

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

68-1.006 Standards.

The Fish and Wildlife Conservation Commission adopts the following standards to guide rulemaking relating to hunting and fishing:

(1) The paramount objective of rulemaking relating to hunting and fishing shall be the management of the fish and wildlife resources of this state for their long-term well-being and for the benefit of people.

(2) Rulemaking shall be based upon the best information available, including biological, sociological, economic, and other information deemed relevant by the Commission.

(3) The biological basis for rulemaking should include but not be limited to stock assessments, biological surveys, management plans or other science-based studies or information.

(4) With respect to harvested populations, rulemaking should permit reasonable means and quantities of harvest, consistent with optimum sustainable populations. Optimum sustainable populations shall mean the highest degree of population productivity within available habitat to sustain fish and wildlife for the long term use or enjoyment of people.

(5) When possible and practicable, populations will be managed as a biological unit. A biological unit shall mean a species or subspecies of fish or wildlife within their dependent habitat or ecosystem.

(6) Conservation and management decisions shall be derived through processes which are fair and accessible to all the people of the state and which are consistent with the procedures in Rule 68-1.001, F.A.C.

(7) When applicable, federal fish and wildlife management plans and management plans of other states or interstate commissions should be considered when developing state hunting and fishing rules.

(8) This rule is effective on July 1, 2006 and shall apply to rules and rule amendments relating to hunting and fishing proposed thereafter.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New \_\_\_\_\_

Section II  
Proposed Rules

**DEPARTMENT OF COMMUNITY AFFAIRS**

**Division of Housing and Community Development**

RULE CHAPTER TITLE: Florida Small Cities Community

RULE CHAPTER NO.: 9B-43

Development Block Grant Program 9B-43

RULE TITLES: RULE NOS.:

Definitions 9B-43.003

Definitions 9B-43.0031

Eligible Applicants 9B-43.004

Application and Administrative Requirements 9B-43.0041

Application Criteria 9B-43.005

Grant Administration and Project

Implementation 9B-43.0051

Application Procedures for All Categories 9B-43.006

Emergency Set-aside Assistance 9B-43.0061

Scoring System 9B-43.007

Section 108 Loan Guarantee Program 9B-43.0071

Program Requirements for Housing 9B-43.009

Program Requirements for Neighborhood

Revitalization 9B-43.010

Program Requirements for Economic

Development 9B-43.012

Program Requirements for Commercial

Revitalization 9B-43.013

General Grant Administration of All Categories 9B-43.014

PURPOSE AND EFFECT: To incorporate 2005 legislative changes, reorganize the rules and provide clarification of the rule chapter.

SUMMARY: Rule Chapter 9B-43, F.A.C., has been revised to make it more user-friendly, and to eliminate duplicative information found in the application manual, federal regulation and state statute. The rule is now a concise document that is easier to follow. The application manual(s) that is incorporated by reference is also being streamlined and consolidated into one document.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Cost has been prepared. However, the rule revisions will not have a financial impact on the State of Florida or any local government served by the Florida Small Cities CDBG Program. The only costs associated with the rule revision are those related to the public meetings being conducted.

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

SPECIFIC AUTHORITY: 290.048 FS.

LAW IMPLEMENTED: 290.042, 290.043, 290.044, 290.0455, 290.046, 290.047, 290.0475, 290.048 FS.

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

TIME AND DATE: 9:00 a.m. – 4:00 p.m., February 21, 2006

PLACE: Room 166, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida 32399-2100

Any person requiring special accommodation at the workshop because of a disability or physical impairment should contact Judy Peacock, Planning Manager, CDBG Program, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100 or call (850)487-3644 (SUNCOM 278-3644) at least seven days before the date of the workshop. If you are hearing or speech impaired, please contact the Department of Community Affairs using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) or 1(800)955-9771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Monya Newmyer, Community Program Manager, Division of Housing and Community Development, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-3644

THE FULL TEXT OF THE PROPOSED RULES IS:

#### 9B-43.003 Definitions.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.042, 290.043 FS. History—New 11-30-87, Amended 10-11-88, 9-25-89, 10-14-90, 12-29-91, 4-26-93, 1-30-95, 2-13-96, 12-25-96, 1-29-98, 3-28-02, Repealed \_\_\_\_\_.

