reference in the Application that such person, partnership, corporation, trust or other entity has performed its obligation under the partnership agreements and is not currently in default under those agreements.

(71)~~(73)~~ "Housing Provider" means, with respect to a HOME Development, local government, consortia approved by HUD under the HUD Regulations, for-profit and non-profit Developers, and qualified CHDOs, with demonstrated capacity to construct or rehabilitate affordable housing.

(72)~~(74)~~ "HUD" means the U.S. Department of Housing and Urban Development.

(73)~~(75)~~ "HUD Regulations" means, with respect to the HOME Program, the regulations of HUD in 24 CFR § 92, together with subsequent amendments thereto, as in effect on the date of this rule chapter.

(74)~~(76)~~ "Income Certification", "Tenant Income Certification" or "Form TIC-1" means the ~~that~~ Form TIC-1, which is adopted and incorporated by reference, and which shall be used to certify the income of all residents residing in a set-aside unit in a Development. A copy of such form is available on FHFC's web site www.floridahousing.org.

(75)~~(77)~~ "Land Use Restriction Agreement, " or "LURA" means, with respect to the SAIL or HOME Program, an agreement between the Corporation and the Applicant which sets forth the Set-Aside requirements and other Development requirements, if any, under the SAIL or HOME Program.

(76)~~(78)~~ "Lead Agency" means a Local Government or Non-Profit serving as the point of contact and accountability to the State Office on Homelessness with respect to the Local Homeless Assistance of Continuum of Care Plan, in accordance with Section 420.624, F.S.

(77)~~(79)~~ "Local Government" means a unit of local general-purpose government as defined in Section 218.31(2), F.S.

(78)~~(80)~~ "Local Homeless Assistance Continuum of Care Plan" means a plan for developing and implementing a framework for a comprehensive and seamless array of housing and services to address the needs of homeless persons and persons at risk for homelessness, in accordance with Section 420.624, F.S.

(79)~~(81)~~ "Low Income" means, with respect to the HOME Program, income which does not exceed 80% of the median income for the area, as determined by HUD, with adjustments for family size, except that HUD may establish income ceilings higher or lower than 80% of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes, provided; however, with respect to the HC Program, "Low Income" shall mean income which is at or below 50% or 60% of the area median income, adjusted for family size, whichever is elected.

(80)~~(82)~~ "Match" means non-federal contributions to a HOME Development eligible pursuant to the HUD Regulations.

(81)~~(83)~~ "Non-Profit" means a qualified non-profit entity as defined in Section 42(h)(5)(C), subsection 501(c)(3) or 501(c)(4) of the Code and organized under Chapter 617, F.S., if a Florida Corporation, or organized under similar state law if organized in a jurisdiction other than Florida, to provide housing and other services on a not-for-profit basis, which owns at least 51% of the ownership interest in the Development held by the general partner entity and which entity is acceptable to federal and state agencies and financial institutions as a Sponsor for affordable housing. For purposes of the foregoing, in accordance with Section 42 of the Code, a for-profit entity wholly owned by one or more qualified non-profit organizations will constitute a Non-Profit entity. The purpose of the Non-Profit must be, in part, to foster low-income housing and such purpose must be reflected in the Articles of Incorporation of the Non-Profit entity. Qualification as a Non-Profit entity must be evidenced to the Corporation by the receipt from the Applicant, upon Application, of a written opinion from legal counsel. The total cost of securing this written legal opinion will be borne entirely by the Applicant. A Non-Profit entity shall own an interest in the Development, either directly or indirectly; shall not be affiliated with or controlled by a for-profit corporation; and shall materially participate in the development and operation of the Development throughout the total affordability period as stated in the Land Use Restriction Agreement and the Extended Use Agreement. If an Applicant submits Application to the Corporation as a Non-Profit entity but does not qualify as such, the Application will be rejected and the Applicant will be disqualified from participation for the current cycle.

(82)~~(84)~~ "Note" means a unilateral agreement containing an express and absolute promise to pay to the Corporation a principal sum of money for the loan together with interest on a specified date. The Note will provide the interest rate and will be secured by a mortgage.

(83)~~(85)~~ "Portfolio Diversification" means a distribution of SAIL and HOME Program loans to Developments in varying geographic locations with varying design structures and size and with different types and identity of Sponsors.

(84)~~(86)~~ "Preliminary Allocation" means a non-binding reservation of Housing Credits issued to a Housing Credit Development which has successfully completed the credit underwriting process and demonstrated a need for Housing Credits.

(85)~~(87)~~ "Preliminary Determination" means an initial determination by the Corporation of the amount of Housing Credits outside the Corporation's Allocation Authority needed from the Treasury to make a Tax-Exempt Bond-Financed Development financially feasible and viable.

(86)~~(88)~~ "Principal" means an Applicant, any general partner of an Applicant, and any officer, director, or any shareholder of any Applicant or shareholder of any general partner of an Applicant.

(87)~~(89)~~ "Program" or "Programs" means the SAIL, HOME and/or HC Program(s) as administered by the Corporation.

(88)~~(90)~~ "Program Report" or "Form PR-1" means the report format which is required to be completed and submitted to the Corporation pursuant to Rule 67-48.006, F.A.C., and is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter. A copy of such form is available on FHFC's web site www.floridahousing.org.

(89)~~(91)~~ "Progress Report" or "Form Q/M Report" means, with respect to a Housing Credit Development, a report format that is required to be completed and submitted to the Corporation pursuant to subsection 67-48.028(4), F.A.C., and is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter. A copy of such form is available on FHFC's web site www.floridahousing.org.

(90)~~(92)~~ "Project," "Property" or "Development" means any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing for persons or families, whether new construction, the acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing housing, together with such related non-housing facilities as the Corporation determines to be necessary, convenient, or desirable.

(91)~~(93)~~ "Qualified Allocation Plan" or "QAP" means, with respect to the HC Program, the Qualified Allocation Plan which is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter, and which was approved by the Governor of the State of Florida, pursuant to Section 42(m)(1)(B) of the Code and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on FHFC's web site www.floridahousing.org.

(92)~~(94)~~ "Qualified Census Tract" or "QCT" means any census tract which is designated by the Secretary of Housing and Urban Development as having either 50% or more of the households at an income which is less than 60% of the area median gross income, or a poverty rate of at least 25 percent, in accordance with Section 42(d)(5)(C), of the Code ~~IRC~~. A list of the QCTs is adopted and incorporated herein by reference. A copy of such list is available on FHFC's web site www.floridahousing.org.

(93)~~(95)~~ "Recap of Tenant Income Certification Information" or "Form AR-1" means, with respect to the HOME and/or HC Program(s), a report format which is required to be completed and submitted to the Corporation pursuant to this rule chapter and is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter. A copy of such form is available on FHFC's web site www.floridahousing.org.

(94)~~(96)~~ "Received" as it relates to delivery of a document by a specified deadline means, unless otherwise indicated, delivery by hand, U.S. Postal Service or other courier service, in the office of the Corporation no later than 5:00 p.m., Eastern Time, on the deadline date.

(95)~~(97)~~ "Rehabilitation" means, with respect to the HOME Program, the alteration, improvement or modification of an existing structure. It also includes moving an existing structure to a foundation constructed with HOME funds. Rehabilitation may include adding rooms outside the existing walls of a structure, but adding a housing unit is considered new construction. "Rehabilitation" means, with respect to the Housing Credit Program, what is stated in Section 42(e) of the Code, with the exception of Section 42(e)(3)(A)(ii)(II) which is changed to read: "II. The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units, in the building, is $20,000 or more."

~~(98) "Return on Equity" means, with respect to SAIL Developments, the amount of income from the SAIL Development that may accrue to the Sponsor as investment earnings on SAIL Equity contributed to the SAIL Development, not to exceed 12% per annum.~~

(96)~~(99)~~ "Review Committee" means a committee of FHFC staff persons and one DCA staff person appointed by the Board who will make recommendations to the Board regarding Program participation.

(97)~~(100)~~ "Rural Development" or "RD" or "USDA-RD" means (previously called "Farmer's Home Administration" or "FmHA") the United States Department of Agriculture – Rural Development or other agency or instrumentality created or chartered by the United States to which the powers of the RD have been transferred.

(98)~~(101)~~ "SAIL" or "SAIL Program" means the State Apartment Incentive Loan Program created pursuant to Sections 420.507(22) and 420.5087, F.S.

(99)~~(102)~~ "SAIL Development" means a residential development which provides one or more housing units proposed to be constructed or substantially rehabilitated with SAIL funds for Eligible Persons. A ~~SAIL~~ Development ~~which is under construction, in the process of rehabilitation or which has been completed~~ may be considered for the SAIL Program funding only if:

(a) The pro forma submitted for the ~~SAIL~~ Development in other programs of the Corporation ~~within the last year~~ reflected SAIL funding; and

(b) Permanent financing of the costs associated with construction or rehabilitation of the ~~SAIL~~ Development, including tax-exempt bonds with conversion clauses, has not closed as of the Application Deadline, or if financed with Multifamily Mortgage Revenue Bonds or Local Government-issued tax-exempt bonds, the bonds did not close prior to January 1, 2002 ~~2000~~ or if the Development received an allocation of Housing Credits, the IRS Forms 8609 have not been issued; and

(c) The Application and attached exhibits demonstrate that SAIL funds will enable the SAIL Development to provide additional amenities, or incorporate some additional features which benefit Very Low-Income persons or households. Developments that are not eligible to obtain SAIL funds are those Developments that have already received funding through the SAIL Program, unless otherwise specified in the Universal Application. Notwithstanding the above, Developments that have extraordinary conditions such as acts of God, restrictions of any Governmental Authority, enemy action, civil disturbance, fire, or any other act beyond the reasonable control of the Developer will need to obtain permission from the Board to process an Application through SAIL for additional funding.

~~(103) "SAIL Equity" means the cash contributed or anticipated to be contributed towards the development and construction of a SAIL Development available at the time of the SAIL loan closing including bridge loans from syndicators of the HC for the Development.~~

~~(a) For a public or Non-Profit Sponsor or Developer, an outright grant of funds, not to exceed 15% of Development Cost minus SAIL Equity provided as described above, may be considered "SAIL Equity".~~

~~(b) For a public or Non-Profit Sponsor or Developer, a loan subordinate to the SAIL loan from a local government may be considered "SAIL Equity".~~

~~The rate used to calculate Return on Equity on such loan shall not exceed the lesser of the loan rate or 12%.~~

(100)~~(104)~~ "SAIL Minimum Set-Aside Requirement" means the least number of set-aside units in a SAIL Development which must be held for Very Low-Income persons or households pursuant to the category (i.e., Family, Elderly, Homeless, or Farmworker and Commercial Fishing Worker) under which the Application has been made. The SAIL Minimum Set-Aside Requirement shall be ~~either~~:

(a) 20% of the SAIL Development's units set-aside for residents ~~(i.e., Family, Elderly, Homeless, or Farmworker and Commercial Fishing Worker)~~ with annual household incomes at or below 50% of the area, metropolitan statistical area ("MSA") or state or county median income, whichever is higher, adjusted for family size, or

(b) 40% of the SAIL Development's units set-aside for residents ~~(i.e., Family, Elderly, Homeless, or Farmworker and Commercial Fishing Worker)~~ with annual household incomes at or below 60% of the area, MSA or state or county median income, whichever is higher, adjusted for family size. Sponsors of SAIL-funded Developments shall have the option of selecting this minimum set-aside ~~(b) above~~ only if the SAIL Development is scheduled to be assisted with Housing Credits, in addition to the SAIL loan, or

(c) 100% of the SAIL Development's units set aside for residents with annual household incomes below 120% of the state or local median income, whichever is higher, adjusted for family size. Sponsors of SAIL-funded Developments shall have the option of selecting this minimum set-aside only if the SAIL Development is located in the Florida Keys Area.

(101)~~(105)~~ "Scattered Sites" means two or more parcels in the same county, contiguous to one another, sharing at least one common boundary between them, or within such reasonable proximity to each other as to appear to the public to be under the dominion and control of the Applicant.

(102)~~(106)~~ "Section 8 Eligible" means one or more persons or families who have incomes which meet the income eligibility requirements of Section 8 of the United States Housing Act of 1937, which is adopted and incorporated herein by reference, as in effect on the date of this rule chapter.

(103)~~(107)~~ "Single Room Occupancy" or "SRO" means housing, consisting of single room dwelling units, that is the primary residence of its occupant or occupants. An SRO does not include facilities for Students.

(104)~~(108)~~ "Sponsor" means any individual, association, corporation, joint venture, partnership, trust, local government, or other legal entity or any combination thereof which:

(a) Has been approved by the Corporation as qualified to own, construct, acquire, rehabilitate, reconstruct, operate, lease, manage, or maintain a Development; and

(b) Except for a local government, has agreed to subject itself to the regulatory powers of the Corporation.

(105)~~(109)~~ "State Office on Homelessness" means the office created within the Department of Children and Family Services under Section 420.622, F.S.

(106)~~(110)~~ "Student" means, with respect to SAIL and Housing Credit Developments, for the purposes of income certification, any individual who is, or will be, a full-time student at an educational institution during 5 months of the

year, or a correspondence school with regular facilities. "Student" shall not be construed to include persons participating in an educational or training program approved by the Corporation.

(107)~~(111)~~ "Substantial Rehabilitation" means, with respect to the SAIL Program, to bring a Development back to its original state with added improvements, where the value of such repairs or improvements (excluding the costs of acquiring or moving a structure) exceeds 40% of the appraised as is value (excluding land) of such Development before repair. For purposes of this definition, the value of the repairs or improvements means the Development Cost. To be considered "Substantial Rehabilitation," there must be at least the foundations remaining from the previous structures, suitable to support the proposed construction.

(108)~~(112)~~ "Tax-Exempt Bond-Financed Development" means a Development which has been financed by the issuance of tax-exempt bonds subject to applicable volume cap pursuant to Section 42(h)(4) of the Code.

(109)~~(113)~~ "Tie-Breaker Measurement Point" means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For Scattered Site Developments, the Applicant must select a single point on one Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development.

(110)~~(114)~~ "Total Development Cost" means the total of all costs incurred in the completion of a Development, all of which shall be subject to the approval by the Credit Underwriter and the Corporation as reasonable and necessary. Such costs include, for example, the following:

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

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

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

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

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

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

(g) The cost of land improvements, such as landscaping and offsite improvements related to the Development, whether such costs are paid in cash, property, or services. However, offsite improvements are not eligible to be paid with HOME funds.

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

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

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

(111)~~(115)~~ "Treasury" means the United States Department of Treasury or other agency or instrumentality created or chartered by the United States to which the powers of the Department of Treasury have been transferred.

(112)~~(116)~~ "Universal Application Package" or "UA1016 (Rev. 03)" means the forms and instructions, obtained from the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME and/or HC Program(s). The Universal Application Package is adopted and incorporated herein by reference, effective on the date of the latest amendment to this rule chapter.

(113)~~(117)~~ "Urban In-Fill Development" means a Development (i) in a site or area that is targeted for in-fill housing or neighborhood revitalization by the local, county, state or federal government as evidenced by its inclusion in a HUD Empowerment/Enterprise Zone, a HUD-approved Neighborhood Revitalization Strategy, Florida Enterprise Zone, area designated under a Community Development Block Grant (CDBG), area designated as HOPE VI or Front Porch Florida Community, or a Community Redevelopment Area as described and defined in the Florida Community Redevelopment Act of 1969, or the proposed Development is located in a Qualified Census Tract and the development of which contributes to a concerted community revitalization plan, and (ii) in a site which is located in an area that is already developed and part of an incorporated area or existing urban service area.

(114)~~(118)~~ "Very Low-Income" means

(a) With respect to the SAIL Program,

1. If using tax-exempt bond financing for the first mortgage, income which meets the income eligibility requirements of Section 8 of the United States Housing Act of 1937, as in effect on the date of this rule chapter; or

2. If using taxable financing for the first mortgage, total annual gross household income which does not exceed 50% of the median income adjusted for family size, or 50% of the median income adjusted for family size for households within the MSA, within the county in which the person or family resides, or within the State of Florida, whichever is greater; or

3. If used in a Development using Housing Credits, income which meets the income eligibility requirements of Section 42 of the Code; or

(b) With respect to the HOME Program, income which does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for family size, except that HUD may establish income ceilings higher or lower than 50% of the median for the area on a basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

(c) With respect to the HC Program, if residing in a Development using the Housing Credit, income which is at or below 40% or 45% of the area median income whichever is selected in the Application.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089(2) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.002, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, _____.

67-48.004 Application and Selection Procedures for Developments.

(1) All Applications must be complete, legible and timely when submitted, except as described below. Corporation staff may not assist any Applicant by copying, collating, or adding documents to an Application nor shall any Applicant be permitted to use the Corporation's facilities or equipment for purposes of compiling or completing an Application.

(2) Failure to submit an Application completed in accordance with the Application instructions and these rules will result in rejection of the Application or a score less than the maximum available in accordance with the instructions in the Application and this rule chapter.

(3) Each submitted Application shall be evaluated and preliminarily scored using the factors specified in the Application Package and these rules. Preliminary scores shall be transmitted to all Applicants ~~along with the scoring sheets and threshold report~~.

(4) Applicants who wish to notify the Corporation of possible scoring errors relative to another Applicant's Application must file with the Corporation, within 7 ~~10~~ Calendar Days of the date of receipt of the preliminary scores, a written Notice of Possible Scoring Error (NOPSE). Each NOPSE must specify the assigned Application number and the scores in question, as well as describe the alleged deficiencies in detail. Each NOPSE is limited to the review of only one Application's score. Any NOPSE that seeks the review of more than one Application's score will be considered improperly filed and ineligible for review. There is no limit to the number of NOPSEs that may be submitted. The Corporation's staff will review each written NOPSE timely received.

(5) The Corporation shall transmit to each Applicant the NOPSEs submitted by other Applicants with regard to its Application. The notice shall also include the Corporation's decision regarding the NOPSE, along with any other items identified by the Corporation to be addressed by the Applicant.

