

(p) Whether the individual or firm can demonstrate that the misconduct at issue was not reflective of their historical compliance record;

(q) Whether the individual's or firm's misconduct resulted in actual or potential financial or other gain or the value of such gain.

(r) The number, size and character of the transactions at issue;

(s) The age, financial status, and level of investment sophistication of the investor;

(t) Whether the violation is attributable to a principal, manager, supervisor or person exercising a similar function;

(u) The financial resources of the firm, nature of the firm's business, the number of individuals registered with the firm, the level of trading activity of the firm, other entities the firm controls, is controlled by, or is under common control with;

(v) Whether the violation of Chapter 517, F.S., is the result of an individual acting alone or the result of two or more persons acting in furtherance of an agreement, scheme or plan; and

(w) Other relevant, case-specific circumstances.

(6) The fines imposed by the rule are \$1,000 for a level "A" fine, \$5,000 for a level "B" fine, \$7,500 for a level "C" fine and level \$10,000 for a level "D" fine.

(7) The ranges for suspensions imposed by this rule are 5 to 15 days for an "A" level suspension; 16 to 30 days for a "B" level suspension; and, over 30 days for a "C" level suspension. A business day is defined as a day the major stock exchanges are open. Suspensions of 30 or fewer days are measured in business days while a suspension of 31 or more days is measured in calendar days.

Rulemaking Authority 517.1611(1) FS. Law Implemented 517.1611(1) FS. History--New

Section II Proposed Rules

DEPARTMENT OF STATE

Division of Library and Information Services

RULE NO.: 1B-2.011 RULE TITLE: Library Grant Programs

PURPOSE AND EFFECT: The purpose of this amendment is to modify the guidelines for the Library Services and Technology Act Grant program. These revisions will update the grant program to implement Section 257.12(3), Florida Statutes regarding the adoption of an Internet safety education program by public libraries.

SUMMARY: The revisions to the Library Services and Technology Act Grant Guidelines and Application packet will bring the application guidelines document in line with Florida

Statute 257.12(3) regarding the adoption of an Internet safety education program by public libraries, and will update the grant forms, guidelines, and application packet.

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

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

RULEMAKING AUTHORITY: 257.14, 257.15, 257.25 FS.

LAW IMPLEMENTED: 257.12, 257.14, 257.15, 257.25 FS.

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

DATE AND TIME: Tuesday, January 19, 2010, 10:00 a.m.

PLACE: Gallery for Innovation and the Arts, R. A. Gray Building, 500 South Bronough Street, Tallahassee, FL

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 3 days before the workshop/meeting by contacting: Dorothy Frank by mail at R. A. Gray Building, 500 South Bronough Street, Tallahassee, FL 32399, or by e-mail at dafrank@dos.state.fl.us. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or (800)955-8770 (Voice). If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Marian Deeney by mail at R. A. Gray Building, 500 South Bronough Street, Tallahassee, FL 32399, or by e-mail at mdeeney@dos.state.fl.us

THE FULL TEXT OF THE PROPOSED RULE IS:

1B-2.011 Library Grant Programs.

(1) This rule provides procedures for library grant programs administered by the Division of Library and Information Services (Division). Each program shall be governed by guidelines which contain information on eligibility requirements, application review procedures, evaluation and funding criteria, grant administration procedures, if applicable, and application forms. All grant awards shall be subject to final approval by the Secretary of State.

(2) Applicants for grants shall meet the eligibility and application requirements as set forth in the following guidelines for each grant program:

(a) The State Aid to Libraries Grant Guidelines and Application, effective 4-1-98, amended 11-20-01, amended 12-28-03, amended 2-21-07, amended _____, which contain guidelines and application forms, State Aid to Libraries Grant Application (Form DLIS/SA01), effective 4-1-98, amended 12-28-03, amended _____; State Aid to Libraries Grant Application – Multicounty Library (Form DLIS/SA02), effective 4-1-98, amended 12-28-03, amended _____; Grant Agreement, effective 12-28-03, amended _____; Certification of Credentials – Single Library Administrative Head (Form DLIS/SA03), effective 4-1-98, amended 12-28-03, amended _____; State Aid to Libraries Grant Application – Summary Financial Report (Form DLIS/SA04), effective 4-1-98, amended 12-28-03, amended _____; State Aid to Libraries Required Documents Checklist (Form DLIS/SA05), effective _____.

(b) The Library Construction Grant Guidelines and Application, effective 4-1-98, amended 2-14-99, amended 1-9-03, amended 2-21-07, which contain instructions, grant application (Form DLIS/PLC01), effective 4-1-98, amended 2-14-99, amended 4-4-00, amended 12-18-00, amended 1-9-03; Payment Request #1 (Form DLIS/PLC02) effective 1-9-03; Payment Request #2 (Form DLIS/PLC03) effective 1-9-03; Payment Request #3 (Form DLIS/PLC04) effective 1-9-03; Payment Request #4 (Form DLIS/PLC05) effective 1-9-03; and Closeout Report (Form DLIS/PLC06) effective 1-9-03.

(c) The Library Cooperative Grant Guidelines and Application, effective 4-1-98, amended 1-24-2008 which contain instructions and application (Form DLIS/LCG01), effective 4-1-98, amended 4-4-00, amended 1-24-2008; Mid-Year Report (Form DLIS/LCG02) effective 1-24-08, Annual Report Form (Form DLIS/LCG03) effective 1-24-08, Annual Statistical Report Form for Multitype Library Cooperatives (Form DLIS/LCG04), effective 4-1-98, amended 4-4-00, amended 1-24-2008, Grant Agreement (Form DLIS/LCG05), effective 1-24-08 and the FLIN Manual, effective 1-24-08.

(d) The Library Services and Technology Act Grant Guidelines and Application, effective 4-1-98, amended 2-14-99, amended 11-20-01, amended _____, which contain instructions and application (Form DLIS/LSTA01), effective 4-1-98, amended 2-14-99, amended 4-4-00, amended 12-18-00, amended 11-20-01; Mid-Year Report (Form DLIS/LSTA02), effective 2-14-99, amended 4-4-00, amended 12-18-00, amended 11-20-01; ~~and~~ Annual Report (Form DLIS/LSTA03), effective 4-4-00, amended 12-18-00, amended 11-20-01; ~~and~~ Grant Agreement, effective _____.

(e) The Florida Library Literacy Grants Guidelines and Application, effective 4-4-00, amended 11-20-01 which contain instructions and application (Form DLIS/FLL01), effective 4-4-00, amended 11-20-01; Mid-Year Report (Form

DLIS/FLL02), effective 4-4-00, amended 11-20-01; and Annual Report (Form DLIS/FLL03), effective 4-4-00, amended 11-20-01.

(f) The Community and Library Technology Access Partnership Grants Guidelines and Application which contain instructions and application (Form DLIS/CLTA01), effective 12-18-00; and Annual Report (Form DLIS/CLTA02), effective 12-18-00.

(g) The Community Libraries in Caring Program Application, effective 11-16-04, which contains instructions and application (Form DLIS/CLIC01), effective 11-16-04; Annual Report (Form DLIS/CLIC02), effective 11-16-04; and Grant Agreement (Form DLIS/CLIC03), effective 11-16-04, revised 2-21-06, amended 2-21-07.

(3) Guidelines and forms in this rule are incorporated by reference and may be obtained from the Director of the Division, Florida Department of State, Division of Library and Information Services, R. A. Gray Building, 500 South Bronough, Tallahassee, Florida 32399-0250.

(4) The Division of Library and Information Services will waive the financial matching requirements on grants for rural communities that have been designated in accordance with Sections 288.0656 and 288.06561, F.S. Eligible communities applying for Library Services and Technology Act grants, Florida Library Literacy Grants, and Library Construction grants must request waiver of matching requirements at the time of grant application.

(5) This section supersedes Chapters 1B-3 and 1B-5, F.A.C.

Rulemaking Specific Authority 257.14, 257.191, 257.192, 257.24, 257.41(2) FS. Law Implemented 257.12, 257.15, 257.16, 257.17, 257.171, 257.172, 257.18, 257.191, 257.192, 257.195, 257.21, 257.22, 257.23, 257.24, 257.25, 257.40, 257.41, 257.42 FS. History—New 1-25-93, Amended 7-17-96, 4-1-98, 2-14-99, 4-4-00, 12-18-00, 11-20-01, 3-20-02, 1-9-03, 12-28-03, 11-16-04, 2-21-06, 2-21-07, 1-24-08, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Dorothy Frank

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Judith A. Ring

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 9, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 23, 2009

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

RULE NO.:
5E-1.023

RULE TITLE:
Procedures for Landowners and Leaseholders to Submit a Notice of Intent to Implement Nitrogen Best Management Practices (BMPs)

PURPOSE AND EFFECT: The purpose and effect is to delete portions of the rule referring to container nursery interim measures, which are no longer necessary since a statewide rule (Rule 5M-6.001 et. seq., F.A.C.) has been adopted for container nursery growers.

SUMMARY: The Office of Agricultural water Policy (OAWP) requested that portions of this rule referring to container nursery interim measures be deleted since they are no longer necessary in light of the a statewide rule (Rule 5M-6.001 et. seq., F.A.C.) that has been adopted for container nursery growers.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will have an impact on small business. A SERC has been prepared by the agency.

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

RULEMAKING AUTHORITY: 570.07(23), 403.067(7)(c)2., 576.045(6) FS.

LAW IMPLEMENTED: 403.067, 576.045 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: Mr. Bruce Nicely, Chief of Bureau of Compliance Monitoring; 3125 Conner Boulevard, Building 8, Tallahassee, Florida 32399, (850)487-8731

THE FULL TEXT OF THE PROPOSED RULE IS:

5E-1.023 Procedures for Landowners and Leaseholders to Submit a Notice of Intent to Implement Nitrogen Best Management Practices (BMPs).

(1) through (4)(a) No change.

(b) Citrus. The document titled Nitrogen Best Management Practices (BMPs) for Florida Ridge Citrus dated 7-23-2002, and the associated recordkeeping requirements dated 7-23-2002 are hereby adopted and incorporated by reference into this rule. Copies may be obtained from the Department of Agriculture and Consumer Services, Office of Agricultural Water Policy, 1203 Governors Square Blvd., Suite 200, Tallahassee, FL 32301. ~~“Ridge Citrus” Growers currently enrolled in the Nitrogen Interim Measure for Florida Citrus must submit a Notice of Intent to Implement the Best Management Practices for Florida Ridge Citrus by January 1, 2003, to maintain eligibility for the “waiver of liability” from the recovery of costs or damages associated with nitrate contamination of groundwater, Section 576.045(4), F.S., and the “presumption of compliance” with state nitrate groundwater quality standards, Section 576.045(5), F.S.~~

~~Effective January 1, 2003, the document titled Nitrogen Interim Measure for Florida Citrus under paragraph (5)(a) of this rule will be repealed for Ridge Citrus.~~

(5) Approved Nitrogen Interim Measures.