#### 9B-43.0031 Definitions.

The Florida Small Cities Community Development Block Grant (CDBG) program is governed by definitions provided in the Housing and Community Development Act of 1974, as amended; Title 24 C.F.R. 570, and Sections 290.0401-.048, F.S., incorporated herein by reference, as effective on \_\_\_\_\_. The following additional definitions are provided for clarification.

(1) “Architectural and engineering services” means the basic services required to be performed by an architect or engineer licensed by the State of Florida including preliminary engineering, design services and services during construction except for the following additional engineering services:

(a) Site surveys for water treatment plants, sewage treatment works, dams, reservoirs, and other similar special surveys as may be required, such as route surveys.

(b) Laboratory tests, well tests, borings, specialized geological soils, hydraulic or other studies recommended by the engineer.

(c) Property surveys, detailed description of sites, maps, drawings, or estimates related to them, assistance in negotiating for land and easement rights.

(d) Necessary data and filing maps for water rights.

(e) Redesigns ordered by the owner after final plans have been accepted by the owner and the local government, except redesigns to reduce the project cost to within the funds available.

(f) Appearances before courts or boards on matters of litigation or hearings related to the project.

(g) Preparation of environment assessments or environmental impact statements.

(h) Performance of detailed staking necessary for construction of the project in excess of the control staking.

(i) Provision of the operation and maintenance manual for facilities.

(j) Activities required for obtaining state and federal regulatory agency construction permits.

(k) Design of hookups.

(l) Cost of engineering specialties such as electrical; hydro geological services; biologists; and heating, ventilation, and air conditioning (HVAC).

(2) “Authorized signature” means the original signature of the Chief Elected Official or the signature of a person who is designated by charter, resolution, code, ordinance or other official action of the local government to sign CDBG related documents. If a signature other than the Chief Elected Official is submitted, a copy of that designation must accompany that signature.

(3) “Direct Benefit” is CDBG assistance that promotes or enhances individual well-being including housing rehabilitation, sewer and water hookups, or job creation by a Participating Party. Activities that only meet a national objective through an area-wide determination do not confer direct benefit.

(4) “Full time employees” means all those persons employed by the local government who are payroll employees on any one specific payroll date during the 45 day period prior to the application deadline date and who receive full vacation, retirement, and any other benefits provided by the employing local government to all its regular employees. Elected officials are not defined as “full time” employees. For county governments, only the employees of the Board of County Commissioners shall be counted.

(5) “Fundable range” shall be determined from the scores of the eligible applications, ranked in descending order by the Department. Following appeals, awards will be made based upon rank beginning with the highest scoring application and proceeding in descending order until all available funds in that category for that funding cycle are depleted. The score of the last application funded shall establish the lowest score in the fundable range if there are no eligible unfunded applications remaining in the category. If there are unfunded applications in a category, the highest scored unfunded application shall establish the lowest score of the fundable range.

(6) “Job creation location” means the geographic location within the project area where job creation activities of the Participating Party and expenditure of non-public funds will occur. This excludes any locations where public funds from any source are being expended for local government-owned infrastructure, local government owned public facilities or within public easements or rights-of-way.

(7) “Jobs – created” means jobs – permanent which were not in existence in the State of Florida prior to the provision of the CDBG assistance and which would not be created without CDBG assistance. In cases where an employer both creates and eliminates jobs, “jobs – created” means the difference between the new jobs - created and the old jobs eliminated.

(8) “Jobs – permanent” means a full-time job or a full-time equivalent job (2,000 hours annually) as set forth in the application which is necessary to the overall goals and objectives of a business and which has no known end, and which will be maintained by the Participating Party for a minimum of one year from administrative closeout of the subgrant.

(9) “Jobs – retained” means jobs – permanent which, without CDBG assistance, would be abolished by layoffs, plant closing, or other severe economic or natural conditions or as otherwise clarified in 24 C.F.R. 570.483(b)(4), as effective on \_\_\_\_\_.

(10) “Jurisdiction” means the corporate limits of a local government or the area over which it has zoning authority.

(11) “Liquidated damages” are funds paid to a local government by a contractor, vendor, or any other party pursuant to a CDBG-funded contract when such payment is triggered by nonperformance or failure to perform on their part. This definition is applicable whether such funds are withheld by the local government or repaid or rebated to the local government by the contractor, vendor or third party.

(12) “Local government” means a unit of general purpose local government, i.e., county governments and municipal governments (incorporated cities, towns and villages) within the State of Florida. Unless otherwise stated, “applicant” shall refer to the applying local government.