(6) Within 7 ~~15~~ Calendar Days of receipt of the notice set forth in paragraph (5) above, each Applicant shall be allowed to submit additional documentation, revised pages and such other information as the Applicant deems appropriate to address the issues raised pursuant to paragraphs (3) and (5) above that could result in rejection of the Application or a score less than the maximum available. Where specific pages of the Application are revised, changed or added, each new page(s) must be marked as "revised," and submitted. Failure to mark each new page(s) "revised" will result in the Corporation not considering the revisions, changes or additions to that new page. Pages of the Application that are not revised or otherwise changed may not be resubmitted, except that documents executed by third parties must be submitted in their entirety even if only a portion of the original document was revised. Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant shall also be required in its submittal to make such other changes as necessary to keep the Application consistent as revised. The Applicant shall submit an original and three copies of all additional documentation and revisions. Only revisions, changes and other information Received by the deadline set forth herein will be considered. Any subsequent revision submitted prior to the deadline shall include a written request from the Applicant for withdrawal of any previously submitted revision(s).

(7) Within 7 ~~10~~ Calendar Days of the deadline for receipt by the Corporation of the documentation set forth in subsection (6) above, all Applicants may submit to the Corporation a Notice of Alleged Deficiencies (NOAD) in any other Application. Each NOAD is limited only to issues created by documents revised and/or added by the Applicant submitting the Application pursuant to subsection (6) above. Each NOAD must specify the assigned Application number, the pages and the documents in question, as well as describe the alleged deficiencies in detail. Each NOAD is limited to the review of only one Applicant's submission. However, there is no limit to the number of NOADs which may be submitted. NOADs which seek the review of more than one Applicant's submission will be considered improperly filed and ineligible for review. The Corporation will only review each written NOAD timely Received.

(8) The Corporation shall transmit a copy of all NOADs to the affected Applicant.

(9) Following the receipt and review by the Corporation's Staff of the documentation described in subsections (5), (6) and (7) above, the Corporation's Staff shall then prepare final scores. In determining such final scores, no Application shall be rejected or receive a point reduction as a result of any issues not previously identified in the notices described in subsections (3), (4) and (5) above. However, inconsistencies created by the Applicant as a result of information provided pursuant to subsections (6) and (7) above will still be justification for rejection or reduction of points, as appropriate. Notwithstanding the foregoing, any deficiencies in the mandatory elements set forth in subsection (14) below can be identified at any time prior to sending the final scores to Applicants and will result in rejection of the Application. The Corporation shall then transmit final scores to all Applicants.

(10) The availability of any remaining funds or Allocation Authority shall be noticed or offered to a Development as approved by the Board of Directors. With respect to the HC Program, in the event there remains Allocation Authority after the Corporation has exhausted its waiting list of Applications during a Funding Cycle and time requirements preclude an Application Period and notice thereof, the Corporation shall allocate any unused Allocation Authority to any eligible Development meeting the requirements of the Code and in accordance with the Qualified Allocation Plan.

(11) Applications shall be limited to one submission per subject property with the exception that Local Government-issued Tax-Exempt Bond-Financed Developments may submit a separate Application for non-competitive Housing Credits. Two or more Applications with the same Financial Beneficiary for Developments that are contiguous with the property of another Application, or that are divided by a street or easement, or if it is readily apparent from the two Applications, proximity, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development, the Applications will be considered to be submissions for the same Development site and the Corporation will reject all such Applications except the Application with the highest (worst) lottery number. Two Applications by Applicants with common Financial Beneficiaries for Developments that are contiguous, or that are divided by a street or easement, or that are otherwise part of a common or related scheme of development, will not be considered to be submissions for the same Development site if one of the Applicants applies for SAIL only.

(12) If the Board determines that any Applicant or any Affiliate of an Applicant:

(a) Has engaged in fraudulent actions;

(b) Has materially misrepresented information to the Corporation regarding any of its Developments, or within the current Application or in any previous applications for financing or an allocation of Housing Credits administered by the Corporation;

(c) Has been convicted of fraud, theft or misappropriation of funds;

(d) Has been excluded from federal or Florida procurement programs; or

(e) Has been convicted of a felony~~.~~

and ~~Upon a determination by the Board~~ that such action substantially increases the likelihood that the Applicant will not be able to produce quality affordable housing, the Applicant and any of the Applicant's Affiliates will be ineligible for funding or allocation in any program administered by the Corporation for a period of up to two years, which will begin from the date the Board makes such determination. Such determination shall be either pursuant to a proceeding conducted pursuant to Sections 120.569 and 120.57, Florida Statutes ~~factual hearing before the Board at which the Applicant shall be entitled to present evidence~~ or as a result of a finding by a court of competent jurisdiction ~~law or recommended order of an administrative law judge~~.

(13) The Corporation shall reject an Application if, following the submission of the additional documentation, revised pages and other information as the Applicant deems appropriate as described in subsection (6) above:

(a) The Development is inconsistent with the purposes of the SAIL, HOME and/or HC Program(s) or does not conform to the Application requirements specified in this rule chapter;

(b) The Applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application, and Application instructions;

(c) The Applicant fails to ~~provide all required copies and~~ file all applicable Application pages and exhibits which are provided by the Corporation and adopted under this rule chapter;

(d) An Applicant or any Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer is in arrears for any financial obligation it has to the Corporation and/or any agent or assignee of the Corporation. For purposes of the SAIL and/or HOME Program, this rule subsection does not include permissible deferral of SAIL and/or HOME interest.

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(a) Name of the Applicant;

(b) Name of the Developer;

(c) Program(s) applied for;

(d) ~~Designation of~~ Applicant applying as a Non-Profit or for-profit entity;

(e) Site for the Development;

(f) Type of Development category;

(g) Designation selection ~~Whether the Development design constitutes a High Rise~~;

(h) County;

~~(i) Demographic or Area Commitment;~~

(i)~~(j)~~ Total number of units;

(j)~~(k)~~ The total set-aside percentage of the Total Set-Aside Commitment unless, with regard to the HOME Program, the change results from the revision allowed under (l)~~(m)~~ below;

(k)~~(l)~~ CHDO election for the HOME Program;

(l)~~(m)~~ Funding Request (except for Taxable Bonds) amount; notwithstanding the foregoing, requested amounts exceeding the Corporation and Program funding limits can be reduced by the Applicant to reflect the maximum request amount allowed (and no other changes to this amount will be allowed);

(m) Submission of one original hard copy with the required number of photocopies of the Application by the Application Deadline;

(n) Payment of the required Application fee by the Application Deadline.

(15) A Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if at any time the Board determines that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or to the market to be served by the Development.

(16) If an Applicant or any Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer has any existing Developments participating in any Corporation programs that remain in non-compliance with the Code, this rule chapter, or applicable loan documents, and any applicable cure period granted for correcting such non-compliance has ended as of the time of submission of the Application or at the time of issuance of a credit underwriting report, the requested allocation will, upon a determination by the Board that such non-compliance substantially increases the likelihood that such Applicant will not be able to produce quality affordable housing, be denied and the Applicant and the Affiliates of the Applicant or Developer will be prohibited from new participation in any of the Programs for the subsequent cycle and continuing until such time as all of their existing Developments participating in any Corporation programs are in compliance.

(17) With respect to the SAIL, HOME and HC Program Applications, when two or more Applications receive the same numerical score, the Applications will be ranked as outlined in the ~~applicable~~ Application instructions.

(18) At no time during the Application, scoring and appeal process may Applicants or their representatives contact Board members concerning their own Development or any other Applicant's Development. At no time from the Application Deadline until the issuance of the final scores as set forth in subsection (9) above, may Applicants or their representatives verbally contact Corporation staff concerning their own Application or any other Applicant's Development. If an Applicant or its representative does contact a Board member in violation of this section, the Board shall, upon a determination that such contact was deliberate, disqualify such Applicant's Application.

(19) The name of the Development provided in the Application may not be changed or altered after submission of the Application during the history of the Development with the Corporation unless the change is mandated by local, state or federal governmental authorities, or otherwise approved by the Corporation. Evidence of such mandate must be submitted to the Corporation within 30 Calendar Days of notification by the local, state or federal authorities.

(20) Prior to instituting any change resulting in any modification or deviation from the Application or credit underwriting report, Applicant shall notify the Corporation. All changes to the Development plans, resident programs and other specifications which were used to describe the Development in accordance with this rule chapter and UA1016 (Rev. -03) ~~and/or HOMER1015~~ and represented to the Credit Underwriter and Development servicer are affected by this prior notification requirement. Failure to obtain the Corporation's approval prior to implementing any such changes shall result in the Applicant and any of the Applicant's Affiliates being ineligible to participate in any program administered by the Corporation for a period of two years, which shall begin from the date the Board approves disqualification of the Applicant and its Application.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.004, Amended 4-7-98, 11-9-98, 2-24-00, 2-22-01, 3-17-02, _____.

67-48.005 Applicant Administrative Appeal Procedures.

(1) At the conclusion of the review and scoring process established by Rule 67-48.004, F.A.C., each Applicant will be provided with its final score and notice of rights, which shall constitute the point of entry to contest any issue related to the Applicant's Application for the SAIL Program, the HOME Program or the HC Program.

(2) Each Applicant that wishes to contest its final score must file a petition with the Corporation on or before the 21st Calendar Day after the date Applicant receives its notice of rights. The petition must conform to subsection 28-106.201(2) or 28-106.301(2), F.A.C., as applicable, and specify in detail each issue and score sought to be challenged. Submission by facsimile or other electronic means will not be accepted. If the petition does not raise a disputed issue of material fact, the challenge will be conducted pursuant to Section 120.57(2), F.S. If the petition raises one or more disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), F.S. At the

conclusion of any administrative hearing, a recommended order shall be entered by the designated hearing officer which will then be considered by the Board.

(3) Any Applicant who wishes to challenge the findings and conclusions of the recommended order entered pursuant to a Section 120.57(2), F.S., proceeding concerning its own Application shall be allowed the opportunity to submit written arguments to the Board. Any written argument should be typed and double-spaced with margins no less than one inch in either Times New Roman 14-point or Courier New 12-point font and may not exceed five pages. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m., Eastern Time, on the date contained in the recommended order. Submission by facsimile or other electronic means will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to recommended orders. The Board shall consider all recommended orders and written arguments and enter the appropriate final orders.

(4) Following the entry of final orders in all petitions filed pursuant to Section 120.57(2), F.S., and in accordance with the prioritization of the QAP and Rule Chapter 67-48, F.A.C., the Corporation shall issue final rankings. For an Applicant that filed a petition pursuant to Section 120.57(1), F.S., which challenged the scoring of its own Application but has not had a final order entered as of the date the final rankings are approved by the Board, the Corporation shall, if any such Applicant ultimately obtains a final order that modifies the score so that its Application would have been in the funding range of the applicable final ranking had it been entered prior to the date the final rankings were presented to the Board, provide the requested funding and/or allocation (as applicable) from the next available funding and/or allocation, whether in the current year or a subsequent year. Funding refers to SAIL or HOME and allocation refers to HC. Nothing contained herein shall affect any applicable credit underwriting requirements.

(5) Each Applicant will be provided with a final ranking of all Applications and notice of rights, which shall constitute the point of entry to contest any ranking or scoring issue related to any other Applications for the SAIL Program, the HOME Program or the HC Program. An Applicant that wishes to contest the final ranking or score of another Applicant may do so only if:

(a) The competing Applicant files a petition on or before the 21st Calendar Day after the receipt of the notice of rights pursuant to this subsection (5). Submission by facsimile or other electronic means will not be accepted. The petition must conform to subsection 28-106.201(2) or 28-106.301(2), F.A.C., as applicable, and specify in detail each issue, score or ranking sought to be challenged.

(b) For any Application cycle closing after January 1, 2002, if the contested issue involves an error in scoring, the contested issue must (i) be one that could not have been cured pursuant to subsection 67-48.004(14), F.A.C., or (ii) be one that could have been cured, if the ability to cure was not solely within the Applicant's control. The contested issue cannot be one that was both curable and within the Applicant's sole control to cure. With regard to curable issues, a petitioner must prove that the contested issue was not feasibly curable within the time allowed for cures in subsection 67-48.004(6), F.A.C.

(c) The competing Applicant alleges facts in its petition sufficient to demonstrate that, but for the specifically identified threshold, scoring or ranking errors in the challenged Application, its Application would have been in the funding range at the time Florida Housing provided the Applicant with its final ranking.

(d) If the petition does not raise a disputed issue of material fact, the appeal will be conducted pursuant to Section 120.57(2), F.S. If the petition raises one or more disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57(1), F.S. At the conclusion of any administrative hearing, a recommended order shall be entered which will then be considered by the Board.

(6) Any Applicant who wishes to challenge the findings and conclusions of the recommended order entered pursuant to a Section 120.57(2), F.S., proceeding as described in subsection (5) above concerning the final ranking of another Application, shall be allowed the opportunity to submit written arguments to the Board. Any written arguments should be typed and double-spaced with margins no less than one inch in either Times New Roman 14-point or Courier New 12-point font and may not exceed five pages. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m., Eastern Time, on the date contained in the recommended order. Submission by facsimile or other electronic means will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to recommended orders. The Board shall consider all recommended orders and written arguments and enter the appropriate final orders.

(7) For those Applicants that have filed a petition pursuant to subsection (5) above, the Corporation shall, if any such Applicant ultimately obtains a final order that demonstrates that its Application would have been in the funding range of the applicable final ranking, provide the requested funding and/or allocation (as applicable) from the next available

funding and/or allocation, whether in the current year or a subsequent year. Funding refers to SAIL or HOME and allocation refers to HC. Nothing contained herein shall affect any applicable credit underwriting requirements. The filing of a petition pursuant to subsection (5) above shall not stay the Corporation's provision of funding to Applicants per the final rankings referenced in subsection (4) above.

Specific Authority 420.507 FS. Law Implemented 120.57, 120.569, 420.5087, 420.5089, 420.5099 FS. History-New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.005, Amended 4-7-98, 11-9-98, 2-24-00, 2-22-01, 3-17-02, 10-8-02, 12-4-02, Repromulgated _____.

67-48.006 Compliance and Reporting Requirements.

(1) Any duly authorized representative of the Corporation shall be permitted at any time during normal business hours to inspect and monitor the construction or rehabilitation of a Development. Any duly authorized representative of the Corporation or the Treasury shall be permitted at any time during normal business hours to inspect and monitor Development and resident records and facilities. All resident records shall be maintained by the owner of the Development within 50 miles of the Development site.

(2) On-site inspections for HC Developments:

(a) An authorized representative of the Corporation will, at the Applicant's expense, conduct four on-site construction inspections during the construction or rehabilitation of a Competitive HC Development. Any required re-inspection due to a finding of non-compliance will be at the Applicant's expense.

(b) An authorized representative of the Corporation will, at the Applicant's expense, conduct a minimum of one on-site construction inspection of a Non-Competitive HC Development which has not received any other Florida Housing financing. Any required re-inspection due to a finding of non-compliance will be at the Applicant's expense.

(3) The Corporation or its representative shall conduct on-site Development inspections at a minimum of every three years, with a typical frequency of annual reviews.

(4) The Corporation must approve the selection or replacement of a management company prior to such company assuming responsibility for the Development, using the following criteria:

(a) Review of company information including key management personnel, management experience and procedures;

(b) Review of company forms such as application for apartment residence, income verification forms, lease, etc.;

(c) Key management company representatives attendance at a Corporation compliance workshop; and

(d) A meeting between Corporation compliance staff and the key management company representative.

(5) The Corporation will document approval of the management company to the owner of the Development after successful completion of items (4)(a)-(d).

(6) The owner of the Development shall maintain complete and accurate income records pertaining to each resident occupying a Low-Income or Very Low-Income unit. Records for each occupied Low-Income or Very Low-Income unit shall contain the following documentation:

(a) The resident's rental application containing the name or names of each household member, employment and income information for each household member, and other information required by the owner of the Development;

(b) An executed lease agreement listing the term of the tenancy and all of the residents residing in the unit;

(c) Verification of the income of each resident as is acceptable to prove income under Section 8 of the United States ~~U.S.~~ Housing Act of 1937, as in effect on the date of this rule chapter;

(d) Information as to the assets owned by each resident; and

(e) Income Certification Form TIC-1 for each resident. A copy of such form is available on FHFC's web site www.floridahousing.org. ~~sample Form TIC-1 can be obtained from the Corporation.~~

(7) The Applicant shall submit Program Reports pursuant to the following:

(a) The initial HC Program Report shall be submitted upon request of the compliance monitor or Florida Housing prior to the initial management review and physical inspection, but no later than 120 days following the leasing of any unit. Subsequent Program Reports shall be submitted each year of the Housing Credit Compliance Period and shall be due no later than the dates assigned by the Corporation. The Program Reports shall be accompanied by:

1. Recap of Tenant Income Certification Information Form AR-1;

2. Copies of Tenant Income Certifications executed since the last Program Report for at least 10% of the Housing Credit Set-Aside units in the Development (to be sent to the monitoring agent only); and

3. With respect to the HC Program, the Annual Owner Compliance Certification Form to be signed by the owner of the Development certifying that for the preceding 12 month period the Development met its Housing Credit Set-Aside requirements (to be sent to the Corporation only). Forms PR-1, AOC-1 and AR-1 shall be provided by the Corporation and shall be submitted for all Developments receiving Housing Credit Allocations since January 1, 1987.

(b) The initial HOME Program Report shall be submitted prior to the time of loan closing, if occupied, or, if not occupied, at loan closing upon request of the compliance monitor or Florida Housing prior to the initial management review and physical inspection, but no later than 120 days following the leasing of any unit. Subsequent Program Reports shall be submitted annually on the dates assigned by the Corporation. The Program Reports shall be accompanied by:

1. Recap of Tenant Income Certification Information Form AR-1; and

2. Copies of Tenant Income Certification executed since the last Program Report for at least 10% of the HOME-Assisted Units in the Development (to be sent to the monitoring agent only).

(c) The initial SAIL Program Report shall be submitted prior to the time of loan closing, if the Development is occupied, or by the 25th of the month following rental of the initial unit in the Development. Subsequent Program Reports shall be submitted each month and are due no later than the 25th of each month thereafter. The Program Reports shall be accompanied by Recap of Tenant Income Certification Information Form AR-1 and copies of all Tenant Income Certifications executed since the last Program Report (to be sent to the monitoring agent).