~~(a) Citrus. The Approved Nitrogen Interim Measure for Florida Citrus, dated 12-01-95, and the associated recordkeeping requirements dated 12-01-95 are hereby adopted and incorporated by reference into this rule. Copies may be obtained from the Department. Effective January 1, 2003, the document titled Nitrogen Interim Measure for Florida Citrus, under paragraph (5)(a) of this rule will be repealed for “Ridge Citrus”.~~

~~(a)(b) Bahiagrass and Bermuda Grass. The approved “Nitrogen Interim Measure for Bahiagrass and Bermuda Grass” dated 10-31-2000, and the associated recordkeeping requirements dated 10-31-2000 are hereby adopted and incorporated by reference into this rule. Copies may be obtained from the Department of Agriculture and Consumer Services, Office of Agricultural Water Policy, 1203 Governors Square Blvd., Suite 200, Tallahassee, FL 32301.~~

~~(c) Container Grown Plants. The document titled “Interim Measure for Florida Producers of Container Grown Plants”, dated 11-4-02 is hereby adopted and incorporated by reference into this rule. Copies may be obtained from the Department of Agriculture and Consumer Services, Office of Agricultural Water Policy, 1203 Governors Square Blvd., Suite 200, Tallahassee, FL 32301.~~

~~(b)(d) Urban turf or lawns – The document titled “Best Management Practices for Protection of Water Resources in Florida, June 2002, Florida Green Industries” published by the Florida Department of Environmental Protection is hereby adopted and incorporated by reference.~~

~~Rulemaking Specific Authority 403.067(7)(c)2., 576.045(6) FS. Law Implemented 403.067, 576.045 FS. History—New 10-16-96, Amended 5-1-01, 10-17-02, 2-4-03, 11-21-07,_____.~~

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Anderson H. Rackley, Director of Agricultural Environmental Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Mr. Charles H. Bronson, Commissioner of Agriculture

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 14, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 6, 2009

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.:

6A-1.0956

RULE TITLE:

Suspension on the Basis of Felony Charges

PURPOSE AND EFFECT: The purpose of this rule amendment is to include legal guardians in hearings relating to student suspensions, to provide a deadline for decisions following the suspension hearing, and to update statutory references.

SUMMARY: This amendment updates the statutory references, provides language for the inclusion of guardians of students in addition to the student's parent at the administrative hearing relating to suspension and provides a deadline for decisions following the suspension hearing.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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

RULEMAKING AUTHORITY: 1001.02(1), 1006.09(2) FS.

LAW IMPLEMENTED: 1006.09(2) FS.

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

DATE AND TIME: January 19, 2010, 9:30 a.m.

PLACE: Tampa Airport Marriott, 4200 George J. Bean Parkway, Pinellas Meeting Room, Tampa, Florida 33607

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Brooks Rumenik, Director, Office of Safe Schools, Department of Education, 325 West Gaines St., Suite 554, Tallahassee, FL 32399-0400

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.0956 Suspension on the Basis of Felony Charges.

When a student is formally charged with a felony by a proper prosecuting attorney for an incident which allegedly occurred on property other than public school property, but which incident is shown to have an adverse impact on the educational program, discipline, or welfare in the school in which the student is enrolled, the principal shall, in accordance with Section 1006.09 232.26(2), Florida Statutes, conduct an administrative hearing for the purpose of determining whether or not the student should be suspended pending court determination of his or her guilt or innocence, or the dismissal of the charge, is made by a court of competent jurisdiction. The following procedures shall be followed by the principal in instituting and conducting the administrative hearing; provided, however, that a school board may, upon written approval of the Commissioner, utilize its own hearing policy in lieu of this rule.

(1) Upon receiving proper notice that a student has been formally charged with a felony, the principal shall immediately notify the parent or guardian of the student, in writing, of the

specific charges against the student and of the right to a hearing prior to disciplinary action being instituted under the provisions of Section 1006.09 232.26(2), Florida Statutes.

(2) Such notice shall stipulate a date for hearing which shall be not less than two (2) school days nor more than five (5) school days from postmarked date, or delivery, of the notice and shall also advise the parent of the conditions under which a waiver of suspension may be granted, as prescribed in subsections (2) and (3) of Section 1006.09(2) 232.26, Florida Statutes. Pending such hearing, the student may be temporarily suspended by the principal.

(3) The hearing shall be conducted by the principal, or designee, and may be attended by the student, the parent or guardian, the student's representative or counsel, and any witnesses requested by the student, the parent or guardian, or the principal.

(4) The student may speak in his or her own defense, may present any evidence indicating his or her eligibility for waiver of disciplinary action, and may be questioned on his or her testimony. However, the student shall not be threatened with punishment or later punished for refusal to testify.

(5) In conducting the hearing, the principal or designee shall not be bound by rules of evidence or any other courtroom procedure, and no transcript of testimony shall be required.

(6) Following the hearing, the principal, within five (5) school days, shall provide the student and parent or guardian with a decision, in writing, as to whether or not suspension will be made. In arriving at this decision, the principal shall consider the conditions prescribed by subsections (2) and (3) of Section 1006.09(2) 232.26, Florida Statutes, under which a waiver of suspension may be granted, and may grant such a waiver when he or she determines such action to be in the best interests of the school and the student. Provided, however, that any suspension pending adjudication of guilt shall be made only upon a finding, based upon conclusive evidence, that a felony charge has been formally filed against the student by a proper prosecuting attorney. The principal shall have authority to modify the decision to either grant or deny a waiver, at any time prior to adjudication of the student's guilt by a court, provided that any such modification adverse to the student shall be made only following a hearing conducted in accordance with this rule.

Rulemaking Specific Authority 1001.02, 1006.09(2) 420.57(1)(a)6., 229.053(1), 232.26(2) FS. Law Implemented 1006.09(2) 232.26(2) FS. History—New 2-18-74, Repromulgated 12-5-74, Amended 9-6-78, Formerly 6A-1.956, Amended 8-30-88,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Frances Haithcock, Chancellor, Division of Public Schools
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric J. Smith, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 8, 2009
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 18, 2009

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: 6A-1.09514
 RULE TITLE: Excused Absences for Religious Instruction or Holiday

PURPOSE AND EFFECT: The purpose of this amendment is to revise the rule to apply to all public school students and not just grades 9-12. The effect is a rule that is aligned with Florida Statutes.

SUMMARY: The rule is amended to apply to all public school students and not just grades 9-12.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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

RULEMAKING AUTHORITY: 1001.02(1), 1001.64, 1003.21(2)(b) FS.

LAW IMPLEMENTED: 1003.21(2)(b) FS.

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

DATE AND TIME: January 19, 2010, 9:30 a.m.

PLACE: Tampa Airport Marriott, 4200 George J. Bean Parkway, Pinellas Meeting Room, Tampa, Florida 33607

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Todd Clark, Bureau Chief, Bureau of Curriculum and Instruction, Department of Education, 325 West Gaines St., Suite 434, Tallahassee, FL 32399-0400

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.09514 Excused Absences for Religious Instruction or Holiday.

(1) Release time during the school day to participate in religious instruction. Each school district which chooses to permit release time during the school day for students to participate in religious instruction shall adopt rules to implement Section 1003.21(2)(b), Florida Statutes, ~~for students in grades 9 through 12.~~ The school district's rules shall include, but are not limited to, the following:

(a) through (4) No change.

Rulemaking Specific Authority 1001.02(1), 1003.21(2)(b), 1001.64 FS. Law Implemented 1003.21, 1003.436, 1006.33 FS. History—New 10-17-89, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Frances Haithcock, Chancellor, Division of Public Schools
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric J. Smith, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 8, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 18, 2009

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF MANAGEMENT SERVICES

Division of Building Construction

RULE NOS.:	RULE TITLES:
60D-4.001	Purpose
60D-4.002	Definitions
60D-4.003	Conformance
60D-4.004	Criteria for Alternative Designs.
60D-4.005	Computer-Based Simulation Program Requirements
60D-4.006	Life-Cycle Cost Analysis Requirements
60D-4.007	Energy Performance Analysis for Leases
60D-4.008	Standards Adopted

PURPOSE AND EFFECT: Amends the current Rule to comply with Sections 255.251, 255.252, 255.253, 255.254, 255.255 and 255.256, Florida Statutes (The Florida Energy Conservation and Sustainable Buildings Act of 2008). The effect of the proposed Rule will be uniform agency procedures regarding the selection of energy-consuming equipment and architectural components for new state-financed facilities and existing state-owned facilities.

SUMMARY: The proposed amendment is a substantial revision to the existing Rule. The proposed amendment includes energy performance standards based on sustainable building ratings, requirements for the evaluation of alternative architectural and engineering designs, and procedures for conducting a life-cycle cost analysis of the required alternative designs. The proposed Rule also incorporates a new program titled the "Florida Life-Cycle Cost Analysis Program" that documents compliance with the proposed Rule when a life-cycle cost analysis is required. The Division of Real Estate Development and Management has consulted with the Florida Small Business Regulatory Advisory Council and has determined that this amendment has no negative impact on small businesses as defined by Section 288.703, F.S., nor on

small counties or small cities as defined by Section 120.52, F.S., since the added engineering design costs will be assumed by state agencies.

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

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

RULEMAKING AUTHORITY: 255.255(1), 255.256 FS.

LAW IMPLEMENTED: 255.253, 255.254, 255.255, 255.256 FS.

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

DATE AND TIME: Monday, February 1, 2010, 9:00 a.m. – 1:00 p.m.

PLACE: Division of Real Estate Development and Management, 4050 Esplanade Way, Room 101, Tallahassee, Florida 32399-0950

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 2 days before the workshop/meeting by contacting: Mr. Darren Fancher at darren.fancher@dms.myflorida.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Mr. Darren Fancher, PE, Mechanical Engineer, Division of Real Estate Development and Management, 4050 Esplanade Way, Suite 335, Tallahassee, FL 32399-0950, phone (850)414-6747 or email darren.fancher@dms.myflorida.com

THE FULL TEXT OF THE PROPOSED RULES IS:

(Substantial rewording of Rule 60D-4.001 follows. See Florida Administrative Code for present text.)

60D-4.001 Purpose.

To comply with the requirements of Sections 255.251, 255.252, 255.253, 255.254, 255.255 and 255.256, Florida Statutes (The Florida Energy Conservation and Sustainable Buildings Act of 2008), the following Rules are promulgated by the Department of Management Services and shall apply to the design and construction of state-financed facilities, to the renovation of state-owned facilities, and to leased facilities larger than 5,000 square feet. These Rules are promulgated to minimize the utilization of non-renewable energy, reduce greenhouse gasses, and improve sustainability by state agencies.