(13) “Main Street Program participant” means an entity in a local government’s jurisdiction which has been selected for participation in the Florida Main Street Program by the Secretary of State and are currently considered an active participant in the Main Street Program by the Department of State as of the application date.

(14) “Minority” means a Black, American Indian, Alaskan native, Hispanic, Asian, Hasidic Jew or Pacific Islander individual.

(15) “Open contract” means any subgrant which has not been administratively closed.

(16) “Participating party” means a business or other entity responsible for creating or retaining jobs – permanent as part of the proposed Economic Development project. The applying local government shall not be a participating party in its own application.

(17) “Principal” means the owner of a 50 percent or more interest in a business activity.

(18) “Project area or areas” means the site or sites upon which all subgrant-related construction activities take place, without respect to funding source.

(19) “Public notice” is defined as an advertisement published in a local newspaper of general circulation at least five days, and no more than 20 days, prior to event for which the notice was placed.

(20) “Section 3” means Section 3 of the Housing and Community Development Act of 1968, as amended, and 24 C.F.R. Part 135, as effective on \_\_\_\_\_, relating to employment and other economic opportunities for lower income persons.

(21) “Service area” means the total geographic area to be served by a subgrant-funded activity, where at least 51 percent of the residents are low and moderate income persons. A service area will encompass all beneficiaries who are reasonably served or would be reasonably served by an activity.

(22) “Time period” or “days” means calendar days. All time periods specified in this rule, the application, the contract and all correspondence to and from the Department refer to calendar days unless otherwise specified.

(23) “Very low-income family (VLI)” is a household whose annual income does not exceed 30 percent of the median income for the area or does not exceed 30 percent of the median income for the State, whichever is higher, as most recently determined by HUD. This information can be found in the HUD adjusted census data in the elements titled FAMVLOW and NFAMVLOW.

Specific Authority 290.048 FS. Law Implemented 290.042, 290.043 FS. History–New \_\_\_\_\_.

#### 9B-43.004 Eligible Applicants.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.044, 290.046 FS. History–New 11-30-87, Amended 10-11-88, 10-14-90, 12-29-91, 1-30-95, 2-13-96, 1-29-98, 3-28-02, Repealed \_\_\_\_\_.

#### 9B-43.0041 Application and Administrative Requirements.

The Florida Small Cities CDBG program is governed by the Housing and Community Development Act of 1974, as amended; Title 24 C.F.R.; Sections 290.0401-.048, F.S.; the “Guide to National Objectives and Eligible Activities for State CDBG Program” published by the US Department of Housing and Urban Development; and the Florida Small Cities CDBG Program Application Manual, all of which are incorporated herein by reference, as effective on \_\_\_\_\_.

(1) Application Process.

(a) An annual application cycle will be announced in anticipation of federal funding. The announcement will include the beginning and ending dates of the application cycle and the application deadline.

(b) Once an application is submitted to the Department, no aspect of the application may be revised to improve the score or broaden the scope of the project.

(c) If an activity is determined to be ineligible for funding pursuant to 24 C.F.R. 570.482, as effective on \_\_\_\_\_, the Department will reduce the amount requested for the ineligible activity and associated complementary activities. The application will be re-scored after this reduction.

(d) Applicants may submit either a Housing or Neighborhood Revitalization application. If both are received from a single local government, only the first application logged in by the Department will be scored. The second application will be returned.

(e) Economic Development applications received by the application deadline will be scored, ranked and, if successful, awarded until all available funds are committed; however, should initial application requests not exceed available funds, applications received after the application deadline will be reviewed and awarded on a first-come, first-served basis during the application cycle until all funds are committed.

(f) Documents to meet application requirements or additional submissions resulting from the site visit must be submitted in original or photocopy form. Facsimile or electronic submissions are not acceptable.

(2) Grant Ceilings.

(a) Grant ceilings establish limits on the amount of funds that may be requested in a single subgrant application for Commercial Revitalization, Economic Development, Housing or Neighborhood Revitalization funding based on the most recently available U.S. Census of Population data. In the case of county government applicants, the population shall include only the unincorporated areas of the county.

(b) Local governments shall comply with the LMI population and subgrant ceilings listed below to determine the maximum amount of funds for which they may apply. Population groupings are based on HUD modified census figures summarizing low and moderate income population.