(8) HC Developments will submit copies of each building's completed IRS Low-Income Housing Credit Allocation Certification Form 8609, Rev. 1-2000, and Schedule A, Annual Statement, Form 8609, Rev. 1-2000, for the first year housing credits are claimed to the Compliance Section of Florida Housing Finance Corporation. These forms are adopted and incorporated herein by reference and are due at the same time they are filed with the Internal Revenue Service. Form 8609 and Schedule A (Form 8609) can be obtained from the Internal Revenue Service by calling 1(800)829-4477. Additionally, correspondence shall accompany these forms which indicates the first taxable year in which the Housing Credits were claimed and the fiscal operating year for the property.

(9) Compliance monitoring for each program will begin:

(a) For the SAIL Program, regardless of whether the Development also received an HC allocation, following the SAIL loan closing or, if the Development is occupied, prior to the SAIL loan closing.

(b) For the HOME Program, regardless of whether the Development also received an HC allocation, following the HOME loan closing or, if the Development is occupied, prior to the HOME loan closing.

(c) For Developments receiving an allocation of non-competitive HC without any FHFC-issued loans, following Final Housing Credit Allocation.

(d) For Developments receiving Competitive HC without any FHFC issued loans, following execution of the Carryover Allocation Agreement.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5089, 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.006, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, _____.

67-48.007 Fees.

The Corporation, the Credit Underwriter or the environmental provider shall collect via check or money order ~~only~~ the following fees and charges in conjunction with the SAIL, HOME and/or HC Program:

(1) Universal Application Package fee.

~~(2) Home Rental Application Package fee.~~

(2)~~(3)~~ Application fee.

(3)~~(4)~~ Credit Underwriting fees.

(4)~~(5)~~ Administrative fees.

(5)~~(6)~~ Commitment fees.

(6)~~(7)~~ Compliance monitoring fees.

(7)~~(8)~~ Loan servicing fees.

(8)~~(9)~~ Construction inspection fees.

(9)~~(10)~~ Financial monitoring fees.

(10)~~(11)~~ Tax-exempt mortgage financing.

(11) HUD environmental fee.

All of the fees set forth above with respect to the SAIL Program are part of Development Cost and can be included in the Development Cost pro forma and paid with SAIL loan proceeds. Failure to pay any fee shall cause the firm loan commitment under any Program to be terminated or shall constitute a default on the respective loan documents.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.007, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, _____.

PART II STATE APARTMENT INCENTIVE LOAN PROGRAM

67-48.009 SAIL General Program Procedures and Restrictions.

~~(1) In the Application, each Applicant must select the category in which to apply and must specify the SAIL Minimum Set-Aside Requirement with which the Development will comply.~~

(1)~~(2)~~ Loans shall be in an amount not to exceed 25% of the Total Development Cost except as described in (2)~~(3)~~ below, or the minimum amount required to make the Development economically feasible, whichever is less, as determined by the Credit Underwriter.

(2)~~(3)~~ The following types of Sponsors are eligible to apply for loans in excess of 25% of Total Development Cost pursuant to Section 420.507(22), F.S.:

(a) Non-Profit and public Sponsors which are able to secure grants, donations of land, or contributions from other sources collectively totaling at least 10% of Total Development Cost; or

(b) Sponsors that maintain an 80% occupancy of residents qualifying as Farmworkers as defined in Section 420.503(18), F.S., Commercial Fishing Workers as defined in Section 420.503(5), F.S., or the Homeless as defined in Section 420.621(4) over the life of the loan.

(3)~~(4)~~ At a minimum, the percentage of set-aside units committed to in the Application must be held for Very Low-Income persons or households for a period of time equal to the greater of the following:

(a) The term of the SAIL loan; or

(b) 12 years; or

(c) Such longer term agreed to by the Applicant in the Application.

(4)~~(5)~~ Applicants cannot request additional SAIL funding for the same Development, unless otherwise specified in the Universal Application.

(5)~~(6)~~ Developer fee shall be limited to 16% of Development Cost. A Developer fee on the building acquisition cost shall be limited to 4% of the cost of the building exclusive of land. A total Developer fee of 18% of Development Cost shall be allowed if the proposed Development is qualified for Housing Credits pursuant to Rule 67-48.027, F.A.C., pertaining to Tax-Exempt Bond-Financed Developments. However, the Developer fee shall be limited to 10% of Development Cost for those Developments involving rehabilitation of buildings which have received a Florida Housing funding commitment or a Preliminary Allocation/Determination for other construction work within fourteen years of the Application Deadline.

(6)~~(7)~~ The General Contractor's fee shall be limited to a maximum of 14% of the actual construction cost.

(7)~~(8)~~ SAIL loan proceeds shall not be used to fund any contingency reserves.

(8)~~(9)~~ Except for small county requests, Applicants may not request SAIL funding for Developments receiving priority in FHFC's multifamily bond program for having no other FHFC funding.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.009, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, _____.

67-48.0095 Additional SAIL Application Ranking and Selection Procedures.

(1) During the first six months following the publication date of the first Notice of Funding Availability published each year within the State of Florida, SAIL funds shall be allocated based upon the requirements specified in Section 420.5087(3), F.S., which specifies the required funding within the four demographic categories of (a) Family, (b) Elderly, (c) Homeless and (d) Commercial Fishing Workers and Farmworkers and in accordance with the ranking and selection process set forth in the Universal Application Package.

(2) 10% of the funds reserved for Applicants in the Elderly category shall be reserved to provide loans to Sponsors of housing for the Elderly for the purpose of making life-safety or security-related repairs or improvements to such housing which are required by federal, state or local regulation, as further specified in Section 420.5087, F.S.

(3) The Corporation shall assign, in order of ranking, tentative loan amounts to the Applications in each demographic and geographic category, up to the total amount available. However, the Corporation shall make adjustments to ensure that minimum funding distribution levels by geographic category are met, as required by Section 420.5087(1), F.S., and further described in the SAIL Notice of Funding Availability.

(4) In the event that the 10% of program funds required to be allocated to counties with a population of 100,000 or less remains unallocated at the conclusion of a successive three-year cycle, the unallocated funds shall be carried forward and shall be added to the funds reserved for counties with a population of 100,000 or less for the next successive three-year period.

~~(5) After the six-month period referenced in subsection 67-48.0095(1), F.A.C., has expired, the Corporation shall allocate SAIL funds to Applicants meeting threshold requirements, without regard to demographic category.~~

(5)~~(6)~~ Based upon fund availability, the Corporation shall select Applications for participation in the SAIL Program in accordance with the instructions included in the Universal Application Package.

(6)~~(7)~~ Selection for SAIL Program participation is contingent upon fund availability at the conclusion of ~~after determination of final loan amounts and~~ the appeals process as set forth in Rule 67-48.005, F.A.C.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 12-23-96, Amended 1-6-98, Formerly 9I-48.0095, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, _____.

67-48.010 Terms and Conditions of SAIL Loans.

(1) The proceeds of all SAIL loans shall be used for new construction or Substantial Rehabilitation of affordable, safe and sanitary rental housing units.

(2) The SAIL loan may be in a first, second, or other subordinated lien position. For purposes of this rule, mortgages securing a letter of credit as credit enhancement for the bonds financing the first mortgage shall be considered a contingent liability and part of the first mortgage lien, provided that the Applicant's counsel furnishes an opinion regarding the contingent nature of such mortgage satisfactory to the Corporation and its counsel.

(3) The loans shall be non-amortizing and shall have interest rates as follows:

(a) 1% simple interest per annum on loans to Developments that maintain an 80% occupancy of residents qualifying as Farmworkers, Commercial Fishing Workers or Homeless over the life of the loan;

(b) 3% simple interest per annum on loans to Developments other than those identified in (a) above ~~for Family and Elderly loans~~;

~~(c) 3% simple interest per annum on loans to Homeless and SRO;~~

(c)~~(d)~~ Payment on the loans shall be based upon the actual Development Cash Flow. Interest may be deferred as set forth in subsection 67-48.010(6), F.A.C., without constituting a default on the loan.

(4) The loans described in paragraphs 67-48.010(3)(a) and~~,~~ (b), ~~and (c),~~ F.A.C., above shall be repaid from all Development Cash Flow, and if the SAIL loan is not a first mortgage loan, each year, subject to the provisions of subsection (6) below, Development Cash Flow shall be applied to pay the following items in order of priority:

(a) First mortgage fees and debt service;

(b) Development Expenses on the SAIL loan, including up to 20% of total Developer fees per year;

(c) Interest payment on SAIL loan balance equal to 1% as stated in (3)(a) above and equal to 3% as stated in (3)(b) ~~and (c)~~ above over the life of the SAIL loan;

(d) Interest payments on the SAIL loan deferred from previous years;

(e) Mandatory payment on subordinate mortgages;

~~(f) 12% Return on Equity to Applicant;~~

~~(g) Any other unpaid SAIL interest deferred from the current and previous years;~~

~~(h) Any unpaid Return on Equity deferred from previous years; and~~

~~(i) Remaining monies to be equally divided between the Applicant and the Corporation with the Corporation receiving no more than the stated interest rate on the SAIL loan.~~ After the full SAIL loan interest has been paid, the Applicant shall retain all remaining monies, unless the Applicant chooses to prepay a portion of the loan balance.

(5) If the SAIL loan is secured by a first mortgage lien, each year, subject to the provisions of paragraph (6) below, Development Cash Flow shall be applied to pay the following items in order of priority:

(a) First mortgage fees and interest payment on SAIL loan balance equal to 1% as stated in (3)(a) above and equal to 3% as stated in (3)(b) above over the life of the SAIL loan;

(b) Development Expenses on the SAIL loan including up to 20% of total Developer fees per year;

(c) Interest payments on the ~~Any other unpaid~~ SAIL loan ~~interest~~ deferred from ~~the current and~~ previous years;

(d) Mandatory payment on subordinate mortgages;

~~(e) 12% Return on Equity to Applicant;~~

~~(f) Any unpaid Return on Equity deferred from previous years; and~~

~~(g) Remaining monies to be equally divided between the Applicant and the Corporation with the Corporation receiving no more than the stated interest rate on the SAIL loan.~~ After the full SAIL loan interest has been paid, the Applicant shall retain all remaining monies, unless the Applicant chooses to prepay a portion of the loan balance.

(6) The determination of Development Cash Flow, determination of payment priorities, and payment of interest on SAIL loans shall occur annually. Any payments of accrued and unpaid interest due annually on SAIL loans shall be deferred to the extent that Development Cash Flow is insufficient to make said payments pursuant to the payment priority schedule established in this rule chapter. If Development Cash Flow is under-reported and such report causes a deferral of SAIL interest, such under-reporting shall constitute an event of default on the SAIL loan. A penalty of 5% of any required payment shall be assessed.

(a) By May 31 of each year of the SAIL loan term, the Applicant shall provide the Corporation with audited financial statements and a certification detailing the information needed to determine the annual payment to be made. However, this certification requirement will be waived until May 31 following the calendar year within which the first unit is occupied. The certification shall require submission of audited financial statements and the SAIL annual reporting form, Cash Flow Reporting Form SR-1, Rev. 12/02 ~~1/98~~, which is incorporated by reference. Form SR-1 can be obtained from the assigned servicer. The audited financial statements are to be prepared in accordance with generally accepted accounting principles for the 12 months ended December 31 and shall include:

1. Comparative Balance Sheet with prior year and current year balances;

2. Statement of revenue and expenses;

3. Statement of changes in fund balances or equity;

4. Statement of cash flows; and

5. Notes.

The financial statements referenced above should also be accompanied by a certification of the Applicant as to the accuracy of such financial statements. The Applicant shall furnish to the Corporation or its servicer, unaudited statements, certified by the Applicant's principal financial or accounting officer, covering such financial matters as the Corporation or its servicer may reasonably request, including without limitation, monthly statements with respect to the Development. A late fee of $500 will be assessed by the Corporation for failure to submit the required audited financial statements and certification by May 31 of each year of the SAIL loan term. Failure to submit the required audited financial statements and certification by May 31 of each year of the SAIL loan term shall constitute an event of default on the SAIL loan.

(b) The Corporation servicer shall issue a billing for interest due on the SAIL loan for the immediately preceding calendar year by July 31 of each calendar year of the SAIL loan.

(c) The Applicant shall remit the interest due to the Corporation servicer no later than August 31 of each year of the SAIL loan term. The first payment of SAIL interest will be due no later than August 31 following the calendar year within which the first unit is occupied. The first payment of interest shall include all interest for the period which begins accruing on the date of the first Draw and ends on December 31 of the calendar year during which the first unit is occupied.

(7) After maturity or acceleration, the Note shall bear interest at the Default Interest Rate from the due date until paid. Unless the Corporation has accelerated the SAIL loan, the Applicant shall pay the Corporation a late charge of 5% of any required payment that is not received by the Corporation within 15 days of the due date.

(8) Any sale, conveyance, assignment, or other transfer of interest or the grant of a security interest in all or any part of the title to the Development other than a superior mortgage shall be subject to the Corporation's prior written approval.

(9) The final billing for the purpose of payoff of the SAIL loan shall also include a billing for compliance fees to cover monitoring of SAIL Program requirements beyond the maturity date of the Note, as applicable. Such fees shall be computed by determining the present value of the annual compliance monitoring fee and multiplying that by the number of years for which the Development will have a set-aside for Very Low-Income persons or households beyond the repayment date. For Developments with perpetual set-asides, the period for which compliance fees shall be collected shall be limited to 50 years. The present value discount rate shall be 2.75% per annum. Such amount shall be reduced by the amount of any compliance monitoring fees for other programs collected by the Corporation for the Development provided:

(a) The compliance monitoring fee covers some or all of the period following the anticipated SAIL loan repayment date; and

(b) The Development has substantially equivalent set-asides for Very Low-Income persons or households mandated through another Corporation program for which the compliance monitoring fee was collected.

(10) The SAIL loans shall be serviced either directly by the Corporation or by the servicer on behalf of the Corporation.

(11) The Corporation shall monitor compliance of all terms and conditions of the SAIL loan and shall require that certain terms and conditions be embodied in the Land Use Restriction Agreement and recorded in the public records of the county wherein the Development is located. The Land Use Restriction Agreement will be recorded first. Violation of any term or condition of the documents evidencing or securing the SAIL loan shall constitute a default during the term of the SAIL loan. The Corporation shall take legal action to effect compliance if a violation of any term or condition relative to the set-asides of units for Very Low-Income persons or households is discovered during the course of compliance monitoring or by any other means.

(12) The Corporation shall require adequate insurance to be maintained on the Development as determined by the first mortgage lender or the Corporation's servicer, but which shall, in any case, include fire, hazard and other insurance sufficient to meet the standards established in Part V, Section 106 of the Fannie Mae DUS Guide, effective September 10, 2002 ~~September 28, 1999~~, which is adopted and incorporated herein by reference.

(13) The SAIL loan shall be for a period of not more than 15 years, to include the construction/stabilization period. However, if both a SAIL loan and federal housing credits are to be used to assist a Development, the Corporation may set the SAIL loan term for a period commensurate with the investment requirements associated with the Housing Credit syndication. The loan term may also exceed 15 years as required by the Federal National Mortgage Association whenever it is participating in the financing of the Development, or if otherwise approved by the Board.

(14) Upon maturity of the SAIL loan, the Corporation may renegotiate and extend the loan in order to extend the availability of housing for the target population. Such extensions shall be based upon:

(a) Performance of the Applicant during the SAIL loan term;

(b) Availability of similar housing stock for the target population in the area;

(c) Documentation and certification by the Applicant that funds are not available to repay the Note upon maturity;

(d) A plan for the repayment of the loan at the new maturity date; and

(e) Assurance that the security interest of the Corporation will not be jeopardized by the extension.

(15) After accepting a preliminary commitment, the Applicant shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the SAIL mortgage without prior approval of the Corporation's Board of Directors. However, an Applicant may reduce the interest rate on any superior or inferior mortgage loan without the Board's permission, provided that no other terms of the loan are changed. Florida Housing must be notified of any such change.

(a) The Board shall approve requests for mortgage loan refinancing only if Development Cash Flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation.

(b) The Board shall deny requests to increase the amount of any superior mortgage, unless the criteria outlined in paragraph 67-48.010(15)(a), F.A.C., are met, the original combined loan to value ratio for the superior mortgage and the SAIL mortgage is maintained or improved, and a proportionate amount of the increase in the superior mortgage is used to reduce the outstanding SAIL loan balance. To calculate the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the SAIL loan balance, the following calculation shall be used: divide the amount of the original SAIL mortgage by the combined amount of the original SAIL mortgage and the original

superior mortgage; then multiply the quotient by the amount of the increase in the superior mortgage after deducting refinancing costs. For example, if the amount of the original SAIL mortgage is $2,000,000, the original superior mortgage is $4,000,000, but the current balance is $3,000,000, the proposed new superior mortgage is $5,000,000, and refinancing costs are $200,000, then the amount of the increase in the superior mortgage after deducting refinancing costs would be $1,800,000 ~~$800,000~~, and the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the SAIL loan balance would be $594,000 ~~$266,667~~. This $594,000 would be applied first to accrued interest and then to principal.

(c) The Board shall deny requests for mortgage loan refinancing which require extension of the SAIL loan term or otherwise adversely affect the security interest of the Corporation unless the criteria outlined in paragraph 67-48.010(15)(a), F.A.C., are met, the Credit Underwriter recommends that the approval of such a request is crucial to the economic survival of the Development or unless the Board determines that public policy will be better served by the extension as a result of the Applicant agreeing to further extend the Compliance Period or provide additional amenities or resident programs suitable for the resident population. Further, the Board shall limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

(16) All SAIL loans shall be in conformance with applicable federal and state statutes, including the Fair Housing Act as implemented by 24 CFR 100, which is adopted and incorporated herein by reference, and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR 35, which is adopted and incorporated herein by reference. The Corporation shall allow units dedicated to occupancy by the Elderly in a Development designed for occupancy by elderly households pursuant to authorization by HUD under the Fair Housing Amendments of 1988 as implemented by 24 CFR 100.

(17) Rent controls shall not be allowed on any Development except as required in conjunction with the issuance of tax-exempt bonds or federal Housing Credits; however, rents must be determined to be reasonable by the Credit Underwriter.

(18) The documents creating, evidencing or securing each SAIL loan must provide that any violation of the terms and conditions described in Rule 67-48, F.A.C., constitutes a default under the SAIL loan documents allowing the Corporation to accelerate its loan and to seek foreclosure as well as any other remedies legally available to it.