Rulemaking Specific Authority 255.255 FS. Law Implemented 255.255 FS. History—New 5-26-76, Amended _____

(Substantial rewording of Rule 60D-4.002 follows. See Florida Administrative Code for present text.)

60D-4.002 Definitions.

(1) “Additions” – mean any facility related project that increases a building’s footprint and the conditioned square footage of a building.

(2) “Alternative design” – refers to a potential architectural or engineering design for a new construction, addition, or renovation project, that is unique from all other building designs under consideration in at least one of the following areas:

(a) Thermal characteristics of building envelope materials.

(b) Amount of exterior glass.

(c) Thermal characteristics of exterior glass.

(d) Type of energy-consuming system.

(e) Type of energy-consuming equipment.

(f) Type of component within energy-consuming equipment.

(g) Type of control scheme for equipment or systems.

(h) Equipment energy efficiency rating.

(i) Interior lighting system power density (watts per square foot).

(3) “Annual Supplement to NIST 135” – refers to the Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis-2009, Annual Supplement to NIST 135 and NBS Special publication 709, National National Institute of Standards and Technology, NISTIR 85-3273. This document has been incorporated by reference in Rule 60D-4.008, F.A.C.

(4) “DOE” – refers to U.S. Department of Energy.

(5) “Energy-consuming equipment” – any mechanical or electrical equipment that consumes electricity or fuel and is used in heating, ventilation, air-conditioning, lighting, hot water heating, and power distribution systems.

(6) “Energy Star” – refers to the joint energy efficiency program between the U.S. Environmental Protection Agency and the U.S. Department of Energy.

(7) “HVAC” – refers to heating, ventilation, and air-conditioning.

(8) “kBtu” – refers to one-thousand British thermal units.

(9) “Life-cycle cost analysis” – a comparative analysis of the total life-cycle costs ranked from lowest to highest for the associated alternative designs.

(10) “NIST” – refers to the National Institute of Standards and Technology.

(11) “Renovation” – means an existing building undergoing an alteration that varies or changes HVAC systems, lighting systems, water-heating systems, insulation, or exterior building envelope conditions.

(12) “Service water heater” – refers to a water heater used for domestic or commercial purposes other than HVAC space heating or manufacturing processes.

(13) “Sustainable building rating” – refers to one of the following sustainable rating systems required in Section 255.257(4), Florida Statutes:

(a) The *United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system*.

(b) The *Green Building Initiative’s Green Globes rating system*.

(c) The *Florida Green Building Coalition rating system*.

Rulemaking Specific Authority 255.255 FS. Law Implemented 255.253 FS. History–New 5-26-76, Amended _____.

(Substantial rewording of Rule 60D-4.003 follows. See Florida Administrative Code for present text.)

60D-4.003 Conformance.

(1) The selection of energy-consuming equipment and architectural components for all new facilities constructed for the use of a state agency and renovations to existing state-owned facilities shall be based on the life-cycle costs of alternative designs developed in accordance with Rule 60D-4.004, F.A.C.

(2) Leases: An energy performance analysis shall be performed in accordance with Rule 60D-4.007, F.A.C., for facilities under consideration to be leased by a state agency.

Rulemaking Specific Authority 255.255, 255.256 FS. Law Implemented 255.254, 255.255 FS. History–New 5-26-76, Amended _____.

(Substantial rewording of Rule 60D-4.004 follows. See Florida Administrative Code for present text.)

60D-4.004 Criteria for Alternative Designs Analysis.

(1) New construction and additions:

(a) This Rule applies to all of the following:

1. New facilities constructed for the use of a state agency.

2. Additions to existing state-owned facilities.

3. Renovations to existing state-owned facilities shall be allowed to comply with subsection 60D-4.004(1), F.A.C., when the agency determines that the scope of the proposed renovation addresses enough energy-consuming equipment and architectural elements to comply with the whole-building energy performance requirements as described in this Rule. Otherwise, subsection 60D-4.004(2), 60D-4.004(3), or 60D-4.004(4), F.A.C., shall apply.

(b) Alternative designs:

1. At least three alternative designs shall be developed for the agency’s consideration.

2. Each alternative design shall be modeled with a computer-based simulation program to simulate total energy usage for the entire building or addition.

3. Each alternative design shall be modeled with the same computer-based simulation program.

4. The computer-based simulation program shall comply with Rule 60D-4.005, F.A.C.

5. The computer-based simulation shall include HVAC heat load calculations and equipment sizing. The HVAC heat load calculations shall include all internal building heat loads.

6. Specific energy performance requirements:

a. Maximum allowable energy consumption: The maximum allowable annual energy consumption for alternative designs shall be based on the minimum energy performance requirement of the sustainable building rating adopted by the agency in accordance with Section 255.257(4)(a), Florida Statutes.

b. For new construction and additions:

(1) The first alternative design shall demonstrate equal or less energy consumption than the maximum allowable energy consumption described in paragraph (a) of this section.

(2) The second alternative design shall demonstrate a percentage reduction in energy consumption of 10 percent, or more, when compared to the maximum allowable energy consumption as described in paragraph (a) of this section.

(3) The third alternative design shall demonstrate a percentage reduction in energy consumption of 20 percent, or more, when compared to the maximum allowable energy consumption as described in paragraph (a) of this section.

(4) Additional alternative designs, if developed, shall demonstrate equal or less energy consumption than the maximum allowable energy consumption described in paragraph (a) of this section.

c. For renovations pursuant to paragraph 60D-4.004(1)(a), (3), F.A.C.:

(1) Two alternative designs shall demonstrate equal or less energy consumption than the maximum allowable energy consumption described in paragraph (a) of this section.

(2) The third alternative design shall demonstrate a percentage reduction in energy consumption of 10 percent, or more, when compared to the maximum allowable energy consumption as described in paragraph (a) of this section.

(3) Additional alternative designs, if developed, shall demonstrate equal or less energy consumption than the maximum allowable energy consumption described in paragraph (a) of this section.

d. The percentage reduction (PR) shall be calculated as follows:

$$PR = 100 \times (\text{required consumption} - \text{proposed consumption}) / \text{required consumption}$$

(c) Selection of preferred design:

1. The selection of the preferred alternative design shall be made by the agency only after a life-cycle cost analysis is performed in compliance with Rule 60D-4.006, F.A.C.

2. For new facilities and additions, construction shall proceed only after the life-cycle cost analysis has been evaluated by the department for technical correctness and completeness, pursuant to Section 255.254(1), Florida Statutes.

(d) Preparation requirements: The preparation of alternative designs and the computer-based energy simulation described in subsection 60D-4.004(1), F.A.C., shall be performed by an architect or engineer licensed in Florida.

(2) Major equipment-related projects:

(a) This Rule applies to renovations in existing state-owned facilities whenever any one of the following items of energy-consuming equipment is installed new or replaced:

1. Chillers with a total cooling capacity of 25 tons (300,000 BTUH) or greater.

2. Boilers with a total input heating capacity of 300,000 BTUH (88 kW) or greater.

3. Unitary HVAC equipment (single and multiple units) within a single building where the total cooling or heating capacity being installed in the project is 25 tons (300,000 BTUH) or greater. Unitary HVAC equipment as defined here shall include:

a. Self-contained air-conditioners and heat pumps.

b. complete split system air-conditioners and heat pumps, which shall be defined here as the both the condenser and evaporator sections of the system.

c. Fuel-burning furnaces.

d. Electric heaters.

4. Service water heaters (single and multiple units) within a single building where the total input heating capacity being installed in the project is 300,000 BTUH (88 kW) or greater.

5. Lighting fixtures within a single building where the total lighting capacity being installed in the project is 30 kW or greater.

(b) This Rule excludes “guaranteed energy, water, and wastewater performance savings projects” as defined in Section 489.145, Florida Statutes.

(c) Exception: New and replacement energy-consuming equipment intended to serve as back-up equipment that only operates if primary equipment fails may be omitted from the computer-based simulation and life-cycle cost analysis requirements of this Rule at the agency’s discretion. Such back-up equipment shall be considered to have a negligible impact to the agency’s overall energy consumption due to infrequent operation. However, the computer-based simulation and life-cycle cost analysis requirements of this Rule shall be applicable to all other aspects of the same renovation project per paragraph 60D-4.004(2)(a), F.A.C. This exception does not apply to supplemental equipment, which shall be defined here as energy-consuming equipment that is intended to operate regularly for the purposes of meeting peak load requirements.

(d) Alternative designs:

1. At least three alternative designs shall be developed for the agency’s consideration.

2. Each alternative design shall be modeled with a computer-based simulation program to simulate the total energy usage of all energy-consuming equipment being installed new or replaced within the project.

a. Exception: For projects where lighting fixtures, service water heaters, or a combination of both are the only energy-consuming equipment being installed new or replaced, the energy usage of the alternative designs shall be considered unrelated to the effects of weather and therefore may be developed manually without a computer-based simulation at the agency’s discretion.

3. The computer-based simulation shall include HVAC heat load calculations and equipment sizing for projects that include new or replacement HVAC equipment. The HVAC heat load calculations shall include all internal building heat loads for the areas affected by the renovation.

4. The computer-based simulation program shall comply with Rule 60D-4.005, F.A.C.

5. Specific energy performance requirements:

a. Each alternative design shall meet or exceed the minimum energy performance requirements of the sustainable building rating adopted by the agency in accordance with Section 255.257(4)(a), Florida Statutes.

b. Each alternative design shall demonstrate different energy consumption.

6. Equipment type requirements:

a. HVAC equipment:

(1) Water-cooled equipment replacements: When the existing HVAC equipment being replaced utilizes cooling towers or ground water for heat rejection purposes, at least one alternative design shall incorporate water-cooled equipment, unless there exist conditions outside of the agency’s control as listed in the exceptions below.

(a) Exceptions:

1. The existing supply or return well has failed and is not repairable.

2. The permit application for groundwater consumption has been denied by the authority having jurisdiction or will not be renewed.

3. The amount of groundwater available from the well system or permitted by the authority having jurisdiction is insufficient for proper or reliable HVAC equipment operation.

4. New water-cooled or related equipment will not fit in the available space.

5. The space available to install new water-cooled or related equipment does not comply with the clearance recommendations or requirements of the equipment manufacturer.

6. Applicable codes and ordinances that prohibit the installation of such equipment.

(2) Centrifugal chiller replacements: When the HVAC equipment being replaced includes one or more centrifugal type chillers, at least one alternative design shall incorporate one or more centrifugal type chillers, unless there exist conditions outside of the agency's control as listed in the exceptions below.