<u>LMI Population</u>	<u>Grant Ceiling</u>
<u>1-499</u>	<u>\$600,000</u>
<u>500-1,249</u>	<u>\$650,000</u>
<u>1-250-3,999</u>	<u>\$700,000</u>
<u>4,000-10,549</u>	<u>\$750,000</u>
<u>10,550 and above</u>	<u>\$750,000</u>

(c) The Department shall offer a local government which scores within the fundable range an amount less than that requested in the application if insufficient funds are available to fund the total subgrant request.

(3) Application Scoring.

(a) The maximum score possible in each program category is 1,000 points. These points shall be divided among three program factors as specified below:

Community-wide needs – 250 points

Program Impact, Scope of Work, LMI Benefit – 650 points

Outstanding Performance in Equal Opportunity Employment and Fair Housing – 100 points

(b) The Department shall calculate Community-wide Need Scores for all eligible local governments based on the most recent and uniformly available federal and state data. Current decennial U.S. Census data shall be used unless otherwise noted. The maximum Community-wide Needs Score is 250 points. Data shall be further defined as:

1. For municipal government applicants, data relevant for the entire incorporated area shall be used;

2. For county government applicants, data relevant for only the unincorporated areas within the county shall be used;

3. For municipalities incorporated since the most recent census, block group or census tract data for the area that was incorporated shall be used where available; otherwise a proportion of the county’s census data shall be used to calculate the community-wide needs score.

a. Three factors shall be used to determine the community-wide needs score with the following maximum points available for each:

b. Number of persons below poverty – 125 points

c. Number of year-round housing units with 1.01 or more persons per room – 62.5 points

d. Number of low and moderate income persons according to the latest HUD adjusted census data – 62.5 points

4. Method of Calculation. Eligible local governments shall be compared on each factor with all other local governments in their LMI population group as designated herein. Calculating each local government’s score shall include the following steps:

a. The highest statistic in each population group for each factor identified herein shall be the basis for relative comparison of all other eligible local governments in the population group, as illustrated below:

Local government’s statistic on factor divided by the highest statistic on factor for all eligible local governments equals percentage to be used for local government’s multiplier

b. For each eligible local government, the percentage calculated shall then be multiplied by the maximum number of points available for that particular factor, as follows: eligible local government’s percentage x maximum points available = score for eligible local government on factor

c. The Community-Wide Needs Score factors shall be summed for each eligible local government for the overall Community-Wide Needs Score. Pursuant to Section 290.046(3)(b), F.S., each local government awarded subgrant

funds shall have its community-wide needs score reduced by 5 points for every \$100,000, or fraction thereof, of funding awarded. This adjustment shall not be made during the first application cycle in which the most recent census data is used. All adjustments for subgrant funds received shall be based on subgrants received in all application cycles after the most recent census data was first used. This calculation shall be based on all funds awarded as of the end of the month prior to the opening date of the application cycle. The adjusted community-wide needs score cannot be less than zero.

(c) In the event that two or more applications receive an equal final score, the application addressing the highest State priority goal as reflected by the goal points for application activities shall receive first consideration. If a tie still exists, then the applicant with the highest community-wide needs score shall receive first consideration. If a tie still exists, the application that will provide direct benefit to the largest number of low and moderate income persons will receive first consideration.

(4) Consistency with Local Comprehensive Plan.

(a) The application shall include affirmation that the proposed activities are not inconsistent with applicable elements of the adopted local comprehensive plan and shall document this consistency by including the applicable excerpts from the applicant's comprehensive plan in the supporting documentation section of the application.

(b) If the Department determines that an application is inconsistent with the adopted local comprehensive plan, the applicant shall be advised of that determination in the completeness review letter. If after review of the applicant's response, the Department reaffirms its determination of inconsistency, the application shall be rejected.

(5) Interlocal Agreements. An applicant may propose activities in other eligible jurisdictions within the following parameters:

(a) Application scoring criteria are based on the applicant's jurisdiction.

(b) Activities undertaken outside the applicant's jurisdiction are also undertaken within the applicant's jurisdiction, except in an Economic Development application where the infrastructure activities may be undertaken exclusively outside the jurisdiction.

(c) No more than 25% of the service area and/or beneficiaries may reside outside the applicant's jurisdiction (except for Economic Development projects).

(d) The applicant shall include with the application an executed Interlocal Agreement which:

1. Includes as parties all local governments whose jurisdictions are included in the project and/or service area(s);

2. Authorizes the applicant to undertake the activities in all jurisdictions included in the interlocal agreement; and

3. Affirms that all activities are not inconsistent with each local government's comprehensive plan and documents this requirement by including the applicable excerpts of each local government's comprehensive plan in the supporting documentation section of the application.