(19) Applicants shall annually certify that the household gross income, adjusted for family size, of each household occupying a unit set aside for Very Low-Income persons or households meets income requirements specified in Section 142(d)(3)(B) of the Code, which is adopted and incorporated herein by reference. Should the annual recertification of such households result in noncompliance with income occupancy requirements, the next available unit must be rented to a household qualifying under the provisions of Section 420.5087(2), F.S., in order to ensure continuing compliance of the Development.

(20) The Corporation must approve the Applicant's selection of a management company prior to such company assuming responsibility for the Development. The Applicant, its designated representative, or the managing agent of the Development must attend a Corporation-sponsored training workshop on certification and compliance procedures prior to the leasing of any units in the Development.

(21) A failure to pay any principal or interest due under the terms of this section shall constitute a default on the SAIL loan.

(22) If, after a four-month rent-up period commencing after issuance of the last certificate of occupancy on the units, an Applicant is unable to meet the agreed-upon demographic commitment for Elderly, Homeless, Farmworker or Commercial Fishing Worker, the Applicant may request to rent such units to Very Low-Income persons or households without demographic restriction.

(a) The written request must provide documentation of marketing efforts implemented over the past four-month period which demonstrate the inclusion of sources of potential residents, advertising to be used, other means of encouraging residents to rent at the Development, and priority to the original targeted group of residents. If the Corporation determines that prior marketing efforts were insufficient, a revised plan which is satisfactory to the Corporation must be submitted and implemented for a four-month period prior to reconsideration.

(b) The Board will require Applicants to provide additional amenities or resident programs suitable for the proposed resident population.

(c) The Board will require Applicants with 1% loans, as described in paragraph 67-48.010(3)(a), F.A.C., to modify loan documents to conform to the terms and conditions of 3% loans, as described in paragraph 67-48.010(3)(b), F.A.C., or to accelerate payments of SAIL loan principal or interest.

(23) The Applicant shall provide to the Corporation an annual budget of income and expenses for the Development, certified as accurate by an officer of the Development, no later than 30 days prior to the beginning of the Development's fiscal year.

(24) Failure to provide the Corporation and its servicer with the SAIL available Cash Flow Statement detailing the information needed to determine the annual payment to be made pursuant to this rule chapter shall constitute a default on the SAIL loan.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.010, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, _____.

67-48.0105 Sale, Refinancing or Transfer of a SAIL Development.

(1) The SAIL loan shall be assumable upon sale, transfer or refinancing of the Development if the following conditions are met:

(a) The proposed transferee meets all specific Applicant identity criteria which were required as conditions of the original loan;

(b) The proposed transferee agrees to maintain all set-asides and other requirements of the SAIL loan for the period originally specified or longer; and

(c) The proposed transferee and release of transferor receives a favorable recommendation from the Credit Underwriter and approval by the Board of Directors of the Corporation.

(2) If the SAIL loan is not assumed since the buyer does not meet the criteria for assumption of the SAIL loan, the SAIL loan (principal and any outstanding interest) shall be repaid from the proceeds of the sale in the following order of priority:

(a) First mortgage debt service, first mortgage fees;

(b) SAIL compliance and loan servicing fees;

(c) An amount equal to the present value of the compliance monitoring fee, as computed by the Corporation and its servicer, times the number of payment periods for which the Development will have a set-aside for Very Low-Income persons or households beyond the repayment date. The present value discount rate shall be 2.75% per annum. For Developments with set-asides in perpetuity, the period for which compliance fees shall be collected shall be limited to 50 years. Such amount shall be reduced by the amount of any compliance monitoring fees collected by the Corporation for the Development, provided:

1. The compliance monitoring fee covers some or all of the period following the anticipated SAIL repayment date; and

2. The Development has substantially equivalent set-asides for Very Low-Income persons or households mandated through another program of the Corporation for which the compliance monitoring fee was collected.

(d) Unpaid principal balance of the SAIL loan;

(e) Any interest due on the SAIL loan;

(f) Expenses of the sale;

(g) If there will be insufficient funds available from the proposed sale of the Development to satisfy (2)(a)-(f) above, the SAIL loan shall not be satisfied until the Corporation has received:

1. An appraisal prepared by an appraiser selected by the Corporation or the Credit Underwriter indicating that the purchase price for the Development is reasonable and consistent with existing market conditions;

2. A certification from the Applicant that the purchase price reported is the actual price paid for the Development and that no other consideration passed between the parties and that the Development Cash Flow reported to the Corporation during the term of the SAIL loan was true and accurate;

3. A certification from the Applicant that there are no Development funds available to repay the SAIL loan, including any interest due, and the Applicant knows of no source from which funds could or would be forthcoming to pay the SAIL loan; and

4. A certification from the Applicant detailing the information needed to determine the final billing for SAIL loan interest. Such certification shall require submission of financial statements and other documents that may be required by the Corporation and its servicer.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 12-23-96, Amended 1-6-98, Formerly 9I-48.0105, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, 3-17-02, Repromulgated _____.

67-48.012 SAIL Credit Underwriting and Loan Procedures.

(1) Following the appeals process, the Corporation shall issue preliminary commitment letters to those Applicants whose Developments were awarded final scores and rankings which placed them into the funding range ~~in each set-aside category~~.

(a) The preliminary commitment shall be subject to a positive recommendation by the Corporation's Credit Underwriter and approval by the Corporation's Board of Directors.

(b) The invitation to credit underwriting shall require that the Applicant submit the credit underwriting fee to the Credit Underwriter within 7 Calendar Days of the date of the invitation. The Corporation will, within the specified 7 Calendar Days, submit a copy of the Applicant's Application to the Credit Underwriter. Unless a written extension is obtained from the Corporation, failure to submit the fee by the specified deadline shall result in rejection of the Application.

(2) The Credit Underwriter shall verify all information in the Application, including information relative to the Applicant, Developer, Syndicator, General Contractor, and, if an ALF, the service provider, as well as ~~and~~ other members of the Development team.

(a) The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during credit underwriting. If the Board determines at any time that the Applicant's Development or d~~D~~evelopment team is no longer the Development or d~~D~~evelopment team described in the Application, and the changes made are prejudicial to the Development or the market to be served by the Development or if any discrepancy or misrepresentation is found, the Application will be rejected.

(b) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of the Credit Underwriter's expertise, the fee for such services shall be borne by the Applicant.

(c) The Credit Underwriter shall review the interest rate and terms of other proposed financing as provided in the Application to determine whether or not such loans are feasible and to determine if a SAIL loan is needed.

(d) Required appraisals studies shall be completed by professionals approved by the Corporation's Credit Underwriters. Approval of appraisers shall be based upon review of qualifications, professional designations held, references and prior experience with similar types of Developments.

(e) A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and product type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the loan request in relation to the property value. Appraisals and separate market studies which have been ordered and submitted by third party credit enhancers, first mortgagors or syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal or market study referenced above.

(f) Except as provided in Section 420.5087(5), F.S., the amount of any superior mortgages combined with the SAIL mortgage shall be less than the appraised value of the Development. Any debt service reserve requirement associated with a superior mortgage shall be excluded from the amount of the superior mortgage for purposes of this calculation.

(g) The minimum combined debt service coverage shall be 1.10 and the maximum debt service coverage shall be 1.50, including the SAIL mortgage and all other superior mortgages. In extenuating circumstances, such as when the Development has deep or short term subsidy, the debt service coverage may exceed 1.50 if the Credit Underwriter's favorable recommendation is supported by the projected cash flow analysis. Developments receiving first mortgage funding from the United States Department of Agriculture Rural Development (RD) are not required to meet the debt service coverage standards if RD is providing rental assistance and has acknowledged that rents will be set at an amount sufficient to pay all operating expenses, replacement reserve requirements and debt service on the SAIL and all superior mortgages.

(h) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves and operating expense reserves deemed appropriate by the Credit Underwriter when calculating the final net operating income available to service the debt. A minimum amount of $200 per unit must be used for all Developments. However, the amount may be increased based on a physical needs assessment. An Applicant may choose to fund a portion of the replacement reserves at closing. The amount cannot exceed 50% of the required replacement reserves for 2 years and must be placed in escrow at closing.

(i) The underwriters may request additional information but at a minimum the following will be required during the underwriting process:

1. For credit enhancers, audited financial statements for their most recent fiscal year ended, if published; otherwise the previous year's audited statements will be provided until the current statements are published or credit underwriting is complete. The audited statements may be waived if the credit enhancer is rated at least "A-" by Moody's, Standard and Poor's or Fitch.

2. For Principals and guarantors, audited financial statements or financial statements compiled or reviewed in accordance with Statement on Standards for Accounting and Review Services (SSARS) No. 1, which is adopted and incorporated herein by reference, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If audited financial statements or financial statements compiled or reviewed in accordance with Statement on Standards for Accounting and Review Services (SSARS) No. 1, are not available, unaudited financial statements prepared within the last 90 days and reviewed by the credit underwriter in accordance with the Fannie Mae Multifamily Delegated Underwriting and Servicing (DUS) Guide, effective November 23, 1999, which is adopted and incorporated herein by reference, and the two most recent year's tax returns.

3. For the General Contractor, audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100% of the total construction cost is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

4. For the Applicant and general partner, audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If the entities are newly formed (less than 18 months in existence as of the date that credit underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules.

(j) The Credit Underwriter shall consider the following when determining the need for construction completion guarantees:

1. Liquidity of the guarantor.

2. Developer and General Contractor's history in successfully completing Developments of similar nature.

3. Problems encountered previously with Developer or contractor.

4. Exposure of Corporation funds compared to Total Development Cost.

At a minimum, the Credit Underwriter shall require a personal guarantee for completion of construction from the principal individual or the corporate general partner of the borrowing entity. In addition, a letter of credit or payment and performance bond will be required if the Credit Underwriter determines after evaluation of subparagraphs 1.-4. above that additional surety is needed. However, a completion guarantee will not be required if SAIL funds are not drawn until construction is complete, as evidenced by final certificates of occupancy.

(k) The Credit Underwriter shall require an operating deficit guarantee, to be released upon achievement of 1.10 debt service coverage for a minimum of six consecutive months for the combined permanent first mortgage and SAIL loan. Developments receiving United States Department of Agriculture Rural Development funds are not required to meet the debt service coverage standards for release of operating deficit guarantee.

(l) Contingency reserves which total no more than 5% of hard and soft costs for new construction and no more than 15% of hard and soft costs for Substantial Rehabilitation may be included within the Total Development Cost for Application and underwriting purposes. Contingency reserves shall not be paid from SAIL funds.

(m) The Credit Underwriter shall review and determine if the number of loans and/or construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of each proposed Corporation Development.

(n) The Credit Underwriter shall consider the appraisal of the Development and other market study documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application. The Credit Underwriter shall consider the market study and other documentation to make a recommendation of whether to approve or disapprove funding when the proposed Development would financially impair an existing Development previously funded by Florida Housing.

(o) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same. Failure to submit required information by the specified deadline, unless a written extension of time has been approved by the Corporation's Board and the Credit Underwriter, shall result in rejection of the Application. If the Application is rejected, the Corporation will select additional Application(s) as outlined in the Universal Application instructions ~~in order of scoring~~.

(3) Any changes in a firm commitment from any other source of the funding shall be consistent with the underwriting assumptions made in connection with the SAIL loan. All items required by the Credit Underwriter must be provided to the Credit Underwriter within 35 Calendar Days of notification from the Credit Underwriter. The Applicant will have an additional 25 Calendar Days to submit the appraisal, survey and final plans to the Credit Underwriter. The Credit Underwriter shall advise the Corporation in writing of all items not received by the specified deadlines. Unless an extension is approved by Florida Housing ~~the Corporation's Board~~, failure to submit the required credit underwriting information or fees by the specified deadlines shall result in withdrawal of the preliminary commitment and the funds will be made available to the next eligible Applicant.

(4) The Credit Underwriter shall complete its analysis and submit ~~make~~ a written draft report and recommendation to the Corporation ~~within 80 Calendar Days from the date of the Applicant's execution of the preliminary commitment letter~~. Upon receipt, the Corporation shall provide to the Applicant the section including supporting information and schedules from the written draft report. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter within 48 hours of receipt. After the 48 hour period, the Corporation shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. Then the Credit Underwriter shall review and incorporate the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within 72 hours of receipt of revised report. Then, the Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(5) After approval of the Credit Underwriter's recommendation by the Board of Directors or a committee appointed by the Board, the Corporation shall issue a firm SAIL loan commitment.

(6) Other mortgage loans related to the Development and the SAIL loan must close within 60 Calendar Days of the date of the firm SAIL loan commitment unless an extension is approved by the Board. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request will then be submitted to the Corporation's Board of Directors for consideration. The Corporation shall charge an extension fee of one-half of one percent of the SAIL loan amount if the Board approves the requested extension to extend the SAIL commitment beyond the period outlined in this rule chapter.

(7) The Corporation's servicer shall conduct at the Applicant's expense a preconstruction analysis and review of all the Development's costs prior to the closing of the SAIL loan.

(8) It is the responsibility of the Applicant to comply with any part of this section and to request in writing and show cause for any waiver. Failure to comply will result in the disqualification of the Applicant and withdrawal of the SAIL commitment. The Corporation shall then offer a preliminary SAIL commitment to the next eligible Applicant or, with approval of the Board, retain available funds for use in the next Application Period.

(9) At least 5 Calendar Days prior to attending any closing:

(a) The Applicant must provide evidence of all necessary consents or required signatures from first mortgagees or subordinate mortgagees to the Corporation and its counsel, and

(b) The Credit Underwriter must have received all items necessary to release its letter confirming that all closing contingencies have been met, including the finalized sources and uses of funds and Draw schedule.

Specific Authority 420.507 FS. Law Implemented 420.5087, 420.5087(6)(e) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.012, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, _____.

67-48.013 SAIL Construction Disbursements and Permanent Loan Servicing.

(1) SAIL loan proceeds shall be disbursed during the construction phase in an amount per Draw which does not exceed the ratio of the SAIL loan to the Total Development Cost, unless approved by the Credit Underwriter.

(2) Ten business days prior to each Draw, the Applicant shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Applicant for a Draw. The request shall set forth the amount to be paid and shall be accompanied by documentation specified by the Corporation's servicer including claims for labor and materials to date of the last inspection.

(3) The Corporation and its servicer shall review the request for a Draw, and the servicer shall provide the Corporation with approval of the request or an alternative recommendation, after the title insurer provides an endorsement to the policy of title insurance updating the policy to the date of the current Draw and increasing the insurance coverage to an amount equal to the sum of all prior Draws and the current Draw, without additional exceptions, except those specifically approved in writing by the Corporation.

(4) The Corporation will disburse construction Draws through Automated Clearing House (ACH). The Applicant may request disbursement of construction Draws via a wire transfer. The Applicant will be charged a fee of $10 for each wire transfer requested. This charge will be netted against the Draw amount.

(5) The Corporation shall elect to withhold any Draw or portion of any Draw, notwithstanding any documentation submitted by the Applicant in connection with the request for a Draw, if

(a) The Corporation or the Corporation's servicer determines at any time that the actual cost budget or progress of construction differs from that as shown on the loan documents; or

(b) The percentage of progress of construction of the improvements differs from that shown on the request for a Draw.

(6) The servicer may request submission of revised construction budgets.

(7) If the Corporation determines that further analysis by the Credit Underwriter is required prior to the release of the final Draw, the Applicant shall pay to the Credit Underwriter a fee based on an hourly rate determined pursuant to the contract between the Corporation and the Credit Underwriter.

(8) Retainage in the amount of 10% per Draw shall be held by the servicer during construction until the Development is 50% complete. At 50% completion, no additional retainage shall be held from the remaining Draws. Release of funds held by the Corporation's servicer as retainage shall occur pursuant to the SAIL loan agreement.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.013, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, Repromulgated _____.

PART III HOME INVESTMENT PARTNERSHIPS PROGRAM

67-48.014 HOME General Program Procedures and Restrictions.

~~In order for a Development to qualify for HOME funds, it shall, at a minimum, meet or comply with the following:~~

(1) Unless otherwise provided in the Application instructions, ~~t~~The Corporation shall utilize up to 10% of the HOME allocation for administrative costs pursuant to the HUD Regulations.

(2) The Corporation shall utilize at least 15% of the HOME allocation for CHDOs pursuant to the HUD Regulations, to be divided between the multifamily and single family cycles ~~as approved by the Board of Directors~~. ~~In the event of CHDO Applications in excess of 15% of the HOME allocation designated for multifamily, such Applications shall be funded up to a cumulative maximum of 25%, including partial funding of any such Application. Partial funding will be offered to an Applicant only in the event that partial funding constitutes at least 60% of the Applicant's requested HOME funding. Any remaining unfunded or partially funded CHDO Application(s) shall remain eligible to compete for non-CHDO designated funding.~~ In order to apply under the CHDO set-aside, the CHDO must have at least 51% ownership interest in the Development held by the General Partner entity and

meet all other CHDO requirements as defined by HUD in 24 CFR 92 and other Corporation requirements identified in the CHDO Checklist. The CHDO Checklist is adopted and incorporated herein by reference and is available on FHFC's web site www.floridahousing.org.

(3) Within the rental cycle administered pursuant to Chapter 67-48, F.A.C., the Corporation will distribute funds as provided in the Universal Application instructions. ~~in the following order subject to the provisions of subsections 67-48.014(1) and (2), F.A.C.:~~

~~(a) Funds will be allocated to qualified CHDOs in order of ranking, until 15% of the available funds have been allocated.~~

~~(b) The remaining funds will then be allocated to Applications for proposed Developments in order of ranking.~~

(4) The maximum per-unit subsidy amount of HOME funds that the Corporation may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established pursuant to the HUD Regulations.

(5) The minimum amount of HOME funds that must be invested in a Rental Development is $1,000 times the number of HOME-Assisted Units in the Development.

(6) A Development qualifies as affordable housing and for HOME funds if, with respect to income and occupancy:

(a) 80% of the HOME-Assisted Units are occupied by families whose ~~who~~ annual income does not exceed 60% of the median family income for the area, as determined by HUD, with adjustments for family size, and

(b) 20% of the HOME-Assisted Units are occupied by families whose annual income does not exceed 50% of the median family income for the area, as determined by HUD, with adjustments of family size.