(a) Exceptions:

1. A new centrifugal type chiller will not fit in the available space.

2. The space available to install a new centrifugal type chiller or related equipment does not comply with the clearance recommendations or requirements of the equipment manufacturer.

3. Applicable codes and ordinances that prohibit the installation of such equipment.

b. Lighting equipment:

(1) For office areas:

(a) T-5 fluorescent lighting shall be included in at least one alternative design when lighting fixtures are to be installed new or replaced.

(b) Task lighting shall be included in at least one alternative design when lighting fixtures are to be installed new or replaced.

(2) Lamp and ballast replacements for existing lighting fixtures shall be considered an acceptable alternative design.

c. Service water heating equipment:

(1) Water heater replacements: When the equipment being replaced utilizes natural gas, at least one alternative design shall incorporate natural gas.

(2) Low flow plumbing fixtures shall be considered an acceptable alternative design for service water heaters.

(e) Selection of preferred design: The selection of the preferred alternative design shall be made by the agency only after a life-cycle cost analysis is performed in compliance with Rule 60D-4.006, F.A.C.

(f) Preparation requirements: The preparation of alternative designs and the computer-based energy simulation described in subsection 60D-4.004(2), F.A.C., shall be performed by an architect or engineer licensed in Florida.

(3) Minor equipment-related projects:

(a) This Rule applies to renovations in existing state-owned facilities whenever any of the following items of energy-consuming equipment are installed new or replaced:

1. Chillers with a total cooling capacity of less than 25 tons (300,000 BTUH).

2. Boilers with a total input heating capacity of less than 300,000 BTUH (90 kW).

3. Unitary HVAC equipment (single and multiple units) within a single building where the total cooling or heating capacity being installed in the project is less than 25 tons (300,000 BTUH). Unitary HVAC equipment as defined here shall include:

a. Self-contained air-conditioners and heat pumps.

b. Complete split system air-conditioners and heat pumps, which shall be defined here as both the condenser and evaporator sections of the system.

c. Fuel-burning furnaces.

d. Electric heaters.

4. Service water heaters (single and multiple units) within a single building where the total input heating capacity being installed in the project is less than 300,000 BTUH (88 kW).

5. Lighting fixtures within a single building where the total lighting capacity being installed in the project is less than 30 kW.

(b) This Rule excludes "guaranteed energy, water, and wastewater performance savings projects" as defined in Section 489.145, Florida Statutes.

(c) Exception: The agency shall be permitted to strive for higher energy performance results at its discretion by requiring compliance with subsection 60D-4.004(2), F.A.C., thereby requiring a computer-based simulation and life-cycle cost analysis.

(d) Alternative designs:

1. There is no minimum number of alternative designs required.

2. Specific energy performance requirement: Each alternative design shall meet or exceed the minimum energy performance requirements of the sustainable building rating adopted by the agency in accordance with Section 255.257(4)(a), Florida Statutes.

(4) Guaranteed energy, water, and wastewater performance savings projects:

(a) Applies to all "guaranteed energy, water, and wastewater performance savings projects" as defined in Section 489.145, Florida Statutes.

(b) A baseline energy model shall be developed with a computer-based simulation program to simulate the total existing energy usage for the building(s) included in the analysis.

(c) Alternative designs shall be developed with a computer-based simulation program to simulate total energy usage for the building(s) after the implementation of the proposed energy conservation measures.

(d) The baseline energy model and the alternative designs shall be developed with the same computer-based simulation program.

(e) The computer-based simulation program shall comply with Rule 60D-4.005, F.A.C.

(f) The computer-based simulation shall include HVAC heat load calculations and equipment sizing. The HVAC heat load calculations shall include all internal building heat loads.

(g) Alternative designs:

1. The agency shall specify the number of alternative designs. One alternative design shall be considered acceptable.

2. Specific energy performance requirement: Each alternative design shall meet or exceed the minimum energy performance requirements of the sustainable building rating adopted by the agency in accordance with Section 255.257(4)(a), Florida Statutes.

(h) Selection of preferred design:

1. The selection of the preferred design or scope of work shall be made by the agency only after an investment grade energy audit as defined in Section 489.145(3)(f), Florida Statutes is reviewed by the department in accordance with Sections 489.145(4)(c) and 489.145(6), Florida Statutes.

2. Life-cycle cost analysis:

a. The investment grade energy audit required in Section 489.145(6), Florida Statutes shall include a life-cycle cost analysis for each alternative design and the baseline energy model that complies with subsection 60D-4.004(6), F.A.C.

b. The life-cycle cost analysis for the baseline energy model shall incorporate all reasonably-expected costs based on the computer-based simulation throughout the analysis period assuming no energy conservation measures are employed.

c. The results of the life-cycle cost analysis as described in Rule 60D-4.006, F.A.C., shall not replace any part of the investment grade energy audit required in Section 489.145(6), Florida Statutes or be used as the basis of guaranteed cost savings, but shall be based on the information contained within the investment grade energy audit in accordance with Rule 60D-4.006, F.A.C. The life-cycle cost analysis as described in Rule 60D-4.006, F.A.C., shall be used by the agency and the department in conjunction with the investment grade energy audit to assist in the evaluation of the project's life-cycle costs pursuant to Sections 489.145(4)(c) and 255.255(1), Florida Statutes.

(i) Preparation requirement: The preparation of alternative designs and the computer-based energy simulation described in subsection 60D-4.004(4), F.A.C., shall be performed by the "guaranteed energy, water, and wastewater performance savings contractor" as defined in Section 489.145, Florida Statutes.

Rulemaking Specific Authority 255.255 FS. Law Implemented 255.254, 255.255 FS. History--New 5-26-76, Amended _____.

(Substantial rewording of Rule 60D-4.005 follows. See Florida Administrative Code for present text.)

60D-4.005 Computer-Based Simulation Program Requirements ~~Input Procedures~~.

The computer-based simulation program required in subsections 60D-4.004(1), 60D-4.004(2), 60D-4.004(4), and 60D-4.004(7), F.A.C., shall comply with all of the following:

(1) The energy baseline and all alternative designs shall be modeled with a computer-based simulation program that is capable of modeling all of the following:

(a) 8,760 hours per year.

(b) hourly variations in occupancy, lighting power, miscellaneous equipment power, thermostat setpoints, and HVAC system operation, defined separately for each day of the week and holidays.

(c) Thermal mass effects.

(d) Ten or more thermal zones.

(e) Part-load performance curves for mechanical equipment.

(f) Capacity and efficiency correction curves for mechanical heating and cooling equipment.

(2) The computer-based simulation program shall be capable of performing design load calculations to determine all of the following:

(a) HVAC equipment capacities.

(b) HVAC air flow rates.

(c) HVAC water flow rates.

(3) The computer-based simulation program shall have the ability to do one of the following:

(a) Directly determine the energy performance for the alternative designs, or

(b) Produce hourly reports of energy usage that is suitable for the performance of the alternative designs to be determined by a separate calculation program.

(4) The following computer-based simulation programs shall be considered acceptable:

(a) DOE-2;

(b) BLAST;

(c) eQuest;

(d) EnergyPlus;

(e) Carrier HAP;

(f) Trane TRACE;

(g) Other computer-based simulation programs that demonstrate compliance with this Rule shall be considered acceptable.

(5) When the sustainable building rating adopted by the agency in accordance with Section 255.257(4)(a), Florida Statutes requires a computer-based simulation, the computer-based simulation program utilized for the analysis shall be consistent with the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, or the Florida Green Building Coalition standards.

Rulemaking Specific Authority 255.255 FS. Law Implemented 255.255 FS. History--New 5-26-76, Amended _____.

(Substantial rewording of Rule 60D-4.006 follows. See Florida Administrative Code for present text.)

60D-4.006 Life-Cycle Cost Analysis Requirements Approval Procedures.

A life-cycle cost analysis shall be performed for all new facilities constructed for the use of a state agency and for renovations to existing state-owned facilities where required in Rule 60D-4.004, F.A.C. The analysis shall compare the reasonably-expected life-cycle costs of alternative designs developed in accordance with Rule 60D-4.004, F.A.C., during the design development phase of the project. Life-cycle cost analyses shall comply with all of the following requirements:

(1) Preparation requirements:

(a) The life-cycle cost analysis shall be performed by one of the following:

1. An architect licensed in Florida.

2. An engineer licensed in Florida.

3. A “guaranteed energy, water, and wastewater performance savings contractor” as defined in Section 489.145, Florida Statutes.

(b) The life-cycle cost analysis shall be performed by the same person or firm that performed the computer-based energy simulations required in Rule 60D-4.004, F.A.C.

(2) Methodology: The life-cycle cost analysis shall determine the expected total present-value cost to own, operate, maintain, and replace the energy-consuming equipment for each alternative design throughout the analysis period as described in this Rule.

(3) Analysis period:

(a) The analysis period shall be 25 years for each alternative design under consideration in a project unless directed otherwise in this section.

(b) The analysis period for “guaranteed energy, water, and wastewater performance savings projects” as defined in Section 489.145, Florida Statutes shall be equal to the expected term of the “guaranteed energy, water, and wastewater performance savings contract”.

(4) Analysis approach: For each alternative design, the total life-cycle cost shall be determined as described here:

(a) Life-cycle ownership cost:

1. All ownership costs utilized in the analysis shall include all related material, labor, and installation costs.

2. The total ownership cost utilized in the analysis shall consist of all of the following that are to be installed new or replaced in the project:

a. Building envelope components and windows:

1. New construction and additions per subsection 60D-4.004(1), F.A.C.: The incremental cost of the energy-related modifications may be utilized in the analysis, in which case the incremental cost for the least expensive alternative design shall be zero. Otherwise, the total cost for the scope of work shall be utilized.

2. Renovations: The total cost for the scope of work shall be utilized.

b. HVAC: The total cost for the scope of work shall be utilized.

c. Lighting: The total cost for the scope of work shall be utilized.

d. Service water heating: The total cost for the scope of work shall be utilized.

e. Power distribution: The total cost for the scope of work shall be utilized.

f. Other measures: Analyses for “guaranteed energy, water, and wastewater performance savings projects” as defined in Section 489.145, Florida Statutes shall include the costs for all energy conservation measures proposed in the project.

3. For projects that are not financed by the agency, the life-cycle ownership cost utilized in the analysis shall be assumed to occur in the initial year of the analysis period and require no conversion to present value dollars.