(c) When the income of a resident increases above 80% of area median income, the next unit that becomes available in the Development must be rented to a HOME income-eligible resident. If the income of a Very Low-Income household increases above the limits for a Very Low-Income household, then the Developer must rent the next available unit to a Very Low-Income household. The amount of rent the resident whose income has increased must pay is the lesser of the amount payable by the resident under state or local law or 30% of the adjusted monthly income for rent and utilities.

(d) With respect to rent limits, the HOME Rent Chart at 65% or 50%, or the Fair Market Rent, less the applicable utility allowance, is the maximum rent that can be charged for a HOME Rent-Restricted Unit. HOME-Assisted Units with Section 8 subsidy must compare the Section 8 gross rent (resident rent, subsidy amount, and utility allowance) to the maximum applicable HOME high or low rent limit minus utilities. However, Developments with project-based rental assistance may utilize the project-based rents as compared to the HOME High and Low rents. Compliance with the HOME rent restrictions will take precedence over the Developer's acceptance of a full Section 8 (resident-based) subsidy for the HOME-Assisted Units.

(e) The minimum period of affordability for rehabilitation Developments is 15 years.

(f) The minimum period of affordability for newly-constructed rental housing is 20 years. The period of affordability will be extended until the loan is repaid as enumerated in subsection 67-48.020(1), F.A.C.

(g) The minimum percentage of HOME-Assisted Units within a Development must be at least equal to the percentage (ratio) calculated by dividing the HOME loan amount by the Total Development Cost. This percentage will be utilized to determine the minimum number of HOME-Assisted Units required within a Development. HOME-Assisted Units must be identified at the time of Application. For purposes of meeting affordable housing requirements for a Development, the HOME-Assisted Units counted may be changed over the Compliance Period, so long as the total number of HOME-Assisted Units remains the same, and the substituted units are, at a minimum, comparable in terms of size, features, and number of bedrooms to the original HOME-Assisted Units.

(h) The Development will remain affordable, pursuant to commitments documented within the executed Land Use Restriction Agreement without regard to the term of the mortgage or to transfer of ownership.

(7) The Development must comply with all applicable provisions of 24 CFR Part 92.

(8) Any single contract for the development (rehabilitation or new construction) of affordable housing with 12 or more HOME-Assisted Units under the HOME Program must contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the United States Secretary of Labor pursuant to the Davis-Bacon Act, 40 U.S.C. § 276a-276 ~~265~~ -a-5 (1994), which is adopted and incorporated herein by reference, 24 CFR § 92.354, 24 CFR Part 70 (volunteers), which is adopted and incorporated herein by reference, and 40 U.S.C. 276c, which is adopted and incorporated herein by reference, will be paid to all laborers and mechanics employed for the construction or rehabilitation of the Development, and such contracts must also be subject to the overtime provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327-333 (1994), which is adopted and incorporated herein by reference, the Copeland Act (Anti-Kickback Act), 40 U.S.C. § 276c (1994), which is adopted and incorporated herein by reference, and the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.), which is adopted and incorporated herein by reference.

(9) All HOME Developments must conform to the following federal requirements:

(a) Equal Opportunity and Fair Housing as enumerated in 24 CFR § 92.202 and 92.250, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), which is adopted and incorporated herein by reference, Fair Housing Act (42 U.S.C. 3601-3620), which is adopted and incorporated herein by reference, Age Discrimination Act of 1975, as amended (42 U.S.C. 6101), which is adopted and incorporated herein by reference, Executive Order 11063 (amended by Executive Order 12259), which is adopted and incorporated herein by reference, and 24 CFR 5.105(a), which is adopted and incorporated herein by reference.

(b) Affirmative Marketing as enumerated in 24 CFR § 92.351.

(c) Environmental Review as enumerated in 24 CFR § 92.352, 24 CFR Part 58, which is adopted and incorporated herein by reference, and National Environmental Policy Act of 1969, which is adopted and incorporated herein by reference.

(d) Displacement, Relocation, and Acquisition as enumerated in 24 CFR § 92.353, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4201-4655), which is adopted and incorporated herein by reference, 49 CFR Part 24, which is adopted and incorporated herein by reference, 24 CFR Part 42 (Subpart C ~~B~~), which is adopted and incorporated herein by reference, and Section 104(d) "Barney Frank Amendments," which is adopted and incorporated herein by reference.

(e) Lead-based Paint as enumerated in 24 CFR § 92.355, and 24 CFR Part 35, which is adopted and incorporated herein by reference.

(f) Conflict of Interest as enumerated in 24 CFR § 92.356, 24 CFR 85.36 and 24 CFR 84.42, which are adopted and incorporated herein by reference.

(g) Debarment and Suspension as enumerated in 24 CFR Part 5, which is adopted and incorporated herein by reference.

(h) Flood Insurance as enumerated in Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106), which is adopted and incorporated herein by reference.

(i) Handicapped Accessibility as enumerated in Section 504 of the Rehabilitation Act of 1973 (implemented in 24 CFR Part 8) and 24 CFR § 100.205, which are adopted and incorporated herein by reference.

(j) Americans with Disabilities Act as enumerated in 42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225, which are adopted and incorporated herein by reference.

(k) Equal Opportunity Employment as enumerated in Executive Order 11246 (implemented in 41 CFR Part 60), which is adopted and incorporated herein by reference.

(l) Economic Opportunity as implemented in 24 CFR Part 135, which is adopted and incorporated herein by reference.

(m) Minority/Women Employment as enumerated in 24 CFR § 85.36(e), and Executive Orders 11625, 12432, and 12138, which are adopted and incorporated herein by reference.

(n) Site and Neighborhood Standards as enumerated in 24 CFR 983.6(b) ~~893.6(b)~~, which is adopted and incorporated herein by reference.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(2) FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.014, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, 3-17-02, _____.

67-48.015 Match Contribution Requirement for HOME Allocation.

(1) The Corporation is required by HUD to match non-federal funds to the HOME allocation as specified in the HUD Regulations. ~~One of the criteria for selecting HOME Developments will be its ability to obtain a non-federal local match source pursuant to HUD Regulations~~.

(2) A Match Credit Fund funded by the State of Florida has been appropriated to the Corporation. The funds are to be used for demonstration Developments, pilot programs, or other Developments selected and approved by the Corporation's Board of Directors. Such pilot programs or Developments shall be counted as the Corporation's required match for HUD purposes and may be any eligible activity acceptable to HUD regulations and approved by the Corporation's Board of Directors.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(4) FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.015, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, 3-17-02, _____.

67-48.017 Eligible HOME Activities.

HOME funds may be used for ~~the following activities:~~ acquisition (must include new construction and/or rehabilitation), new construction, reconstruction, or moderate or substantial rehabilitation of non-luxury housing with suitable amenities pursuant to the HUD Regulations. In addition, HOME funds may be used for any activity found to be eligible by HUD in Match c~~C~~redit and/or d~~D~~isaster d~~D~~evelopments.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(3) FS. History–New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 9I-48.017, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, 3-17-02, Amended _____.

67-48.018 Eligible HOME Applicants.

Applicants for HOME loans may include CHDOs, public housing authorities, local governments, Non-Profit organizations, and private for-profit organizations. The Applicant must be a legally-formed, existing entity at the time of Application Deadline. Pursuant to the HUD Regulations, Applicants may not request additional HOME funding during the period of affordability. However, additional funds may be committed to a Development up to one year after Development completion provided the amount does not exceed the maximum per-unit subsidy and the additional amount is not used to pay for Developer fees.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(3) FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.018, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, Amended 3-17-02, _____.

67-48.019 Eligible and Ineligible HOME Development Costs.

(1) HOME funds may be used to pay for the following eligible costs as enumerated in the HUD Regulations:

(a) Development hard costs as they directly relate to the identified HOME Assisted Units only for:

1. New construction, the costs necessary to meet local and State of Florida building codes and the Model Energy Code referred to in the HUD Regulations;

2. Rehabilitation, the costs necessary to meet local and State of Florida rehabilitation building codes and at a minimum, the Section 8 Housing Quality Standards under the HUD Regulations;

3. Both new construction and rehabilitation, costs to demolish existing structures, improvements to the Development site and utility connections;

(b) The cost of acquiring improved or unimproved real property. A HOME Development and HOME loan that involves acquisition must include rehabilitation or new construction in order to be an eligible Development.

(c) Soft costs as they relate to the identified HOME-Assisted Units. The costs must be reasonable, as determined by the Corporation and the Credit Underwriter, and associated with the financing, development, or both. These costs may include:

1. Architectural, engineering or related professional services required to prepare plans, drawings, specifications or work write-ups;

2. Costs to process and settle the HOME financing for a Development, such as credit reports, fees for evidence of title, recordation, building permits, attorney fees, cost certifications, and estimates;

3. Developer fee shall be limited to 16% of Development Cost. A Developer fee on the building acquisition cost shall be limited to 4% of the cost of the building exclusive of land. However, the Developer fee shall be limited to 10% of Development Cost for those Developments involving rehabilitation of buildings which have received a Florida Housing funding commitment or a Preliminary Allocation/Determination for other construction work within fourteen years of the Application Deadline.

4. Impact fees;

5. Costs of Development audits required by the Corporation;

6. Affirmative marketing and fair housing costs;

7. Temporary relocation costs as required under HUD Regulations;

8. The General Contractor's fee shall be limited to a maximum of 14% of the actual construction cost.

(2) HOME funds shall not be used to pay for the following ineligible costs:

(a) Development reserve accounts for replacements, unanticipated increases in operating costs, or operating subsidies, except as described in subparagraph 67-48.021(2)(f)2., F.A.C.;

(b) Resident-based rental assistance except for pilot or demonstration Developments as approved by the Board of Directors;

(c) Public housing;

(d) Administrative costs;

(e) Developer fees unless the HOME funds include rehabilitation or new construction;

(f) Any other expenses not allowed under 24 CFR Part 92.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(3) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.019, Amended 11-9-98, 2-24-00, Repromulgated 2-22-01, Amended 3-17-02, _____.

67-48.020 Terms and Conditions of Loans for HOME Rental Developments.

All HOME Rental Development loans shall be in compliance with the Act, the HUD Regulations and, at a minimum, contain the following terms and conditions:

(1) The HOME loan may be in a first, second, or subordinated lien position. The term of the loan shall be for a minimum period of 15 years for Rehabilitation Developments and 20 years for new construction Developments. The term of the HOME loan may be extended to coterminate with the first mortgage term upon the recommendation of the Credit Underwriter and approval by the Corporation.

(2) The annual interest rate will be determined by the following:

(a) All for-profit Applicants that own 100% of the ownership interest in the Development held by the general partner entity will receive a 3% per annum interest rate loan.

(b) All qualified non-profit Applicants that own 100% of the ownership interest in the Development held by the general partner entity will receive a 0% interest rate loan. For purposes of determining the annual HOME interest rate, the definition of Non-Profit found at Rule 67-48.002, F.A.C., shall not apply; instead, qualified non-profit Applicants shall be those entities defined in the HUD Regulations, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the Code and organized under Chapter 617, F.S., if a Florida corporation, or organized under similar state law if organized in a jurisdiction other than Florida.

(c) All Applicants consisting of a non-profit and for-profit partnership will receive a 0% interest rate loan on the portion of the loan amount equal to the qualified non-profit's ownership interest in the Development held by the general partner entity. A 3% interest rate shall be charged for loans on the portion of the loan amount equal to the for-profit's interest in the Development held by the general partner entity. After

closing, should the Applicant sell any portion of the Development ownership, the loan interest rate ratio will be adjusted to conform to ~~with~~ the new percentage of ownership.

(3) The loans shall be non-amortizing and repayment of principal shall be deferred until maturity, unless otherwise recommended by the Credit Underwriter and approved by the Corporation. Interest payments on the loan shall be paid to the Corporation's servicer annually on the date specified in the Note.

(4) As approved by the Board of Directors, loans which finance demonstration Developments or Developments located in a state or federally declared disaster area may be provided with forgivable terms.

(5) The accumulation of all Development financing, including the HOME loan and all existing debt within a Development, may not exceed the Total Development Cost, as determined and certified by the Credit Underwriter.

(6) Before disbursing any HOME funds, there must be a written agreement with the Applicant ensuring compliance with the requirements of the HOME Program pursuant to this rule chapter and the HUD Regulations.

(7) A representative of the Applicant and the managing agent of the Development must attend a Corporation-sponsored training session on income certification and compliance procedures.

(8) If the Development has 12 or more HOME-Assisted Units to be developed under a single contract, the General Contractor and all available subcontractors shall attend a Corporation-sponsored preconstruction conference regarding federal labor standards provisions.

(9) The Corporation shall require adequate insurance to be maintained on the Development as determined by the first mortgage lender or the Corporation's servicer, but which shall, in any case, include fire, hazard and other insurance sufficient to meet the standards established in Part V, Section 106 of the Fannie Mae DUS Guide, effective September 10, 2002 ~~Section 101.17 of the Federal National Mortgage Association Multifamily Conventional Selling Eligibility Requirements for rental properties~~, which is adopted and incorporated herein by reference.

(10) All loans must provide that any violation of the terms and conditions described in this rule chapter or the HUD Regulations constitute a default under the HOME loan documents allowing the Corporation to accelerate its loan and seek foreclosure as well as any other remedies legally available to it.

(11) If a default on a HOME loan occurs, the Corporation will commence legal action to protect the interest of the Corporation. The Corporation shall acquire real and personal property or any interest in the Development if that acquisition is necessary to protect any HOME loan; sell, transfer, and convey any such property to a buyer without regard to the provisions of Chapters 253 and 270, F.S.; and, if that sale, transfer, or conveyance cannot be consummated within a reasonable time, lease the Development for occupancy by Eligible Persons.

(12) The Corporation or its servicer shall monitor the compliance of each Development with all terms and conditions of the HOME loan and shall require that such terms and conditions be recorded in the public records of the county where the Development is located. Violation of any term or condition shall constitute a default during the term of the HOME loan.

(13) The Applicant shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the HOME mortgage without prior approval of the Corporation's Board of Directors. However, an Applicant may reduce the interest rate on any superior or inferior mortgage loan without the Board's permission, provided that no other terms of the loan are changed. Florida Housing must be notified of any such change.

(a) The Board shall approve requests for mortgage loan refinancing only if Development cash flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation.

(b) The Board shall deny requests to increase the amount of any superior mortgage, unless the criteria outlined in paragraph 67-48.020(13)(a), F.A.C., are met, the original combined loan to value ratio for the superior mortgage and the HOME mortgage is maintained or improved, and a proportionate amount of the increase in the superior mortgage is used to reduce the outstanding HOME loan balance. To calculate the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the HOME loan balance, the following calculation shall be used: divide the amount of the original HOME mortgage by the combined amount of the original HOME mortgage and the original superior mortgage; then multiply the quotient by the amount of the increase in the superior mortgage after deducting refinancing costs. For example, if the amount of the original HOME mortgage is $2,000,000, the original superior mortgage is $4,000,000, but the current balance is $3,000,000, the proposed new superior mortgage is $5,000,000, and refinancing costs are $200,000, then the amount of the increase in the superior mortgage after deducting refinancing costs would be $1,800,000 ~~$800,000~~, and the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the HOME loan balance would be $594,000 ~~$266,667~~. This $594,000 would be applied first to accrued interest and then to principal.

(c) The Board shall deny requests for mortgage loan refinancing which require extension of the HOME loan term or otherwise adversely affect the security interest of the Corporation unless the criteria outlined in paragraph 67-48.020(13)(a), F.A.C., are met, the Credit Underwriter

recommends that the approval of such a request is crucial to the economic survival of the Development or unless the Board determines that public policy will be better served by the extension as a result of the Applicant agreeing to further extend the Compliance Period or provide additional amenities or resident programs suitable for the resident population. Further, the Bboard shall limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(7),(8),(9) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.020, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, _____.

67-48.0205 Sale or Transfer of a HOME Development.

(1) The HOME loan shall be assumable upon Development sale, transfer or refinancing if the following conditions are met:

(a) The proposed transferee meets all specific Applicant identity criteria which were required as conditions of the original loan;

(b) The proposed transferee agrees to maintain all set-asides and other requirements of the HOME loan for the period originally specified; and

(c) The proposed transferee and Application receives a favorable recommendation from the Credit Underwriter and approval by the Corporation's Board of Directors.

(2) If the Development is sold and the proposed transferee does not meet the criteria for assumption of the loan, the HOME loan shall be repaid from the proceeds of the sale. If there will be insufficient funds available from the proposed sale of the Development, the HOME loan shall not be satisfied until the Corporation has received:

(a) An appraisal prepared by an appraiser selected by the Corporation indicating that the purchase price for the Development is reasonable and consistent with existing market conditions;

(b) A certification from the Applicant that the purchase price reported is the actual price paid for the Development and that no other consideration passed between the parties and that the income reported to the Corporation during the term of the loan was true and accurate; and

(c) A certification from the Applicant that there are no Development funds available to repay the loan and the Applicant knows of no source from which funds could or would be forthcoming to pay the loan.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(7),(8),(9) FS. History–New 12-23-96, Amended 1-6-98, Formerly 9I-48.0205, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, Repromulgated 3-17-02, _____.

67-48.021 HOME Credit Underwriting and Loan Procedures.

(1) After the administrative appeal procedures have been completed, the Corporation shall assign a tentative loan amount to the Applicants ranked within funding range in accordance with the Universal Application instructions ~~in each set-aside category with the highest point totals on their Applications for funding, up to the amount available in the category~~.

(2) Based upon availability of funds, the Corporation shall issue a preliminary commitment notifying each Applicant of selection for participation in the HOME Program ~~in the order of each Applicant's ranking within each set-aside category. When an Applicant's tentative loan amount exceeds the remaining fund availability, the Corporation shall offer the Applicant a tentative loan amount equal to the remaining funds. Rejection of such an offer will cause the Corporation to make the offer to the next highest ranked Applicant within the category. This process shall be followed until all funds for the set-aside category are committed.~~

(3)~~(a)~~ The preliminary commitment letter shall be subject to a positive recommendation by the Corporation's Credit Underwriter, approval by the Corporation's Board of Directors, and a certification by the Corporation of the HUD Environmental Review pursuant to 24 CFR § 92.352.