4. For “guaranteed energy, water, and wastewater performance savings projects” as defined in Section 489.145, Florida Statutes, the total ownership cost utilized in the analysis shall be determined as follows:

a. The expected construction costs, investment grade energy audit costs, measurement and verification costs, and financing costs shall be annualized.

b. The DOE real discount rate shall be used to convert all future annual ownership costs to present value dollars. The DOE real discount rate is available in the *Annual Supplement to NIST 135*, which is incorporated by reference in Rule 60D-4.008, F.A.C.

c. Grants, rebates, and capital funding used to buy down the cost of the “guaranteed energy, water, and wastewater performance savings contract” shall not be included in the life-cycle cost analysis per Section 489.145(4)(j), Florida Statutes.

d. The life-cycle ownership cost shall be calculated as the sum of all present-value annual ownership costs that are expected to occur during the analysis period.

e. Exclusion: The analysis for the baseline energy model described in paragraph 60D-4.004(4)(g), (2), F.A.C., shall not include any life-cycle ownership costs.

(b) Life-cycle operating cost:

1. The annual energy usage utilized in the analysis shall be determined by the computer-based energy simulation requirements of Rule 60D-4.004, F.A.C.

2. The actual energy prices available from the local utility provider shall be used to convert the annual energy usage to the annual operating cost for the initial year.

3. The DOE energy price escalation forecasts, not including the effects of general price inflation, shall be used to predict future annual energy costs. These forecasts are available in the *Annual Supplement to NIST 135*, which is incorporated by reference in Rule 60D-4.008, F.A.C.

4. All water costs associated with the alternative design shall be incorporated into the life-cycle operating cost.

5. The price escalation factor utilized for water costs shall be derived from historical water costs for the building(s).

6. The effects of general price inflation shall be excluded from the analysis.

7. The DOE real discount rate shall be used to convert all future annual operating costs to present value dollars. The DOE real discount rate is available in the *Annual Supplement to NIST 135*, which is incorporated by reference in Rule 60D-4.008, F.A.C.

8. The life-cycle operating cost shall be calculated as the sum of all present-value annual operating costs that are expected to occur during the analysis period.

(c) Life-cycle maintenance cost:

1. The expected annual maintenance costs utilized in the analysis shall be derived for all new energy-consuming equipment based on estimates or direct quotes from the equipment manufacturer or vendors that represent the equipment manufacturer. For existing energy-consuming equipment, the annual maintenance costs utilized in the analysis shall be based on actual maintenance costs.

2. The scope of maintenance services utilized to develop the expected annual maintenance costs for new energy-consuming equipment shall:

a. Be based on the equipment manufacturer's recommendations, and

b. Include regularly scheduled maintenance items such as planned overhauls, but not attempt to include coincidental repairs.

3. The DOE real discount rate shall be used to convert all future annual maintenance costs to present value dollars. The DOE real discount rate is available in the *Annual Supplement to NIST 135*, which is incorporated by reference in Rule 60D-4.008, F.A.C.

4. The effects of general price inflation shall be excluded from the analysis.

5. The life-cycle maintenance cost shall be calculated as the sum of all present-value annual maintenance costs that are expected to occur during the analysis period.

(d) Life-cycle replacement cost:

1. The analysis shall include the replacement cost for new energy-consuming equipment that has an expected service life that is shorter than the analysis period.

2. Expected service life:

a. The expected service life utilized in the analysis for energy-consuming equipment shall be based on the *2007 ASHRAE Handbook – HVAC Applications (Chapter 36, Table 4)*, which is incorporated by reference in Rule 60D-4.008, F.A.C., but may be modified to account for the following circumstances:

(1) The agency's experience with similar equipment

(2) Harsh environments such as coastal, marine, industrial, and urban areas that can effectively shorten equipment service life

b. For equipment not included in the *2007 ASHRAE Handbook – HVAC Applications (Chapter 36, Table 4)* per paragraph (a) of this section, the expected service shall be estimated based on one or both of the following criteria:

(1) The equipment manufacturer's recommendation

(2) The judgement of a licensed architect, engineer, or contractor

3. Replacement costs shall be derived from the initial ownership costs.

4. The DOE real discount rate shall be used to convert all future replacement costs to present value dollars. The DOE real discount rate is available in the *Annual Supplement to NIST 135*, which is incorporated by reference in Rule 60D-4.008, F.A.C.

5. The effects of general price inflation shall be excluded from the analysis.

6. The life-cycle replacement cost shall be calculated as the sum of all present-value replacement costs that are expected to occur during the analysis period.

(e) Residual value:

1. The analysis shall include residual value for energy-consuming equipment that is expected to be replaced during the analysis period and therefore has an expected service life that extends beyond the analysis period.

2. The residual value shall be derived by linearly prorating the replacement cost based on the ratio of remaining service life to total expected service life, assuming a salvage value of zero.

3. The DOE real discount rate shall be used to convert all residual values to present value dollars. The DOE real discount rate is available in the *Annual Supplement to NIST 135*, which is incorporated by reference in Rule 60D-4.008, F.A.C.

4. The effects of general price inflation shall be excluded from the analysis.

(f) Total life-cycle cost: The total life-cycle cost shall be calculated as follows:

1. The life-cycle ownership cost, plus;

2. The life-cycle operating cost, plus;

3. The life-cycle maintenance cost, plus;

4. The life-cycle replacement cost (when applicable), less;

5. The residual value (when applicable).

(g) Sensitivity analysis:

1. The agency shall perform a sensitivity analysis as described in this section to account for uncertainty in the discount rate and future energy prices in an attempt to ascertain which variable(s) are most critical to the financial performance of the project.

2. The sensitivity analysis shall be structured to determine the total life-cycle cost result as a result of incrementally modifying the discount rate and energy price projections one at a time, and then both simultaneously.

3. Limits:

a. The discount rate utilized in the sensitivity analysis shall be raised no higher than twice that of the DOE real discount rate.

b. The energy price projections utilized in the sensitivity analysis shall be raised no higher than current prices projected forward at twice the average DOE price escalation rate.

(5) Submission requirements:

(a) The life-cycle cost analysis shall be submitted to the agency during the design development phase of the project.

(b) The life-cycle cost analysis shall be submitted to the department in addition to the agency for projects that pertain to subsections 60D-4.004(1) and 60D-4.004(4), F.A.C., during the design development phase of the project, pursuant to Sections 255.254(1) and 489.145(6), Florida Statutes.

(c) Required forms:

1. A bound copy and an electronic version in Microsoft Excel[®] format of the Florida Life-Cycle Cost Analysis Program (Form #AE16) is required for all submissions.

2. A printout of the input and output sheets of the computer-based simulation program for each alternative design.

(d) The Florida Life-Cycle Cost Analysis Program (Form #AE16) is hereby incorporated by reference.

(e) The Florida Life-Cycle Cost Analysis Program (Form #AE16) is available from the Department of Management Services at:

DMS Building Construction

4050 Esplanade Way, Suite 335

Tallahassee, Florida 32399-0950

(850)488-1817

http://dms.myflorida.com/business_operations/real_estate_development_management/building_construction/forms_and_documents

(f) Delivery: The life-cycle cost analysis shall be delivered to the department at:

DMS FLCCA Review

4050 Esplanade Way, Suite 335

Tallahassee, Florida 32399-0950

(850)488-1817

Rulemaking Specific Authority 255.255, 255.256 FS. Law Implemented 255.254, 255.255 FS. History--New 5-26-76, Amended _____

(Substantial rewording of Rule 60D-4.007 follows. See Florida Administrative Code for present text.)

60D-4.007 Energy Performance Analysis for Leases Exemptions.

(1) Applies to the following facilities that are under consideration to be leased by a state agency:

(a) Buildings larger than 5,000 gross square feet.

(b) Spaces larger than 5,000 square feet of rentable area within a specified building.

(2) This Rule excludes facilities that are to be newly constructed for the use of a state agency. Such facilities shall comply with subsection 60D-4.004(1), F.A.C.

(3) Energy performance analysis:

(a) Energy Star rating:

1. An Energy Star rating shall be developed with the Energy Star Portfolio Manager or Energy Star Target Finder program along with actual utility bill data for the previous twelve months. The Energy Star Portfolio Manager and Energy Star Target Finder programs are free software tools that are available at the websites listed here. http://www.energystar.gov/index.cfm?c=evaluate_performance.bus_portfoliomanager.

a. The Energy Star Portfolio Manager software is available at:

b. The Energy Star Target Finder software is available at: http://www.energystar.gov/index.cfm?c=new_bldg_design.bus_target_finder.

2. The minimum acceptable Energy Star rating shall be 50.

3. Exceptions:

a. When actual utility bill data is not available for the previous twelve months, including proposed lease spaces that are not *separately* metered by the utility provider, a computer-based simulation that complies with subsection 60D-4.007(4), F.A.C., shall be performed that provides the expected annual energy consumption for the proposed lease. The results of the computer-based simulation shall be used to generate an Energy Star rating as described in subsection (1) of this section.

b. When the proposed lease does not meet the eligibility criteria for an Energy Star rating regarding the type or allocation of space, an energy performance index (kBtu per gross square foot per year) shall be developed manually with one of the following sources in lieu of the energy performance index (kBtu per gross square foot per year) generated by the Energy Star software described in subsection (1) of this section:

(1) Actual utility bill data for the previous twelve months.

(2) The expected annual energy consumption developed with a computer-based simulation that complies with subsection 60D-4.007(4), F.A.C.

4. Renovations: When renovations are performed or proposed to improve the energy performance of the proposed lease, a computer-based simulation that complies with

subsection 60D-4.007(4), F.A.C., shall be performed to provide the expected annual energy consumption required to develop one of the following:

a. An Energy Star rating for proposed leases that pertain to subsection (1) of this section, or

b. The energy performance index (kBtu per gross square foot per year) for proposed leases that pertain to paragraph (3)(b) of this section.

(b) Energy cost projection:

1. The total expected annual energy cost for the facility or space shall be derived from one of the following sources:

a. The average annual energy costs based on actual utility bill data for the previous three years, or

b. Current utility rates and a computer-based simulation that complies with subsection 60D-4.007(4), F.A.C., when actual utility bill data for the previous three years is not available

2. A cost utilization index (total energy cost per gross square foot per year) shall be developed with the energy cost data described in subsection (1) of this section.

3. The cost utilization index (total energy cost per gross square foot per year) shall be projected forward for each contract year of the proposed lease based on one of the following:

a. The average annual energy escalation rate derived from actual utility bill data for the previous three years, or

b. An escalation rate approved by the agency when actual utility bill data for the previous three years is not available.

4. Renovations: When renovations are performed or proposed to improve the energy performance of the proposed lease, current utility rates and the computer-based simulation required in paragraph 60D-4.007(3)(a), (4) shall be used to develop the cost utilization index (total energy cost per gross square foot per year).

(4) Computer-based simulation requirements:

(a) The computer-based simulation shall be performed by an engineer licensed in Florida.

(b) The computer-based simulation program shall comply with Rule 60D-4.005, F.A.C.

(c) The computer-based simulation shall model total energy consumption for the proposed lease.

(d) The computer-based energy simulation shall model all of the following loads that exist or shall exist as a result of renovations in the proposed lease:

1. Lighting.
2. Internal equipment loads.
3. Service water heating.
4. Space heating.
5. Space cooling.
6. Fans.
7. Pumps.

(5) Submission requirements: The following items must be included in the energy performance analysis submitted to the department:

(a) A description of the proposed lease property that includes:

1. Gross square footage (*for separately –metered buildings*).
2. Rentable square footage (*for spaces within specified buildings*).
3. Type of space.
4. Occupancy level.
5. Operating schedule.

(b) Copies of the actual utility bill statements for the previous three years (*if available*). Historical consumption and cost data from the utility provider will be considered acceptable.

(c) Copies of the utility bill statements for the previous one year (*if available*). Historical consumption and cost data from the utility provider will be considered acceptable.

(d) Energy Star software forms:

1. “Statement of Energy Performance” (*when Energy Star Portfolio Manager is used*).
2. “Target Energy Performance Results” (*when Energy Star Target Finder is used*).

(e) Energy performance index and calculations (*when manual calculation is required*).

(f) Cost utilization index and calculations.

(g) Input and output sheets from the computer-based simulation program (*when a computer-based simulation is required*).

(h) A description of all energy-related features, including:

1. Type of energy-consuming systems and equipment.
2. Size of energy-consuming systems.

(i) A detailed description of all renovations performed or proposed to improve energy performance.

(j) Delivery: The energy performance analysis shall be mailed or delivered to the department pursuant to Section 255.254(1), Florida Statutes at the address listed here.

DMS Energy Performance Analysis Review

4050 Esplanade Way, Suite 335

Tallahassee, Florida 32399-0950

(850)488-1817

Rulemaking Specific Authority 255.255, 255.256 FS. Law Implemented 255.254, 255.255 FS. History–New 5-26-76, Amended _____.

60D-4.008 Standards Adopted.

(1) “Annual Supplement to NIST 135”: Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis – 2009, Annual Supplement to NIST 135 and NBS Special

publication 709, National Institute of Standards and Technology, NISTIR 85-3273 is hereby incorporated by reference.

(2) Copies of this document are available by writing to:
National Technical Information Service
5301 Shawnee Rd.
Alexandria, VA 22312
<http://www.ntis.gov/>
(800)553-6847

(3) Copies of this document are also available for free download at the following website: <http://www1.eere.energy.gov/femp/program/lifecycle.html>.

(4) "ASHRAE Handbook – HVAC Applications (2007)": 2007 ASHRAE Handbook – Heating, Ventilating, and Air-Conditioning Applications (Chapter 36, Table 4) is hereby incorporated by reference.

(5) Copies of this document are available by writing to:
American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE)
1791 Tullie Circle
Atlanta, GA 30329
<http://www.ashrae.org>
(800)527-4723

(6) Copies of this document are also available for purchase at the following website: <http://www.ashrae.org/publications/page/1279>.

Rulemaking Authority 255.255, 255.256 FS. Law Implemented 255.254, 255.255 FS. History–New .

NAME OF PERSON ORIGINATING PROPOSED RULE:
Mr. Dean Izzo, Director of Real Estate Development and Management, Department of Management Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ms. Linda H. South, Secretary, Department of Management Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 10, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 2, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Architecture and Interior Design

RULE NO.: 61G1-11.013
RULE TITLE: Definitions

PURPOSE AND EFFECT: The Board proposes the rule amendment to add the definitions of residential interior design, residential interior designer, residential space planning and residential space planner.

SUMMARY: The definitions of residential interior design, residential interior designer, residential space planning, and residential space planner will be added to the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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

RULEMAKING AUTHORITY: 481.2055, 481.211 FS.

LAW IMPLEMENTED: 481.203, 481.211, 481.221(4), (8), 481.229(1)(c) 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: Anthony Spivey, Executive Director, Board of Architecture and Interior Design, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G1-11.013 Definitions.

In these rules, where the context will permit;

(1) through (4) No change.

(5) "Residential interior design," "residential interior designer," "residential space planning," or "residential space planner" are terms that may be used to describe interior design services or interior decorator services for a residential application, as set forth in Section 481.229(6)(a), F.S., without violating Section 481.223(1)(c), F.S.

Rulemaking Specific Authority 481.2055, 481.211 FS. Law Implemented 481.203, 481.211, 481.221(4), (8), 481.223(1)(c), 481.229(1)(c), (6) FS. History–New 12-23-79, Amended 2-24-83, 10-27-83, 12-29-83, Formerly 21B-11.13, Amended 11-12-89, 2-14-91, 5-5-91, 12-26-91, Formerly 21B-11.013, Amended 11-15-93, 11-21-94, 1-10-99, 2-12-04, 4-15-07, 12-16-07,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Architecture and Interior Design

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Architecture and Interior Design

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 30, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 25, 2009

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF HEALTH

Board of Medicine

RULE NO.: 64B8-9.009
 RULE TITLE: Standard of Care for Office Surgery

PURPOSE AND EFFECT: The proposed rule amendments are intended to clarify Level II office surgery with regard to sedation and to require automated external defibrillators (AEDs) in offices which perform Level II and Level III office surgery.

SUMMARY: The proposed rule amendment adds language to clarify sedation which characterizes Level II office surgery. In addition, the proposed rule amendments require automated external defibrillators (AEDs) in offices which perform Level II and Level III office surgery.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Board prepared two Statements of Estimated Regulatory Costs for the rule. With regard to the change in subparagraph (4)(a)1., of the rule, any physician who is administering medication that alters the level of consciousness will incur the costs of registering as a Level II office surgery facility if they have not already done so. Those facilities which are required to register to comply with the rule will incur costs of \$150 for registration and \$1500 for a Department inspection if the facility is not accredited by one of the nationally recognized accrediting agencies. With regard to the requirement for AEDs for Level II and Level III office surgery facilities, the Board estimates that the cost will range between \$1500 and \$2000 for an AED system. There are currently 341 registered offices and those offices which do not currently have an AED will be required to purchase one.

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

RULEMAKING AUTHORITY: 458.309(1), 458.331(1)(v) FS.

LAW IMPLEMENTED: 458.331(1)(g), (t), (v), (w), 458.351 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: Larry McPherson, Jr., Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-9.009 Standard of Care for Office Surgery.
 NOTHING IN THIS RULE RELIEVES THE SURGEON OF THE RESPONSIBILITY FOR MAKING THE MEDICAL DETERMINATION THAT THE OFFICE IS AN

APPROPRIATE FORUM FOR THE PARTICULAR PROCEDURE(S) TO BE PERFORMED ON THE PARTICULAR PATIENT.

- (1) through (3) No change.
- (4) Level II Office Surgery.
- (a) Scope.

1. Level II Office Surgery is that in which peri-operative medication and sedation are used by any means altering the level of consciousness intravenously, intramuscularly, or rectally, thus making intra and post-operative monitoring necessary. Such procedures shall include, but not be limited to: hemorrhoidectomy, hernia repair, reduction of simple fractures, large joint dislocations, breast biopsies, colonoscopy, and liposuction involving the removal of up to 4000cc supernatant fat.

- 2. No change.
- (b) Standards for Level II Office Surgery.
- 1. through 2. No change.
- 3. Equipment and Supplies Required.
- a. through g. No change.

h. Defibrillator or an Automated External Defibrillator unit (AED).

- h. through k. renumbered i. through l. No change.
- (5) No change.

(6) Level III Office Surgery.

(a) No change.

(b) Standards for Level III Office Surgery. In addition to the standards for Level II Office Surgery, the surgeon must comply with the following:

- 1. through 2. No change.
- 3. Equipment and Supplies Required.
- a. through c. No change.

d. Defibrillator or an Automated External Defibrillator unit (AED).

- d. through e. renumbered e. through f. No change.
- 4. No change.

Rulemaking Specific Authority 458.309(1), 458.331(1)(v) FS. Law Implemented 458.331(1)(g), (t), (v), (w), 458.351 FS. History—New 2-1-94, Amended 5-17-94, Formerly 61F6-27.009, Amended 9-8-94, 11-15-94, Formerly 59R-9.009, Amended 2-17-00, 12-7-00, 2-27-01, 8-1-01, 8-12-01, 3-25-02, 3-22-05, 4-19-05, 10-23-05, 10-10-06, 4-18-07, 9-3-07,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Surgical Care Committee, Board of Medicine

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 2, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 19, 2009

DEPARTMENT OF HEALTH

Board of Medicine

RULE NO.: 64B8-13.005
RULE TITLE: Continuing Education for Biennial Renewal

PURPOSE AND EFFECT: The proposed rule amendment is intended to set forth the five most misdiagnosed conditions for the purpose of continuing medical education (CME).

SUMMARY: The proposed rule amendment sets forth the five most misdiagnosed conditions for the purpose of the required medical errors course for licensure renewal.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that the proposed rule amendment will not have an impact on small business.

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

RULEMAKING AUTHORITY: 456.013(6), (7), 456.031(4), 458.309, 458.319 FS.

LAW IMPLEMENTED: 456.013(6), (7), 456.031(1)(a), (3), 456.033, 458.319(4) 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: Larry McPherson, Jr., Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-13.005 Continuing Education for Biennial Renewal.

(1) Every physician licensed pursuant to Chapter 458, F.S., shall be required to complete 40 hours of continuing medical education courses approved by the Board in the 24 months preceding each biennial renewal period as established by the Department.

(a) through (b) No change.

(c) Completion of two hours of continuing medical education relating to prevention of medical errors which includes a study of root cause analysis, error reduction and prevention, and patient safety, and which is approved by any state or federal government agency, or nationally affiliated professional association, or any provider of Category I or II American Medical Association Continuing Medical Education. One hour of a two hour course which is provided by a facility licensed pursuant to Chapter 395, F.S., for its employees may be used to partially meet this requirement. The course must include information relating to the five most mis-diagnosed conditions during the previous biennium, as determined by the Board. While wrong site/wrong procedure surgery continues to

be the most common basis for quality of care violations, the following areas have been determined as the five most mis-diagnosed conditions: cancer; cardiac; acute abdomen; timely diagnosis of surgical complications; and failing to identify pregnancy or stage of pregnancy before beginning treatment or surgery stroke and related cranial conditions.

(2) through (10) No change.