(4)~~(b)~~ All items required by the Credit Underwriter must be provided to the Credit Underwriter within 35 Calendar Days of notification from the Credit Underwriter. The Applicant will have an additional 25 Calendar Days to submit the appraisal, survey and final plans to the Credit Underwriter. Unless an extension is approved by Florida Housing ~~the Corporation's Board~~, failure to submit the required credit underwriting information by the specified deadlines shall result in withdrawal of the preliminary commitment and the funds will be made available to the next eligible Applicant. The Corporation shall select the Credit Underwriter for each Development.

(5)~~(c)~~ The Credit Underwriter shall verify all information in the Application, including information relative to the Applicant, Developer, Syndicator, General Contractor, and, if an ALF, the service provider, as well as ~~and~~ other members of the Development team. The Credit Underwriter shall complete its analysis and submit a written draft report and recommendation to the Corporation ~~within 80 Calendar Days from the date of the preliminary commitment letter~~. Upon receipt, the Corporation shall provide to the Applicant the section including supporting information and schedules from the written draft report. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter within 48 hours after receipt. After the 48-hour period, the Corporation shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. Then the Credit Underwriter shall review and incorporate the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter

within 72 hours of receipt of revised report. Then, the Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(6)~~(d)~~ The underwriters may request additional information but at a minimum the following will be required during the underwriting process:

(a)~~1.~~ For credit enhancers, audited financial statements for their most recent fiscal year ended, if published; otherwise the previous year's audited statements will be provided until the current statements are published or credit underwriting is complete. The audited statements may be waived if the credit enhancer is rated at least "A-" by Moody's, Standard and Poor's or Fitch.

(b)~~2.~~ For Principals and guarantors, audited financial statements or financial statements compiled or reviewed in accordance with Statement on Standards for Accounting and Review Services (SSARS) No. 1, which is adopted and incorporated herein by reference, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If audited financial statements or financial statements compiled or reviewed in accordance with Statement on Standards for Accounting and Review Services (SSARS) No. 1 are not available, unaudited financial statements prepared within the last 90 days and reviewed by the credit underwriter in accordance with the Fannie Mae Multifamily Delegated Underwriting and Servicing (DUS) Guide, effective November 23, 1999, which is adopted and incorporated herein by reference, and the two most recent year's tax returns.

(c)~~3.~~ For the General Contractor, audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100% of the total construction cost is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

(d)~~4.~~ For the Applicant and general partner, audited financial statements or financial statements compiled or reviewed in accordance with SSARS No. 1, for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If the entities are newly formed (less than 18 months in existence as of the date that credit underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules.

(7)~~(e)~~ The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during credit underwriting. If the Board determines at any time that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or the market to be served by the Development or if any discrepancy or misrepresentation is found, the Application will be rejected. The Corporation shall bear the cost of the underwriting review under contract with the Credit Underwriter. However, if the HOME commitment is canceled for failure to adhere to rule deadlines or for reasons within Applicant's control, the Development will be responsible for reimbursing the Corporation for fees incurred for credit underwriting and environmental review processing.

(8)~~(f)~~ The Credit Underwriter shall use the following procedures during the underwriting evaluation:

(a)~~1.~~ Minimum debt service coverage of 1.10 and maximum debt service coverage of 1.50 for the HOME loan and all other superior mortgages. In extenuating circumstances such as when the Development has deep or short term subsidy, the debt service coverage may exceed 1.50 if the Credit Underwriter's favorable recommendation is supported by the projected cash flow analysis. Developments receiving first mortgage funding from the United States Department of Agriculture Rural Development (RD) are not required to meet the debt service coverage standards if RD is providing rental assistance and has acknowledged that rents will be set at an amount sufficient to pay all operating expenses, replacement reserve requirements and debt service on the HOME and all superior mortgages.

(b)~~2.~~ Minimum replacement reserve of $200 per unit for all Developments. However, the amount may be increased based on a physical needs analysis. An Applicant may choose to fund a portion of the replacement reserves at closing. The amount cannot exceed 50% of the required replacement reserves for 2 years and must be placed in escrow at closing.

(c)~~3.~~ Review and determine if the number of loans and construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of each proposed Corporation-funded Development.

(d)~~4.~~ The Credit Underwriter shall consider the following when determining the need for construction completion guarantees:

1.~~a.~~ Liquidity of the guarantor.

2.~~b.~~ Developer and General Contractor's history in successfully completing Developments of similar nature.

3.~~c.~~ Problems encountered previously with Developer.

4.~~d.~~ Problems encountered previously with contractor.

5.~~e.~~ Exposure of Corporation funds compared to Total Development Costs. At a minimum, the Credit Underwriter shall require a personal guarantee for completion of construction from the principal individual or the corporate general partner of the borrowing entity.

In addition, a letter of credit or payment and performance bond will be required in an amount as determined by the Credit Underwriter if the Credit Underwriter determines after evaluation of subparagraphs 1.-5. ~~a.-e.~~ above that the additional surety is needed.

(e)~~5.~~ Require an operating deficit guarantee, to be released upon achievement of 1.10 debt service coverage for a minimum of six consecutive months for the combined permanent first mortgage and HOME loan.

(f)~~6.~~ Contingency reserves which total no more than 5% of hard and soft costs for new construction and no more than 15% of hard and soft costs for Rehabilitation may be included within the Total Development Cost for Application and underwriting purposes. Contingency reserves shall not be paid from HOME funds.

(g)~~7.~~ Review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application.

(9)~~(g)~~ A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and product type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the loan request in relation to the property value. Appraisals and separate market studies which have been ordered and submitted by third party credit enhancers, first mortgagors or syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal or market study referenced above. The Credit Underwriter shall consider the market study and other documentation to make a recommendation of whether to approve or disapprove funding when the proposed Development would financially impair an existing Development previously funded by Florida Housing.

(10)~~(h)~~ If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same. Failure to submit required information by the specified deadline, unless a written extension of time is approved by the Corporation's Board, shall result in the Application being rejected and the Corporation funding additional Applications as outlined in the Universal Application instructions ~~in order of scoring~~.

(11)~~(i)~~ A preconstruction analysis and review of the Development's costs shall be required prior to the closing of the HOME loan.

(12)~~(j)~~ The Applicant will bear the cost of all documentation submitted to the Credit Underwriter for review (i.e., appraisal, credit report, environmental study, etc.). The Applicant may reimburse itself for these costs with HOME funds from the first Draw.

(13)~~(k)~~ After approval of the Credit Underwriter's recommendation by the Board of Directors, or a committee appointed by the Board, the Corporation shall issue a firm HOME loan commitment.

(14)~~(l)~~ The HOME loan shall close within 60 Calendar Days from the date of the firm commitment letter.

(15)~~(m)~~ The Applicant must submit a written request for any extensions needed or any changes to the Development or its financing from the original Application. All requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request must be submitted to the Corporation Board of Directors for consideration.

(16)~~(3)~~ At least 5 Calendar Days prior to attending any closing:

(a) The Applicant must provide evidence of all necessary consents or required signatures from first mortgagees or subordinate mortgagees to the Corporation and its counsel, and

(b) The Credit Underwriter must have received all items necessary to release its letter confirming that all closing contingencies have been met, including the finalized sources and uses of funds and Draw schedule.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(2) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.021, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, _____.

67-48.022 HOME Disbursements Procedures and Loan Servicing.

(1) HOME loan proceeds shall be disbursed during the construction/rehabilitation phase in an amount per Draw on a pro-rata basis with the other financing unless otherwise approved by the Corporation or the Credit Underwriter.

(2) Ten business days prior to each Draw, the Applicant shall supply the Corporation's servicer, as agent for the Corporation, with a written request executed by the Applicant for a Draw in a form and substance acceptable to the Corporation's servicer.

~~(3) A copy of the request for a Draw shall be delivered to the Corporation, Attention: HOME Rental Program Administrator, simultaneously with the delivery of the request to the Corporation's servicer and its inspector.~~

(3)~~(4)~~ The request shall set forth the amount to be paid and shall be accompanied by documentation as specified by the Corporation's servicer. Such documentation shall include invoices for labor and materials to date of the last inspection.

(4)~~(5)~~ The Corporation's servicer and the Corporation shall review the request for Draw and the Corporation's servicer shall provide the Corporation with approval of the request or an alternative recommendation of an amount to be paid after the title insurer provides an endorsement to the policy of title insurance updating the policy to the date of the current Draw and increasing the insurance coverage to an amount equal to the sum of all prior Draws and the current

Draw, without additional exceptions, except those specifically approved in writing by the Corporation. For all Developments consisting of 12 or more HOME-Assisted Units to be developed under a single contract, the borrower shall submit weekly payrolls of the General Contractor and subcontractors in accordance with Federal Labor Standards as enumerated in 24 CFR 92.354.

(5)~~(6)~~ Retainage in the amount of 10% per Draw shall be held by the servicer during construction until the Development is 50% complete. At 50% completion, no additional retainage shall be held from the remaining Draws. Release of funds held as retainage shall occur in accordance with the HOME loan documents.

(6)~~(7)~~ The Corporation or its servicer shall elect to withhold any Draw or portion of any Draw, in addition to the retainage, notwithstanding any documentation submitted by the borrower in connection with a request for a Draw, if:

(a) The Corporation or the servicer determines at any time that the actual cost budget or progress of construction differs from that shown on the loan documents.

(b) The percentage of progress of construction of improvements differs from that shown on the request for a Draw.

(c) Developments subject to and not in compliance with Federal Labor Standards.

(7)~~(8)~~ To the extent excess HOME funds in the budget remain unused, the Corporation has the right to reduce the HOME loan by that amount.

(8)~~(9)~~ If 100% of the loan proceeds have not been expended within six months prior to the HUD deadline pursuant to 24 CFR § 92.500, the funds shall be recaptured by the Corporation ~~and reallocated to any eligible HOME Development on any Corporation waiting list or eligible HOME Developments, as selected by the Board~~.

(9)~~(10)~~ The request for final disbursement of HOME funds, excluding retainage, shall be submitted within 60 days of completion of construction as evidenced by certificates of occupancy.

Specific Authority 420.507(12) FS. Law Implemented 420.5089(1) FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.022, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, _____.

PART IV HOUSING CREDIT PROGRAM

67-48.023 Housing Credits General Program Procedures and Requirements.

In order for a Development to qualify for Housing Credits it shall, at a minimum, meet or comply with the following:

(1) Each Applicant shall comply with this rule chapter and with Section 42 of the Code and federal regulations issued pursuant thereto and in effect at the time of the Funding Cycle. Noncompliance by an Applicant, or any Principal, Affiliate or Financial Beneficiary of an Applicant or Developer shall result in disqualification from participation in the current HC Funding Cycle and for a period of not less than one year. The Applicant and its Principals, Affiliates and Financial Beneficiaries will continue to be ineligible to participate in future HC Funding Cycles until such time as all noncompliance issues are cured.

(2) Each Housing Credit Development shall comply with the minimum Housing Credit Set-Aside provisions, as specified in Section 42(g)(1) of the Code, with respect to the reservation of 20% of the units for occupancy by persons or families whose income does not exceed 50% of the area median income, or the reservation of 40% of the units for occupancy by persons or families whose income does not exceed 60% of the area median income. Further, each Housing Credit Development shall comply with any additional Housing Credit Set-Aside chosen by the Applicant in the Application.

(3) The gross monthly rents for the Housing Credit Set-Aside units shall not exceed 30% of the imputed income limitation applicable to such unit. The monthly rents used must correspond to the Housing Credit Set-Aside chosen by the Applicant in the Application as shown on the rent charts provided by FHFC.

(4) The Development shall provide safe, sanitary and decent residential rental housing and shall be developed, constructed and operated in accordance with the commitments made and the facilities and services described in the Application at the time of submission to the Corporation. Applications will not be considered approved to receive an allocation of Housing Credits until Florida Housing issues a Preliminary Allocation/Preliminary Determination to the Applicant and all contingencies of such documents are satisfied. Allocations are further contingent on the Applicant complying with its Application commitments, Chapter 67-48, F.A.C., and Section 42 of the Code.

(5) All of the dwelling units within a Development shall be rented or available for rent on a continuous basis to members of the general public. The owner of the Development shall not give preference to any particular class or group in renting the dwelling units in the Development, except to the extent that dwelling units are required to be rented to Eligible Persons. All Developments must comply with the Fair Housing Act as implemented by 24 CFR 100, Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR 35, which is adopted and incorporated herein by reference.

(6) Each Housing Credit Development shall complete the Final Cost Certification Application, which is incorporated by reference, by the earlier of the following two dates. A copy of such form is available on FHFC's web site www.floridahousing.org.

(a) The date that is 60 Calendar Days after all the buildings in the Development have been placed in service, or

(b) The date that is 30 Calendar Days before the end of the calendar year for which the Final Housing Credit Allocation is requested.

The Corporation may grant extensions for good cause upon written request.

(7) The completed Final Cost Certification Application shall include an unqualified audit report prepared by an independent certified public accountant. The Corporation will issue only one complete set of Forms 8609 per Development which will be no earlier than total Development completion and the Corporation's acceptance and approval of the Development's Final Cost Certification.

(8) After the final evaluation and determination of the Housing Credit Allocation amount has been made by the Executive Director and the recorded Extended Use Agreement has been received in accordance with Rule 67-48.029, F.A.C., the Forms 8609 are issued to the Applicant of the Housing Credit Development.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.023, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, Repromulgated _____.

67-48.025 Qualified Allocation Plan.

(1) Pursuant to Section 420.507(12), F.S., the Corporation is responsible for the allocation and distribution of Housing Credits in this state. As the allocating agency for the state, distribution of Housing Credits to Applicants shall be in accordance with the Corporation's Qualified Allocation Plan.

(2) The specific criteria of the Qualified Allocation Plan as mandated by Congress and addressed at Section 42(m)(1)(B) of the Internal Revenue Code, as amended, have been approved by the Governor and are adopted by reference herein.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 9I-48.025, Amended 11-9-98, 2-24-00, 2-22-01, Repromulgated 3-17-02, _____.

67-48.026 Housing Credit Underwriting Procedures.

(1) After the final rankings are approved by the Board, the Corporation shall offer all Applicants within the funding range the opportunity to enter credit underwriting.

(2) A response to the invitation to enter credit underwriting must be received by the Corporation and the Credit Underwriter not later than 7 Calendar Days after the date of the letter of invitation.

(3) If the credit underwriting invitation is accepted:

(a) The Applicant shall submit the credit underwriting fee in accordance with Rule ~~subsection~~ 67-48.007~~(4)~~, F.A.C., to the Credit Underwriter within 7 Calendar Days of the date of the letter of invitation, and

(b) All information required by the Credit Underwriter must be provided to the Credit Underwriter within 35 Calendar Days of the date of the invitation to enter credit underwriting. The Credit Underwriter shall complete its report within 56 Calendar Days from the date of the credit underwriting invitation. The appraisal, survey and final plans are acceptable contingency items to the credit underwriting report.

(4) Unless an extension is obtained from Florida Housing ~~the Corporation's Board~~, failure to submit the required credit underwriting information or fees by the specified deadline shall result in withdrawal of the invitation and issuance of an invitation to the next eligible Applicant.

(5) The Corporation shall select the Credit Underwriter for each Development.

(6) The Credit Underwriter shall verify all information in the Application, including information relative to the Applicant, Developer, Syndicator, General Contractor, and, if an ALF, the service provider, as well as ~~and~~ other members of the Development team.

(7) The Credit Underwriter shall report any inconsistencies or discrepancies or changes made to the Applicant's Application during credit underwriting. If the Board determines at any time that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or the market to be served by the Development or if any discrepancy or misrepresentation is found, the Application will be rejected.

(8) The Credit Underwriter shall use the following procedures during the underwriting evaluation:

(a) The Credit Underwriter, in determining the amount of housing credits a Development is eligible for when using the qualified basis calculation, shall use a housing credit percentage of:

1. Thirty (30) basis points over the percentage as of the date of invitation to credit underwriting up to nine percent (9%) for nine percent (9%) credits for new construction and rehabilitation Developments;

2. Fifteen (15) basis points over the percentage as of the date of invitation to credit underwriting up to four percent (4%) for four percent (4%) credits for acquisition and federally subsidized Developments. A percentage of fifteen (15) basis points over the percentage as of the date of invitation to final credit underwriting up to four percent (4%) will be used for Developments receiving ~~FHFC~~ tax-exempt bonds ~~in calendar year 2000 or later~~.

(b) Review and determine if the number of loans and construction commitments of the Applicant and its Principals will impede its ability to proceed with the successful development of the proposed Corporation-funded Development.

(c) Developer fee shall be limited to 16% of Development Cost. A Developer fee on the building acquisition cost shall be limited to 4% of the cost of the building exclusive of land. A total Developer fee of 18% of Development Cost shall be allowed if the proposed Development is qualified for Housing

Credits pursuant to Rule 67-48.027, F.A.C., pertaining to Tax-Exempt Bond-Financed Developments. However, the Developer fee shall be limited to 10% of Development Cost for those Developments involving rehabilitation of buildings which have received a Florida Housing funding commitment or a Preliminary Allocation/Determination for other construction work within fourteen years of the Application Deadline.

(d) The General Contractor's fee shall be limited to a maximum of 14% of the actual construction cost.

(e) Costs such as syndication fees and brokerage fees cannot be included in eligible basis. All consulting fees must be paid out of the Developer fee. Consulting fees cannot cause the Developer fee to exceed the maximum allowable fee as set forth in (c) above.

(f) All contracts for hard or soft Development Costs must be itemized for each cost component.

(g) A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and product type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the proposed property's financial feasibility. Appraisals which have been ordered and submitted by third party credit enhancers, first mortgagors or syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal referenced above. The market study must be completed by a disinterested party which is approved by the Credit Underwriter. The Credit Underwriter shall consider the market study and other documentation to make a recommendation of whether to approve or disapprove an allocation when the proposed Development would financially impair an existing Development previously funded by Florida Housing.

(h) The Credit Underwriter shall review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application.

(i) If the Credit Underwriter determines that special expertise is required to review information submitted to the Credit Underwriter which is beyond the scope of the Credit Underwriter's expertise, the fee for such services shall be borne by the Applicant.

(j) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves and operating expense reserves deemed appropriate by the Credit Underwriter when calculating the final net operating income available to service the debt. A minimum amount of $200 per unit must be used for all Developments. However, the amount may be increased based on a physical needs assessment.

(k) The Corporation's assigned Credit Underwriter shall order, at the Applicant's sole expense, a pre-construction analysis for all new construction or a physical needs assessment for Rehabilitation and shall conduct a review of all of the Development's costs.