Rulemaking Authority 456.013(6), (7), 456.031(4), 458.309, 458.319 FS. Law Implemented 456.013(6), (7), 456.031(1)(a), (3), 456.033, 458.319(4) FS. History—New 9-7-86, Amended 11-17-87, 11-15-88, 1-31-90, 9-15-92, Formerly 21M-28.002, Amended 12-5-93, Formerly 61F6-28.002, Amended 3-1-95, 1-3-96, 1-26-97, Formerly 59R-13.005, Amended 5-18-99, 2-7-01, 6-4-02, 10-8-03, 5-4-04, 5-20-04, 4-5-05, 4-25-06, 12-26-06, 1-16-08, 5-6-08, 11-25-08, 7-6-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rules Committee, Board of Medicine

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 5, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 23, 2009

DEPARTMENT OF FINANCIAL SERVICES

Division of Accounting and Auditing

RULE NOS.: 69I-3.001, 69I-3.003, 69I-3.004
RULE TITLES: Consolidated Equipment Financing Program, Procedure for Negotiation and Execution of Master Equipment Financing Agreements, Deferred Payment Commodity Contracting

PURPOSE AND EFFECT: To implement Department responsibilities under Section 287.063 and 287.064, F.S. To amend Rule 69I-3.001, F.A.C., to implement Department responsibilities under Section 287.064, F.S. In 2008, Section 25, Chapter 2008-227, Laws of Florida, amending Section 287.064, F.S., modified approval criteria and allowed a master financing program for contracts approved by the Department under Section 489.145, F.S., for guaranteed energy, water, and wastewater performance savings contracting. Chapter 2008-227, Laws of Florida, also amended Section 287.063, F.S., adding requirements to the criteria stated in Section 287.063, F.S., for allowing an agency to seek financing without using the Consolidated Equipment Finance Program (CEFP). A new rule is being promulgated to reflect these statutory changes, and to separate the rules related to Section 287.063, F.S., exceptions to the CEFP from Rule 69I-3.001, F.A.C., which addresses rules for the CEFP. Finally, Rule 69I-3.003, F.A.C., is being repealed. Since Rule 69I-3.001, F.A.C., is being modified to address the CEFP, and update the definitions and procurement process associated with that program, there is

no longer a need for this rule. Rule 19A-5.0035, F.A.C., which establishes the procedure for negotiation and award of the Master Equipment Financing Agreement for this program and Rule 69I-3.001, F.A.C., establishes how it is administered by the Department, will replace this rule.

SUMMARY: Establish criteria for approving purchases made under deferred payment contracts which require the payment of interest, related to requesting equipment leases, under Sections 287.063 and 287.064, F.S.

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

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

RULEMAKING AUTHORITY: 17.29, 287.063(2)(b), 287.064(8) FS.

LAW IMPLEMENTED: 287.063, 287.064 FS.

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

DATE AND TIME: January 20, 2010, 2:00 p.m. ET

PLACE: Room 430, Fletcher Building, 101 E. Gaines St., Tallahassee, FL

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 days before the workshop/meeting by contacting: Mike Rutherford (850)413-5594 or Mike.Rutherford@MyFloridaCFO.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Mike Rutherford (850)413-5594 or Mike.Rutherford@MyFloridaCFO.com

THE FULL TEXT OF THE PROPOSED RULES IS:

69I-3.001 Consolidated Equipment Financing Program.

(1) For the purposes of this rule ~~chapter~~, the following definitions shall be used:

(a) "Additional Services" means administrative and any other services associated with managing the Consolidated Equipment Financing Program.

(b) "Agency" means any agency as defined by Section 287.012, F.S., any department created by Chapter 20, F.S., the Executive Office of the Governor, the Florida Fish and Wildlife Conservation Commission, the Parole ~~and Probation~~ Commission, the State Board of Administration, the Agency

for Health Care Administration, the Department of Military Affairs, the Legislative Branch or the Judicial Branch of State Government.

(c) "Chief Financial Officer" means the head of the Department of Financial Services, whose deferred payment commodity contracting duties are carried out by and through its Division of Accounting and Auditing of the Department of Financial Services. However, the Chief Financial Officer's duty to execute the master equipment financing agreements is not delegated to the division.

(d) "Educational Institution" means state universities and state community colleges who also participate in the Consolidated Equipment Financing Program as authorized by Section 287.064 (1), F.S.

~~(e)(d)~~ "Interagency Agreement" means an equipment financing agreement between a financial institution the Chief Financial Officer, and the Agency or Educational Institution, based on the executed Master Equipment Financing Agreement an agency. The respective Agency or Educational Institution is responsible for all payments under its completed and approved Interagency Agreement. Equipment purchased by the Interagency Agreement shall be directly billed by the financial institution, to the respective Agency or Educational Institution.

~~(f)(e)~~ "Master Equipment Financing Agreement" means a master equipment financing agreement to be executed pursuant to Section 287.064, F.S., for the purpose of implementing a consolidated financing program for the acquisition of equipment by deferred payment ~~deferred payment~~ purchases, as defined by Section 287.064(1), F.S., made by or on behalf of the State of Florida or its agencies or by or on behalf of Educational Institutions state community colleges. The term "Master Equipment Financing Agreement" includes all agreements and contracts necessary or convenient for the establishment of a Master Equipment Financing Agreement. "Rent" means ~~the period payment amount total due on an Interagency Agreement within a Master Equipment Financing Agreement.~~

(g) "Master Equipment Financing Agreement for Conservation Measures" means a master equipment financing agreement to be executed pursuant to Section 287.064 (10), F.S., for the purpose of implementing a consolidated financing program for the financing of the cost of energy, water, or wastewater efficiency and conservation measures ("Conservation Measures") as defined in Section 489.145, F.S. "Program" means ~~the Consolidated Equipment Financing Program, which shall consist of the program of financing the deferred payment purchases of equipment on behalf of the State or the state agencies pursuant to 287.064, F.S.~~

(h) "Program" means the Consolidated Equipment Financing Program, which shall consist of the program of financing the deferred payment purchases of equipment on behalf of the State, Educational Institutions or the state agencies pursuant to Section 287.064, F.S.

(i) "Rent" means the amount of payment for a period as defined in an Interagency Agreement within a Master Equipment Financing Agreement.

(2)(a) An Agency or Educational Institution that agency which desires to make deferred payment purchases shall make a written request to participate in the Program. An Agency shall make or a written request for exemption from the Program.

(a) An Agency or Educational Institution that agency which desires to finance or refinance existing deferred payment purchases through the Program shall may make a written request to participate in the Program. An Agency or Educational Institution agency requesting permission to participate in the Program must submit to the Chief Financial Officer for preaudit review and approval the following:

1. A completed and executed Form DFS-A1-410 (for purchases under the Consolidated Equipment Financing Program) Application to Finance Equipment per Section 287.064, F.S., revised effective () Checklist for Requesting Department of Financial Services Chief Financial Officer's Approval to Installment Purchase Equipment through the Consolidated Equipment Financing Program, revised 05/99. The Form form is hereby incorporated by reference, can be viewed at <http://www.myfloridacfo.com/aadir/>, and is available from the Division of Accounting and Auditing, Bureau of Accounting, 200 East Gaines Street, Tallahassee, Florida 32399-0354.

2. A statement documenting indicating whether the equipment is new or used and, if the equipment is used, whether the equipment is currently financed under an installment purchase contract approved by the Chief Financial Officer and, if so, state the date of approval by the Chief Financial Officer and the Chief Financial Officer approval number assigned.

3. A statement documenting indicating the proposed original term and renewal terms under the Interagency Agreement and the anticipated remaining useful economic life of the equipment.

4. A statement certifying that the deferred payment commodity contract does not exceed the useful life of the equipment unless the contract provides for the replacement or the extension of the useful life of the equipment during the term of the loan.

5. If the equipment purchase financing term is beyond 5 years, the Agency must seek an exemption from the Program pursuant to Section 287.064(2), F.S. and seek an exemption according to Rule 69I-3.004, F.A.C.

6. Documentation to substantiate that the annualized amounts of any deferred payment commodity contract are supported from available recurring agency has reasonably determined that it will have sufficient funds available to make the payments under the Interagency Agreement as they become due. Available recurring funds must be appropriated to the Agency in an appropriation category as defined in Section 287.064(11) F.S., determined by the Chief Financial Officer as appropriate, or designated by the Legislature for payment of the obligation incurred under Section 287.064 or 489.145, F.S., as applicable. In accordance with Section 216.023(4)(a)9., F.S., supporting information for any proposed consolidated financing of deferred payment commodity contracts must also include a narrative describing and justifying the need, baseline for current costs, estimated cost savings, projected equipment purchases, estimated contract costs, and return on investment calculation.

7.5. Documentation to substantiate that the Agency or Educational Institution agency has complied with all applicable requirements to lawfully procure the equipment.

8.6. Documentation If the equipment purchase price is less than \$30,000, documentation to substantiate that the purchase by deferred payment is economically beneficial to the State or that failure to make the purchase will adversely affect the Agency's or Educational Institution's agency's performance of its duties.

(b) An Agency or Educational Institution agency financing the acquisition of equipment shall provide the information required in paragraph (a) at least twenty-one days prior to the anticipated date of awarding the contract for such equipment.

(c) Any contract for equipment, the payment of which is anticipated to be made by deferred payment and the payment of interest, shall specify that the award of such contract is contingent upon approval pursuant to Section 287.063, F.S., unless specifically exempted pursuant to Rule 69I-3.004, F.A.C., and Section 287.064, F.S.

(3) The Chief Financial Officer may exempt any equipment from financing under the Program when alternative financing would be cost effective or otherwise beneficial to the State. The factors to be examined by the Chief Financial Officer to determine whether the equipment may be deemed exempt from the Program, are stated in Rule 69I-3.004, F.A.C. shall include the following:

- (a) The nature of the equipment;
- (b) The useful life of the equipment;
- (c) The length of the proposed original term and renewal terms of the Interagency Agreement;
- (d) Availability of funds under the Program;
- (e) Impact on the federal tax exemption of the interest portion of the consolidated rent payments under the Program; and
- (f) The alternative financing costs.

(4) Agencies or Educational Institutions may use a Master Equipment Financing Agreement for Conservation Measures, pursuant to Section 287.064(10)(a), F.S., to finance the cost of energy, water, or wastewater efficiency and conservation measures in accordance with Section 489.145, F.S., excluding the costs of training, operation, and maintenance, for a term of repayment that may exceed 5 years but may not exceed 20 years. The term for repayment may not extend beyond the weighted average useful life of the Conservation Measures financed. The contract shall provide for the replacement or the extension of the useful life of the equipment during the term of repayment. An Agency or Educational Institution that desires to make deferred payment purchases of Conservation Measures shall make a written request to use a Master Equipment Financing Agreement for Conservation Measures. An Agency or Educational Institution requesting permission to use a Master Equipment Financing Agreement for Conservation Measures must submit to the Chief Financial Officer for preaudit review and approval based on the following:

(a) A completed Form DFS-A1-413 (for purchases under the Consolidated Equipment Financing Program for Conservation Measures) Application to Finance Conservation Measures, effective (). Form DFS-A1-413 is hereby incorporated by reference and is available from the Division of Accounting and Auditing, Bureau of Accounting, 200 East Gaines Street, Tallahassee, Florida 32399-0354.