(l) Contingency reserves which total no more than 5% of hard and soft costs for new construction and no more than 15% of hard and soft costs for Rehabilitation may be included within the Total Development Cost for Application and underwriting purposes.

(m) The proposed Development must demonstrate, based on current rates, that it can meet 1.10 debt service coverage (DSC) requirements with all first and second mortgages. Developments receiving first mortgage funding from the United States Department of Agriculture Rural Development (RD) are not required to meet the debt service coverage standards if RD is providing rental assistance and has acknowledged that rents will be set at an amount sufficient to pay all operating expenses, replacement reserve requirements and debt service on the first and second mortgages.

(n) If the Credit Underwriter is to recommend an allocation out of the annual Allocation Authority, the recommendation will be the lesser of (1) the qualified basis calculation result, (2) the gap calculation result, or (3) the Applicant's request amount. In the event the Credit Underwriter is making a recommendation for 4% Housing Credits in reference to a Development funded with tax-exempt bonds, the recommendation will be the lesser of the qualified basis calculation result or the gap calculation result.

(o) If the Credit Underwriter requires additional clarifying materials in the course of the underwriting process, the Credit Underwriter shall request same from the Applicant and shall specify deadlines for the submission of same.

(9) After the completion of its analysis, the Credit Underwriter shall submit its draft recommendation including a detailed report of the Development's credit worthiness, feasibility, ability to proceed and viability to the Corporation. Upon receipt, the Corporation shall provide to the Applicant the section including supporting information and schedules from the written draft report. The Applicant shall review and provide written comments to the Corporation and Credit Underwriter within 48 hours. After the 48 hour period, the Corporation shall provide comments on the draft report and, as applicable, on the Applicant's comments to the Credit Underwriter. Then the Credit Underwriter shall review and incorporate the Corporation's and Applicant's comments and release the revised report to the Corporation and the Applicant. Any additional comments from the Applicant shall be received by the Corporation and the Credit Underwriter within 72 hours of receipt of revised report. Then, the Credit Underwriter will provide a final report, which will address comments made by the Applicant, to the Corporation.

(10) If the Credit Underwriter recommends that Housing Credits be allocated to the Development, the Executive Director shall determine the credit amount, if any, necessary to make the Development financially feasible and viable throughout the Housing Credit Extended Use Period and shall issue a Preliminary Allocation Certificate or a Preliminary Determination of Housing Credits in the case of Tax-Exempt Bond-Financed Developments. If the Credit Underwriter recommends that no credits be allocated to the Development and the Executive Director accepts the recommendation, the Applicant shall be notified that no Housing Credits will be allocated to the Development ~~for the current cycle~~. No Preliminary Allocation Certificate shall be issued on a RD (formerly FmHA) Development which competed for Housing Credits within the RD set-aside and has not received an Obligation of Funding (RD or FmHA Form 1944-51) by October 1st of the year the Applicant is invited into credit underwriting. The Obligation of Funding (RD or FmHA Form 1944-51) is adopted and incorporated herein by reference and a copy of the form can be obtained from the United States Department of Agriculture, P. O. Box 147010, Gainesville, FL 32614-7010. All contingencies required in the Preliminary Allocation shall be met or satisfied by the Applicant within 45 Calendar Days from the date of issuance or as otherwise indicated on the Certificate unless an extension of this deadline is requested in writing by the Applicant and is granted by the Corporation in writing for good cause.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 7-10-97, 1-6-98, Formerly 9I-48.026, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, _____.

67-48.027 Tax-Exempt Bond-Financed Developments.

(1) Tax-Exempt Bond-Financed Developments, as defined in Section 42(h)(4)(B) of the Code, which applied for 4% Housing Credits when applying for tax exempt bonds from Florida Housing in calendar year 2000 or later shall:

(a) Have 50% or more of the aggregate basis of any building and the land on which the building is located financed by tax-exempt bonds;

(b) Be subject to the monitoring and credit underwriting fees as stated in Chapter 67-21, F.A.C.;

(c) Be deemed to have met all HC Program scoring threshold requirements upon the closing of the bonds with Florida Housing;

(d) Receive a Preliminary Determination from the Corporation upon Florida Housing's issuance of a loan commitment in reference to the tax-exempt bonds;

(e) Be subject to the provisions of this rule chapter, specifically the applicable provisions of Part I and Part IV, except for Rules ~~Sections~~ 67-48.026 and 67-48.028, F.A.C.;

(f) Receive Building Identification Numbers from the Corporation upon satisfying the requirements of this section and the Final Cost Certification requirements of Rule 67-48.023, F.A.C.;

(g) Provide an IRS Form 8821 for each Financial Beneficiary of the Development prior to Final Housing Credit Allocation; and

(h) Pay the assigned Credit Underwriter for a comprehensive market study of the housing needs of Low Income individuals in the area to be served by the Development. The market study must be completed by a disinterested third party and a copy of the completed market study must be on file with Florida Housing prior to the Final Housing Credit Allocation.

(2) Tax-Exempt Bond-Financed Developments, as defined in Section 42(h)(4)(B) of the Code, seeking to obtain Housing Credits from the Treasury receiving the bonds from Florida Housing prior to calendar year 2000 or receiving bonds from another source other than Florida Housing, and not competing for Housing Credits under the State of Florida Allocation Authority shall:

(a) Have 50% or more of the aggregate basis of any building and the land on which the building is located financed by tax-exempt bonds;

(b) Be subject to the Application fee specified in this rule chapter;

(c) Meet the HC Program threshold requirements pursuant to the Qualified Allocation Plan and shall have completed loan closings on all required financing;

(d) Participate in the credit underwriting process pursuant to this rule chapter, unless such Development has received its tax-exempt bond financing through the Corporation, in which case the Development must be underwritten to the extent necessary to determine Development feasibility and Housing Credit need;

(e) Be subject to the credit underwriting fees as set forth in this rule chapter;

(f) Be subject to the administrative fee specified in this rule chapter;

(g) Receive a Preliminary Determination from the Corporation upon satisfying the requirements of sections (a) through (f) above. A Development may receive a Preliminary Determination prior to the bonds being issued and the submission of an Application, if the Corporation receives a credit underwriting report prepared by one of the Corporation's contracted Credit Underwriters which recommends a Housing Credit Allocation and the issuance of tax-exempt bonds, and receives evidence of a loan commitment in reference to the tax-exempt bonds. The administrative fee must be paid within seven days of the date of the Preliminary Determination;

(h) Be subject to a Developer fee limitation as specified in this rule chapter;

(i) Be subject to the provisions of this rule chapter, specifically the applicable provisions of Part I and Part IV, except for Rule 67-48.028, F.A.C.;

(j) Provide an IRS Form 8821 for each Financial Beneficiary of the Development prior to Final Housing Credit Allocation;

(k) Be subject to the provisions in this rule chapter, pertaining to the required Extended Use Agreement;

(l) Be subject to the monitoring fee specified in this rule chapter, unless such Development has received tax-exempt bond financing through the Corporation;

(m) After bonds are issued to the Development, make Application to the Corporation as required in Rules 67-48.004 and 67-48.026, F.A.C. Applicant shall submit its Application completed in accordance with the Universal Application Package instructions for receipt by the Corporation no later than July 1 of the year the Development is placed in service; and

(n) Receive Building Identification Numbers from the Corporation upon satisfying the requirements of this section and the Final Cost Certification requirements of Rule 67-48.023, F.A.C.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Amended 12-23-96, 1-6-98, Formerly 9I-48.027, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, Repromulgated _____.

67-48.028 Carryover Allocation Provisions.

(1) If an Applicant cannot complete its Development by the end of the year in which the Preliminary Allocation is issued, the Applicant must enter into a Carryover Allocation Agreement with the Corporation by December 29th of the year in which the Preliminary Allocation is issued. The Carryover Allocation allows the Applicant up to the end of the second year following the Carryover Allocation to have the Development placed-in-service.

(2) An Applicant shall have tax basis in the Housing Credit Development which is greater than 10% of the reasonably expected basis in the Housing Credit Development within six months of the date of the execution of the Carryover Allocation Agreement or the Housing Credits will be deemed to be returned to the Corporation. Certification that the Applicant has met the greater than 10% basis requirement shall be signed by the Applicant's attorney or certified public accountant.

(3) All supporting Carryover documentation and the signed certification evidencing the required basis must be submitted to the Corporation within six months of the date of the execution of the Carryover Allocation Agreement or the Housing Credits will be deemed to be returned.

(4) The Applicant for each Development for which a Carryover Allocation Agreement has been executed shall submit quarterly progress reports to the Corporation using Progress Report Form Q/M Report, which is incorporated by reference, effective on the date of the latest amendment to this rule chapter, and which will be provided by the Corporation. If the Form Q/M Report does not demonstrate continuous and adequate development and construction progress, the Corporation will require monthly submission of Form Q/M Report until satisfactory progress is achieved, until the Development is placed in service, or until a determination is made by the Corporation that the Development cannot be placed in service by the Carryover deadline and the Housing Credits are returned to the Corporation in accordance with the terms of the Carryover Allocation Agreement. Form Q/M Report shall include a written statement describing the current status of the Development; the financing, construction and syndication activity since the last report; the reasons for any changes to the anticipated placed-in-service date; and any other information relating to the status of the Development which the Corporation may request. The first report shall be due to the Corporation by the first Monday in April of the calendar year following Carryover qualification. ~~Such form is included as an attachment to the Application Package.~~

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 9I-48.028, Amended 11-9-98, 2-24-00, 2-22-01, 3-17-02, _____.

67-48.029 Extended Use Agreement.

(1) Pursuant to Section 42(h)(6) of the Code, the Applicant and the Corporation shall enter into an Extended Use Agreement. The purpose of the Extended Use Agreement is to set forth the Housing Credit Extended Use Period, the Compliance Period, and to evidence commitments made by the Applicant in the Application. Such commitments, for example, include the Housing Credit Set-Aside commitment, resident programs, and Development amenities.

(2) The following provisions shall be included in the Extended Use Agreement:

(a) The Applicable Fraction for Housing Credit Set-Aside units for each taxable year in the extended use period shall not be less than the Applicable Fraction;

(b) Eligible Persons occupying set-aside units shall have the right to enforce in any State of Florida court the extended use requirement for set-aside units;

(c) The Extended Use Agreement shall be binding on all successors and assigns of the Applicant; and

(d) The Extended Use Agreement shall be executed and recorded pursuant to Florida law as a restrictive covenant prior to the issuance of a Final Housing Credit Allocation to an Applicant.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 9I-48.029, Amended 11-9-98, 2-24-00, Repromulgated 2-22-01, 3-17-02, _____.

67-48.030 Sale or Transfer of a Housing Credit Development.

An owner of a Housing Credit Development, its successor or assigns which has been granted a Final Housing Credit Allocation shall not sell the Housing Credit Development without having first notified the Treasury of the impending sale and complying with the Treasury's procedure or procedures for completing the transfer of ownership and utilizing the Housing

Credit Allocation. The owner of a Housing Credit Development shall notify the Corporation in writing of an impending sale and of compliance with any requirements by the Treasury for the transfer of the Housing Credit Development. The owner of a Housing Credit Development shall notify the Corporation in writing of the name and address of the party or parties to whom the Housing Credit Development was sold within 14 Calendar Days of the transfer of the Housing Credit Development.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, Amended 1-6-98, Formerly 9I-48.030, Amended 11-9-98, Repromulgated 2-24-00, Amended 2-22-01, Repromulgated 3-17-02, _____.

67-48.031 Termination of Extended Use Agreement and Disposition of Housing Credit Developments.

The Housing Credit Extended Use Period for any building shall terminate upon the date a building is acquired through foreclosure or instrument in lieu of foreclosure or if no buyer can be found who is willing to maintain the Housing Credit Set-Aside of the Development. In the event the Applicant is unable to locate a buyer willing to maintain the set-aside provisions of the Extended Use Agreement, the following steps shall be taken, as set forth in Section 42(h)(6) of the Code, before a building is converted to market-rate use:

(1) After the fourteenth year of the Compliance Period, unless otherwise obligated under the Extended Use Agreement, an Applicant may submit a written request to the Corporation to find a buyer to acquire the Applicant's interest in the Housing Credit Set-Aside portion of the building.

(2) The Corporation shall have one year from the receipt of the request to obtain a qualified buyer for the Development.

(3) The Corporation shall actively seek to obtain a qualified buyer for acquisition of the Housing Credit Set-Aside portion of the building for an amount not less than the Applicable Fraction as specified in the Extended Use Agreement of:

(a) The sum of the outstanding indebtedness secured by the building;

(b) The adjusted investor equity in the building; and

(c) Other capital contributions not reflected in the amounts above, and reduced by cash distributions from the Development.

(4) In the event no buyer is found to acquire the Housing Credit Set-Aside portion of the building within one year, the Housing Credit Extended Use Period shall be terminated, and the units converted to market-rate.

(5) Pursuant to Section 42(h)(6)(E)(ii) of the Code, the termination of an Extended Use Agreement shall not be construed to permit the termination of a tenancy, the eviction of any existing resident of any set-aside unit, or any increase in the gross rent with respect to any set-aside unit before the close of the three-year period following such termination. In no case shall any portion of a Housing Credit Development be disposed of prior to the expiration of the Extended Use Agreement.

Specific Authority 420.507(12) FS. Law Implemented 420.5099 FS. History–New 7-22-96, Repromulgated 12-23-96, 1-6-98, Formerly 9I-48.031, Amended 11-9-98, Repromulgated 2-24-00, 2-22-01, 3-17-02, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kerey Carpenter, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mark Kaplan, Executive Director, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 6, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 28, No. 38, September 20, 2002

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE TITLE: RULE NO.:

Importation of Deer, Elk and Other Wildlife Species in the Family of Cervidae 68A-4.0051

PURPOSE AND EFFECT: The purpose and effect of this rule is to modify the current language of the existing rule to delete existing language and add new language now provided in a new Regulation promulgated by the Department of Agriculture and Consumer Services (DACS). The modified rule will maintain a prohibition against the importation of deer, elk and other wildlife species in the family Cervidae, (except as authorized under the DACS rule), in order to facilitate legal action against illegal importers by FWC law enforcement officers. The modified rule also maintains certain restrictions on transportation and management of cervidae as defined in the DACS rule. This modified rule is necessary to prevent the introduction of Chronic Wasting Disease (CWD) into the wild deer population of Florida. CWD has been found in captive and free-ranging white-tailed deer, mule deer, black-tailed deer and elk in a number of Western and Midwestern states. CWD is a progressive neurological disease that belongs to a family of diseases known as transmissible spongiform enchephalopathies which attack the brainstem of live animals eventually causing death. The origin, epidemiology, or transmission of CWD is unknown and there is currently no live animal test or treatment available.

SUMMARY: The proposed rule will specifically prohibit violations of DACS Rule 5C-26, F.A.C. The DACS rule outlines the procedures that shall be followed and the

requirements that must be met by those applicants requesting permission to import deer, elk and other Cervidae into the state, among other requirements.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: It is estimated that the proposed rule action will cost the agency approximately $575 for administrative preparation and review and $378 for legal advertising costs.

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 the notice.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.

LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const.

A HEARING ON THE PROPOSED RULE WILL BE HELD AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m. each day, January 22-24, 2003

PLACE: Old Lee County Courthouse, Commission Chambers, 2120 Main Street, Fort Myers, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND ECONOMIC STATEMENT IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-4.0051 Importation of Deer, Elk and Other Wildlife Species in the Family of Cervidae ~~Cervids~~.

In addition to other requirements of Chapter 372, Florida Statutes, and Chapter 68A, Florida Administrative Code, and in order to prevent the introduction of Chronic Wasting Disease (CWD) into the captive and wild deer of this state, no person shall violate Department of Agriculture and Consumer Services Rule 5C-26, Florida Administrative Code.

~~(1) For the purpose of this rule, the following words shall have the meaning indicated:~~

~~(a) "Brucellosis" means an infectious disease of animals and humans caused by bacteria of the genus *Brucella*. The disease is characterized by abortion and impaired fertility in its principal animal hosts.~~

~~(b) "Cervid(ae)" means any member of the family Cervidae which includes deer, elk, moose, or their hybrids or related species. Cervidae mentioned in this rule are privately or publicly maintained or held for economic or other purposes within a perimeter fence or confined space.~~

~~(c) "Cervidae Herd Health Plan" means a written herd management agreement between FDACS and the herd owner.~~

~~(d) "Chronic Wasting Disease (CWD)" means a progressive neurological, debilitating disease affecting cervidae. CWD belongs to a family of diseases known as Transmissible Spongiform Encephalopathies (TSEs) or prion diseases.~~

~~(e) "FDACS" means Florida Department of Agriculture and Consumer Services.~~

~~(f) "FWC" means Florida Fish and Wildlife Conservation Commission.~~

~~(g) "Import, Imported, Importation" means the movement of animals into the State of Florida, from another state, United States territories or a foreign country.~~

~~(h) "Intrastate Movements" means Cervidae movement within the State of Florida from one county to another or within the same county.~~

~~(i) "Movement Risk Assessment" means Cervids are classified for movement as follows: High Risk cervids are from herds where CWD has been diagnosed, or from herds that have been exposed to CWD. Medium Risk cervids are from herds without known exposure in states where CWD has been diagnosed in captive or free-ranging cervids but do not originate in a prescribed physical proximity where CWD has been diagnosed. Low Risk cervids are from CWD monitored herds in states where CWD has not been diagnosed but which have a surveillance/ prevention program(s).~~

~~(j) "Official Certificate of Veterinary Inspection (OCVI)" means a legible certificate made on an official form from the state of origin or from the United States Department of Agriculture (USDA), issued by an authorized representative, and approved by the chief animal health official of the state of origin.~~

~~(k) "Trace-forward herd" means a herd that has received an animal from a CWD positive herd within sixty (60) months prior to the diagnosis of CWD in the positive herd.~~

~~(l) "Trace-back herd" means a herd in which a CWD positive animal resided in any of the sixty (60) months prior to diagnosis of CWD in the positive herd.~~

~~(m) "Tuberculosis" means a disease in cattle, captive cervids, bison, and goats caused by the bacteria *Mycobacterium bovis*.~~

~~(2) The General Requirements for Importation are as follows:~~

~~(a) Notwithstanding any other FWC rules, all cervidae for importation shall originate from a herd which has a CWD surveillance/prevention program approved by FDACS and currently holds a CWD- free status. The originating herd status must be CWD free for sixty (60) months prior to importation of any animals into Florida.~~

~~(b) OCVI Required. Notwithstanding any other FWC rules, all cervidae imported into the state must be accompanied by an OCVI, except cervidae consigned directly to a recognized slaughtering establishment which are accompanied by permission from the FDACS State Veterinarian or authorized representative as denoted in subsection (3). The OCVI shall be attached to the waybill or be in the possession of the driver of the vehicle or person otherwise in charge of the animals. The OCVI shall accompany the animals to their final~~

~~destinations in Florida. No person, firm, or association shall have charge, custody, or control of animals imported in violation of this emergency rule.~~

~~(c) All information required on the OCVI shall be fully completed by the issuing veterinarian and shall include the following:~~

~~1. The name, address and phone number of the consignor;~~

~~2. The name, address and phone number of the consignee;~~

~~3. The point of origin;~~

~~4. The point of destination;~~

~~5. The date of examination;~~

~~6. The number of animals examined;~~

~~7. The individual permanent identification number or other identification approved by the FDACS, for each animal;~~

~~8. The sex, age, breed and species of each identified animal;~~

~~9. Test results and herd or state status on CWD, brucellosis and tuberculosis as specified in this emergency rule;~~

~~10. A statement by the issuing veterinarian that the animals identified on the OCVI are free of signs of infectious, communicable or neurologic disease, and;~~

~~11. The phone number of the issuing veterinarian.~~

~~(d) A copy of the OCVI, approved by the chief animal health official of the state of origin, shall be forwarded immediately to the Florida Department of Agriculture and Consumer Services, Division of Animal Industry, Tallahassee, Florida.~~

~~(e) The OCVI shall be void 30 days after issuance.~~

~~(f) All person importing cervidae shall have permission from the FDACS State Veterinarian or authorized representative prior to animal importation. This permission shall be recorded by a number or certificate which shall accompany the OCVI during any animal movement.~~

~~(g) Consignee shall possess, and provide for inspection, a valid FWC license or permit to possess wildlife, as required by rule or law.~~

~~(h) Consignee must be in compliance with the requirements of an approved FDACS Cervidae Herd Health Plan.~~

~~(3) The General Requirements for Intrastate Movement are as follows:~~

~~(a) Animals which are not required to have an OCVI and animals being transported totally within the state shall be accompanied by evidence of ownership or authority for possession of the animals or a notarized affidavit of authority to transport. These documents shall disclose:~~

~~1. The name, address and phone number of the consignor;~~

~~2. The name, address and phone number of the consignee;~~

~~3. The point of origin;~~

~~4. The point of destination, and;~~

~~5. The individual permanent identification number or other identification approved by the FDACS, for each animal;~~

~~(b) All persons moving cervidae shall possess permission from the FDACS State Veterinarian or authorized representative prior to animal movement. This permission shall be recorded by a number or certificate which shall accompany the animals during movement.~~

~~(c) Consignee and consignor shall possess, and provide for inspection, a valid FWC license or permit to possess wildlife, as required by rule or law.~~

~~(d) Consignee and consignor must be in compliance with the requirements of an approved FDACS Cervidae Herd Health Plan.~~

~~(4) Other requirements and exceptions:~~

~~(a) Chronic Wasting Disease Test: No test is presently required for importation. To date, there is no approved live animal test to detect CWD in cervidae. A positive diagnosis is based on post mortem brain testing at a CWD certified laboratory.~~

~~(b) Tuberculosis Test: No test is required for cervidae which originate from an Accredited Tuberculosis-Free Herd program that is approved by FDACS. The statement of herd status shall be recorded on the OCVI accompanying the cervidae. Cervidae not known to be affected with or exposed to tuberculosis may be imported if they:~~

~~1. Are under one (1) month of age, or~~

~~2. Originate from a herd which has been classified negative to an official tuberculosis test of all eligible animals conducted within the past twelve (12) months, and the animals to be imported have been classified negative to an official tuberculosis test, conducted within ninety (90) days prior to importation, or~~

~~3. Have been classified negative to two (2) official tuberculosis tests conducted not less than ninety (90) days apart; the second test was conducted within ninety (90) days prior to importation; and the animals were isolated from all other members of the herd during the testing period. The tuberculosis test results must be recorded on the OCVI accompanying the cervidae.~~

~~(c) Brucellosis Test: No test is required for cervidae which originate from an Accredited Brucellosis-Free Herd program that is accepted by FDACS. The statement of herd status shall be recorded on the OCVI accompanying the cervidae. Cervidae not known to be affected with or exposed to brucellosis may be imported if they:~~

~~1. Are less than one (1) month of age, or~~

~~2. Have a negative official brucellosis test conducted within ninety (90) days prior to importation. The brucellosis test results must be recorded on the OCVI accompanying the cervidae.~~

~~(5) Cervidae Herd Health Plan: The Cervidae Herd Health Plan is a written herd management agreement between FDACS and the herd owner. This plan is based upon a thorough~~

~~epidemiological investigation and risk assessment of the herd and their facility. This plan analyzes the risk of continued disease transmission by clinical and subclinical animals and/or environmental contamination. This plan sets out specific actions to be followed to monitor or survey the herd for specific disease(s) or eradicate specific disease(s) from the herd.~~

~~(6) Exceptions: Exceptions to the movement requirements in this rule shall be determined by the FDACS State Veterinarian or authorized representative. Cervids that are classified by the Movement Risk Assessment as Low Risk for CWD may be considered for waiver of this rule based upon sound scientific information then available as determined by the FDACS State Veterinarian or authorized representative. Cervids that are classified as High Risk for CWD or Medium Risk for CWD shall not be subject to a waiver from this rule.~~

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 10-16-02, Amended_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kyle Hill

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kenneth Haddad, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 5, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 5, 2002

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE TITLE: RULE NO.:

Specific Regulations for Type I Wildlife Management Areas – South Region 68A-15.064

PURPOSE AND EFFECT: The purpose of the proposed rule is to remove restrictions on primitive camping on Fisheating Creek Wildlife Management Area (WMA) to conform to the terms of the May 25, 1999 Settlement Agreement between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Trustees), Save Our Creeks, Environmental Confederation of Southwest Florida, Inc., and Lykes Bros. Inc.

SUMMARY: The proposed rule deletes language that restricts primitive camping to designated campsites in the WMA during hunting seasons. The proposed new language would permit primitive camping year round in any portion of the WMA except the concessionaire-operated campground at Palmdale campground where camping would be administered by permit from the concessionaire.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: It is estimated that the proposed rule will cost the agency approximately $185 for administrative preparation and review and $25 for legal advertising.

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

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.

LAW IMPLEMENTED: Art. IV, Sec 9, Fla. Const.

A HEARING ON THE PROPOSED RULE WILL BE HELD AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m., each day, January 22-24, 2003

PLACE: Old Lee County Courthouse, Commission Chambers, 2120 Main Street, Ft. Myers, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND ECONOMIC STATEMENT IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-15.064 Specific Regulations for Type I Wildlife Management Areas – South Region.

(1) J. W. Corbett Wildlife Management Area

(a) through (d) No change.

(2) Holey Land Wildlife Management Area

(a) through (e) No change.

(3) Everglades and Francis S. Taylor Wildlife Management Area

(a) through (e) No change.

(4) Rotenberger Wildlife Management Area

(a) through (d) No change.

(5) Big Cypress Wildlife Management Area

(a) through (d) No change.

(6) Frog Pond – Dade County

(a) through (d) No change.

(7) Okaloacoochee Slough Wildlife Management Area

(a) through (d) No change.

(8) Fisheating Creek Wildlife Management Area

(a) through (b) No change.

(c) Camping: Primitive camping is permitted year-round throughout the area, except at the concessionaire-operated public campground in Palmdale. Camping at the Palmdale campground shall be by permit only. ~~Permitted at the Fisheating Creek campground throughout the year at designated campsites only. Primitive camping is permitted throughout the area during periods closed to hunting, and, during periods open to hunting, at designated sites only.~~

(d) No change.

(9) Picayune Strand Wildlife Management Area

(a) through (d) No change.

Specific Authority Art. IV, Sec. 9, Fla. Const., 375.313 FS. Law Implemented Art. IV, Sec. 9, Fla. Const., 375.313 FS. History–New 6-21-82, Amended 7-1-83, 7-27-83, 9-27-83, 7-5-84, 7-1-85, 5-7-86, 8-5-86, 5-10-87, 8-24-87, 5-1-88, 6-7-88, 7-1-89, 7-1-90, 9-1-90, 7-1-91, 7-1-92, 7-1-93, 7-1-94, 7-1-95, 8-15-95, 7-1-96, 9-15-96, 10-20-96, 6-1-97, 8-7-97, 7-1-98, 7-2-98, 7-1-99, Formerly 39-15.064, Amended 11-17-99, 7-1-00, 7-1-01, 6-2-02, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Timothy A. Breault

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kenneth Haddad, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 22, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 22, 2002

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE CHAPTER TITLE: Gear Specifications and Prohibited Gear

RULE TITLE: RULE NO.:

Gear Specifications for Certain East Coast Counties; Closure of Certain Martin County Waters to Seine Fishing; Repealing and Readopting a Portion of Section 6 of Chapter 71-770, Laws of Florida, a Martin County Special Act 68B-4.007

PURPOSE AND EFFECT: The purpose of this proposed rule repeal is to eliminate an apparent conflict between two Fish and Wildlife Conservation Commission rules. Current Rule 68B-3.032, F.A.C., provides a list of allowable gears for use in the inside waters of Martin County: small minnow seines, cast nets, landing or dip nets, and blue crab traps. This rule carried forth the surviving allowable gear provisions of a special act, Chapter 71-770, Laws of Florida, which provisions were repealed by the terms of the rule. Rule 68B-4.007, F.A.C., prohibits the use of beach or haul seines in described areas of Martin County inside waters during the period September 1 through the end of February each year, suggesting that the use of beach or haul seines is allowed in inside waters of the county during the rest of the year. To eliminate the conflict, Rule 68B-4.007, F.A.C., is proposed to be repealed. The effect of this rule repeal will be to restore the allowable gear provisions of the original special act and reduce netting mortality on marine species in the inshore waters of Martin County.

SUMMARY: Rule 68B-4.007, F.A.C., which prohibits the use of beach or haul seines in described areas of Martin County inside waters during the period September 1 through the end of February each year, is repealed.

A STATEMENT OF ESTIMATED REGULATORY COST HAS NOT BEEN PREPARED REGARDING THESE PROPOSED RULES: None.

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

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.

LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const.

A HEARING ON THE PROPOSED RULE WILL BE HELD BY THE COMMISSION AT ITS REGULAR MEETING, AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m. – 5:00 p.m. each day, January 22-24, 2003

PLACE: Old Lee County Courthouse, Commission Chambers, 2120 Main Street, Fort Myers, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 calendar days before the workshop/meeting by contacting Cindy Hoffman, ADA Coordinator, at (850)488-6411. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

All written material received by the Commission within 21 days of the date of publication of this notice shall be made a part of the official record.

SECTION 286.0105, FLORIDA STATUTES, PROVIDES THAT, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS HEARING, HE WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSES, HE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND ECONOMIC STATEMENT IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68B-4.007 Gear Specifications for Certain East Coast Counties: Closure of Certain Martin County Waters to Seine Fishing; Repealing and Readopting a Portion of Section 6 of Chapter 71-770, Laws of Florida, a Martin County Special Act.

Specific Authority Art. IV, Sec. 9, Fla. Const., Chapter 83-134, Laws of Fla., as amended by Chapter 84-121, Laws of Fla. Law Implemented Art. IV, Sec. 9, Fla. Const., Chapter 83-134, Laws of Fla., as amended by Chapter 84-121, Laws of Fla. History–New 7-4-91, Amended 1-23-94, 1-3-95, 9-30-96, Formerly 46-4.007, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kenneth D. Haddad, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 21, 2002

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE CHAPTER TITLE: Blue Land Crabs

RULE TITLES:	RULE NOS.:
Definitions	68B-54.001
Statewide Open and Closed Seasons for Harvesting Blue Land Crabs	68B-54.002
Allowable Gear for Harvesting Blue Land Crabs	68B-54.003
Bag Limit	68B-54.004
Other Prohibitions, Exception	68B-54.005

PURPOSE AND EFFECT: Blue land crabs live on the northern edge of their range in coastal areas Central and South Florida. The species has been over-exploited as a food source throughout the Bahamas and the Caribbean and management measures have been instituted in Puerto Rico to address the problem. The Fish and Wildlife Conservation Commission has received anecdotal reports that harvest pressure has greatly increased in Florida, with intense harvest taking place during the pre-migration period of June to December each year. Indian River County has adopted an ordinance prohibiting harvest of land crabs and Brevard County is considering similar action. The purpose of this new rule chapter is to put measures in place that will cap harvest pressure on this marine animal and provide a means for gauging commercial harvest and sale. The effect will be to safeguard this resource before exploitation threatens the species' viability in Florida.

SUMMARY: Proposed new Rule 68B-54.001 provides definitions of the terms "blue land crab" and "harvest," for purposes of new Rule Chapter 68B-54, F.A.C. Proposed Rule 68B-54.002 establishes open (November 1 – June 30) and closed seasons (July 1 – October 31) for harvest of blue land crabs. Proposed Rule 68B-54.003 establishes allowable gear (by hand and by landing or dip net) for blue land crab harvest and prohibits use of other gears and chemicals for such harvest. Proposed Rule 68B-54.004 establishes a daily bag and possession limit (20) for blue land crabs. Proposed Rule 68B-54.005 prohibits molestation of eggbearing blue land crabs and harvest on any federal, state, or county right-of-way. It also provides conditions for interstate and international commerce in blue land crabs within Florida.

A STATEMENT OF ESTIMATED REGULATORY COST HAS NOT BEEN PREPARED REGARDING THESE PROPOSED RULES.

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

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.

LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const.

A HEARING ON THE PROPOSED RULE WILL BE HELD DURING THE REGULAR MEETING OF THE FISH AND WILDLIFE CONSERVATION COMMISSION MEETING, TO BE HELD AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m. – 5:00 p.m., each day, January 22-24, 2003

PLACE: Old Lee County Courthouse, Commission Chambers, 2120 Main Street, Fort Myers, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 calendar days before the workshop/meeting by contacting Cindy Hoffman, ADA Coordinator, at (850)488-6411. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

All written material received by the Commission within 21 days of the date of publication of this notice shall be made a part of the official record.

SECTION 286.0105, FLORIDA STATUTES, PROVIDES THAT, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS HEARING, HE WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSES, HE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND ECONOMIC STATEMENT IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULES IS:

BLUE LAND CRABS

68B-54.001 Definitions.

For the purposes of this chapter, except where the context requires otherwise:

(1) "Blue land crab" means any crab of the species *Cardisoma guanhumi*, or any part thereof.

(2) "Harvest" means the catching or taking of a blue land crab by any means whatsoever, followed by a reduction of such blue land crab to possession.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New_____.

68B-54.002 Statewide Open and Closed Seasons for Harvesting Blue Land Crabs.

(1) Blue Land Crabs shall only be harvested during the open season, which is from November 1 of each year through June 30 of the following year.

(2) No person shall harvest, attempt to harvest, or possess any blue land crab during the period beginning on July 1 and continuing through October 31 of each year.

(3) The prohibition against possession in subsection (2) of this rule shall not apply to blue land crabs that are possessed for experimental, scientific, or exhibitional purposes pursuant to a permit issued by the Fish and Wildlife Conservation Commission as authorized by Section 370.10(2), Florida Statutes, or as stock for artificial cultivation pursuant to a Special Activity License issued by the commission as authorized by Section 370.101(2), Florida Statutes.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New_____.

68B-54.003 Allowable Gear for Harvesting Land Crabs.

(1) Blue land crabs shall only be harvested by hand or with the use of a landing or dip net.

(2) No person shall harvest any blue land crab by or with the use of any gear other than those types specified in subsection (1). Any blue land crab harvested by or with the use of any other type of gear shall be immediately released free, alive and unharmed.

(3) No person shall harvest or attempt to harvest blue land crabs using or with the aid of bleach or any other chemical solution.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New_____.

68B-54.004 Bag Limit.

(1) No person shall harvest in any one day or possess at any time more than 20 blue land crabs.

(2) The possession limit in subsection (1) shall not apply to any licensed wholesale or retail seafood dealer or restaurant, or to any person who has purchased blue land crabs from a licensed wholesale or retail seafood dealer or restaurant. The burden shall be upon the person claiming the benefit of this exemption to show, by receipts, bills of sale, or other appropriate documentation, that such blue land crabs were purchased from a licensed wholesale or retail seafood dealer or restaurant. Failure to maintain such receipts, bills of sale, or other appropriate documentation shall constitute a violation of this rule.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New_____.

68B-54.005 Other Prohibitions, Exception.

(1) The harvest, possession, purchase, or sale of eggbearing blue land crabs is prohibited. The practice of stripping or otherwise molesting eggbearing blue land crabs in order to remove the eggs is prohibited and the harvest, possession, purchase or sale of blue land crabs from which the eggs, egg pouch, or bunion has been removed is prohibited.

(2) No person shall harvest or attempt to harvest any blue land crab on, upon, or from the right-of-way of any federal, state, or county-maintained road, whether paved or otherwise, or from any state park. The harvest or attempted harvest of any blue land crab while such crab is on or upon the right-of-way of any federal, state, or county-maintained road, whether paved or otherwise, or in a state park, is prohibited.

(3) The prohibitions of this chapter shall not apply to blue land crabs that have been legally harvested in another state or country and have entered the State of Florida in interstate or international commerce. The burden shall be upon any person possessing such blue land crabs for sale or exchange, to establish the chain of possession from the initial transaction after harvest by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and to show that such blue land crabs originated from a point outside of the State of Florida and entered the state in interstate or international commerce. Failure to maintain such documentation or to promptly produce such documentation at the request of any duly authorized law enforcement officer shall constitute a violation of this chapter.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kenneth D. Haddad, Executive Director.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 21, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 13, 2002

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF STATE

Division of Elections

RULE NO.:	RULE TITLE:
1S-2.035	Polling Place Accessibility Survey