(b) Items 2-4 and 6-8 in paragraph (2)(a) above.

(5)(4) If equipment is eligible for financing under more than one master equipment financing agreement, the Chief Financial Officer shall determine which Master Equipment Financing Agreement shall be utilized. The factors to be examined to determine whether the equipment is eligible for financing under more than one master equipment financing agreement shall include the following:

- (a) The type or category of the equipment;
- (b) The useful life of the equipment;
- (c) The length of the proposed original term and renewal terms of the Interagency Agreement; and
- (d) Availability of funds under the Master Equipment Financing Agreement.

(6)(5) The Chief Financial Officer may, when stipulated in the Master Equipment Financing Agreement, automatically debit or otherwise collect from each ~~Agency~~ agency the rent payments on Interagency Agreements. The payments or any fractional part thereof under an Interagency Agreement may be prorated by the Chief Financial Officer and, whether or not prorated, shall be payable on the commencement date of the Interagency Agreement and thereafter the rent payment may, when stipulated in the Master Equipment Financing Agreement, be automatically debited or otherwise collected pursuant to the Interagency Agreement.

~~(6)(a) All funds debited or otherwise collected from each agency may be deposited in the Consolidated Payment Trust Fund pursuant to Section 287.064(6), F.S.~~

~~(b) The trust fund shall consist of separate accounts for each master equipment financing agreement and, so long as any financial obligations exist with respect to a master equipment financing agreement, shall be used solely to meet such financial obligations and the cost of related additional services.~~

~~(c) Any income from the investment of funds may be used to fund administrative costs associated with the Program.~~

(7) The Chief Financial Officer shall calculate and determine compliance with any interest rate limitations applicable to the Interagency Agreement or any Master Equipment Financing Agreement. For the purpose of determining compliance with interest rate limitations on any Interagency Agreement, interest rates shall not include administrative costs, surcharges and insurance expense related to the Program.

(8) For the purpose of determining the useful life of equipment, the factors to be considered by the Chief Financial Officer shall include the following:

- (a) The type or category of equipment;
- (b) Whether the equipment is new or used;
- (c) The condition of the equipment;
- (d) The period of intended use; and
- (e) Purpose of the equipment.

(9) The procedure for the negotiation and execution of Master Equipment Financing Agreements is as follows:

(a) Upon the receipt of a written request by the Chief Financial Officer, the Division of Bond Finance of the State Board of Administration shall negotiate Master Equipment Financing Agreements. The procurement and negotiation of Master Equipment Financing Agreements shall be according to Rule 19A-5.0035, F.A.C.

(b) Upon the Chief Financial Officer's acceptance of the terms and conditions of a Master Equipment Financing Agreement negotiated by the Division of Bond Finance, the Chief Financial Officer shall execute the Master Equipment Financing Agreement.

Rulemaking Specific Authority 17.29, 287.064(8) FS. Law Implemented 287.063, 287.064 FS. History—New 9-10-86, Amended 12-20-94, 5-12-97, 1-27-98, 9-13-99, Formerly 3A-3.001, Amended _____.

69I-3.003 Procedure for Negotiation and Execution of Master Equipment Financing Agreements.

Rulemaking Specific Authority 17.29, 287.063(2)(b), 287.064(8) FS. Law Implemented 287.063, 287.064 FS. History—New 3-20-90, Amended 12-20-94, 5-29-95, Formerly 3A-3.003, Repealed _____.

69I-3.004 Deferred Payment Commodity Contracting.

(1) For the purposes of this rule, the following definitions shall be used:

(a) “Agency” means any agency as defined by Section 287.012, F.S., any department created by Chapter 20, F.S., the Executive Office of the Governor, the Florida Fish and Wildlife Conservation Commission, the Parole Commission, the State Board of Administration, the Agency for Health Care Administration, the Department of Military Affairs, or the Judicial Branch of State Government.

(b) “Chief Financial Officer” means the head of the Department of Financial Services, whose deferred payment commodity contracting duties are carried out by and through its Division of Accounting and Auditing. However, the Chief Financial Officer’s duty to execute the master equipment financing agreements is not delegated to the Division.

(c) “Financing Agreement” means the proposed financing agreement associated with deferred payment purchases for which exemption from using the Consolidated Equipment Financing Program is sought.

(d) “Program” means the Consolidated Equipment Financing Program, which shall consist of the program of financing the deferred payment purchases of equipment on behalf of the State or the state agencies pursuant to Section 287.064, F.S.

(2) An Agency that desires to make deferred payment purchases not using the Consolidated Equipment Financing Program shall make a written request for exemption from the Program and seek approval to obtain financing pursuant to Section 287.063, F.S.

(a) An Agency requesting exemption from the Program must submit to the Chief Financial Officer for preaudit review and approval the following:

1. A draft of the Financing Agreement for which an exemption from the program is sought.

2. A statement documenting whether the equipment is new or used and, if the equipment is used, whether the equipment is currently financed under an installment purchase contract approved by the Chief Financial Officer, including the date of approval by the Chief Financial Officer and the assigned Chief Financial Officer approval number.

3. A statement documenting the proposed original term and renewal terms under the proposed Financing Agreement and the anticipated remaining useful economic life of the equipment.

4. A statement documenting that the payment term in the proposed Financing Agreement does not exceed the useful life of the equipment or that the contract provides for the replacement or the extension of the useful life of the equipment during the term of the loan.

5. Documentation, including the amortization table for the proposed Financing Agreement, to substantiate that the interest rate of the Financing Agreement is lower than the interest rate offered by the Program and does not exceed the statutory ceiling contained in Section 287.063(1)(b), F.S.

6. If the equipment purchase price is beyond 5 years, documentation as authorized by Section 287.063(2)(b), F.S., to substantiate that the failure to make such deferred payment purchase would adversely affect the Agency in performance of its duties.

7. Documentation to substantiate that the annualized amounts of any Financing Agreement are supported from available recurring funds available to make the payments under the proposed Financing Agreement as they become due, appropriated to the Agency in an appropriation category as defined in Sections 287.063(5) and 287.064(11), F.S., or documentation that the Legislature has designated for payment of the obligation incurred under Section 287.063, F.S.

8. Documentation to substantiate that the Agency has complied with all applicable requirements to lawfully procure the equipment.

9. Unless waived by a formal Comptroller/Chief Financial Officer Memorandum, documentation to substantiate that the purchase by deferred payment is economically beneficial to the State or that failure to make the purchase will adversely affect the Agency’s performance of its duties.

10. Documentation to substantiate type or category of equipment, condition of the equipment, the period of intended use and purpose of the equipment.

(b) An Agency financing the acquisition of equipment shall provide the information required in paragraph (a) at least twenty-one days prior to the anticipated date of awarding the contract for such equipment.

(c) An Agency shall provide documentation to substantiate that the contract for equipment, the payment of which is anticipated to be made by deferred payment and the payment of interest, specifies that the award of such contract is contingent upon approval pursuant to Section 287.063, F.S.

(3) The Chief Financial Officer may exempt any equipment from financing under the Program when alternative financing would be cost effective or otherwise beneficial to the State. The factors to be examined by the Chief Financial Officer to determine whether the equipment may be deemed exempt from the Program shall include the following:

(a) The nature of the equipment in accordance with Section 287.063(1)(a), F.S.;

(b) The useful life of the equipment in accordance with Section 287.063(2)(b), (3), F.S., which shall include a determination of the following:

1. The type or category of equipment;
2. Whether the equipment is new or used;
3. The condition of the equipment;
4. The period of intended use; and

5. Purpose of the equipment:

(c) The length of the proposed original term and renewal terms of the proposed Financing Agreement in accordance with Section 287.063(2)(b), (3), F.S.:

(d) Availability of funds under the Program in accordance with Section 287.063(5), F.S.:

(e) Impact on the federal tax exemption of the interest portion of the consolidated rent payments under the proposed alternative financing in accordance with 26 CFR 1.103-1; and

(f) The alternative financing costs.

(4) The Chief Financial Officer shall calculate and determine compliance with any interest rate limitations applicable to the Financing Agreement that is determined to be exempt from the Program. For the purpose of determining compliance with interest rate limitations on any proposed Financing Agreement, interest rates shall not include administrative costs, surcharges and insurance expense related to the financing, which is determined to be exempt from the Program in accordance with Sections 287.063(1)(a) and 287.063(2)(a), F.S.

Rulemaking Authority 17.29, 287.063(2)(b) FS. Law Implemented 287.063, 287.064 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
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NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink, Chief Financial Officer

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 10, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 23, 2009

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF STATE

Division of Elections

RULE NO.:
1S-2.043

RULE TITLE:
Electronic File Reporting Relating to
Absentee Ballot Requests
Information, Voting Activity, and
Election Results

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 41, October 16, 2009 issue of the Florida Administrative Weekly.

1) The language in paragraph (b) entitled “File Transmission” under subsection (3), as relates to absentee ballot request information files is reworded as follows:

(b) File Transmission. The Supervisor shall transmit to the Division the electronic file compiled under paragraph (a) no later than noon Eastern Standard Time of the day after the day being reported. The file shall be sent daily beginning 45 days before the election or the first day absentee ballots are mailed in that county for the upcoming election, which is earlier. The last file shall be sent 10 days after the election. The daily file shall be sent even if there is no new information to report. The file shall be in the format specified in paragraph (c).

2) The language in subparagraph 3. of paragraph (c) entitled “File specifications” under section (3), as relates to absentee ballot request information files is reworded as follows:

For each registered voter’s record, the address included shall be the address to which the voter has requested that the ballot be sent. However, addresses must be redacted in the file for those registered voters who requested address protection pursuant to Section 119.07(4)(d), F.S.

3) Table 6, entitled “Voting History Header Record Layout,” that is located in paragraph (c) of subsection (7) of the proposed rule as relates to reporting of voting history, is replaced with the following table that contains corrected file specifications:

Table 6 Voting History Header Record Layout						
Field Position	Field	Type	Length	Required	Format	Comment
1	OperatorID	varchar2		N		May be blank
2	CountyID	varchar2	3	Y		Source of FTP File. Valid County ID, or FVRS or HSMV
3	TargetedCountyID	varchar2	3	Y		Intended Recipient. Valid County ID, or FVRS or HSMV