(6) Documenting LMI Benefit.

(a) HUD Census Data – LMI benefit may be documented by using HUD-provided Census Data where the service area geographically corresponds with block groups, census tracts, or local government geographical limits. A jurisdiction-wide activity using census data rather than a survey to establish the national objective of benefit primarily to low and moderate income persons may score VLI points by calculating a percentage of VLI benefit using census data. VLI beneficiaries are calculated by totaling, for each block group in each census tract, the numbers shown in two data areas: FAMVLOW and NFAMVLOW. This total of VLI beneficiaries is divided by the total beneficiaries to establish the VLI percentage for scoring the appropriate VLI beneficiary points.

(b) Sampling Survey Methodology – A sample-based survey of the beneficiaries must utilize the "Income Verification Form," which is hereby incorporated by reference as effective on \_\_\_\_\_, and must correspond with the random sampling requirements established by HUD in Notice CPD-05-06, as effective on \_\_\_\_\_.

1. The survey process must verify eligibility of any proposed direct benefit activities, certify the number of projected very low, low and moderate income households and beneficiaries, and the total number of beneficiaries.

2. Where the sample-based survey results substantially overstate the proportion of persons with low or moderate income in a service area, the Department will require the local government to provide supporting evidence which substantiates the survey data. If the survey results are found to be inaccurate, the application shall be rejected.

(c) Small Service Area Survey Methodology. For surveys of service areas under 50 households, all households must be surveyed. Any non-responding household must be assumed to be above low and moderate income. The number of household members for non-responding households may be verified through third parties.

(d) A survey approved by the Department for a CDBG application remains valid for the same geographic service area for up to five years from the date the survey was completed.

(e) Only the methods of LMI benefit determination provided for in this rule shall be used.

(7) Site Visits. Prior to issuing awards, the Department will conduct site visits.

(a) The Department shall notify the local government in writing of the date and approximate time the site visit will take place.

(b) The Department shall examine all documents that have been certified to in the application.

(c) Economic Development site visits will require the participating party/parties to be present, or the participating party must meet with Department staff within 30 days after the site visit at the Department of Community Affairs. Should a participating party fail to meet with Department staff, it must be withdrawn from the application by the local government or a 251-point penalty shall be assessed against the Program Impact score. During the site visit, the local government must provide documentation requested by the Department based on the application review.

(8) Completeness Review Letter (for all grant categories except economic development). Following site visit, the Department will advise the applicant of the status of the review.

(a) The Department shall request in writing required documentation determined unavailable or inadequate during site visit. Except for Economic Development applications, applicants shall have 12 calendar days from the date the request is received to provide appropriate documentation to the Department.

(b) If the Department has not received the requested documentation by the deadline date at 5:00 p.m. (E.S.T.), the applicant's funding request shall be revised accordingly and the following reduction in scores shall be applied:

1. Maps (where required) – 250 points
2. Interlocal Agreement, if applicable – 250 points

(c) Additional completeness Review Items for Neighborhood Revitalization Applications. During the completeness review period, the Department shall review applications that propose land assembly or site preparation for new housing construction for low and moderate income persons to determine whether documentation is provided to show:

1. Firm commitments for construction from the developer,
2. Documentation of ownership, or
3. An option on the land to control the sale to or use by low and moderate income persons is provided in the application. Documentation that the proposed site is properly zoned shall also be submitted.

(d) Additional Completeness Review Items for Economic Development Applications. The following completeness requirements must be met for Economic Development applicants:

1. Within 60 days of the applicant's receipt of the Award and Offer to Contract letter, the Department must receive the Subgrant Agreement executed by the local government and documentation required to address all issues identified during the site visit. The date of receipt of the Award and Offer to Contract letter shall not be included in the 60 days.

2. In the event that a participating party withdraws prior to the execution of the subgrant agreement by the Department, and the application remains within the fundable range based on the remaining participating parties, those remaining

participating parties may not increase the job creation numbers or leverage claimed for points beyond the score of the original application. Replacement of participating parties shall not be allowed without withdrawal and resubmission of the application.

(9) Eligibility. Contract performance shall be considered "on time" for open subgrants that have received an agreement period extension of less than twelve months. Performance is on schedule when expenditures and work activity plans stated in awarded subgrant agreement(s) have been met or surpassed. The certification of "on time" performance, as provided in the application, is subject to verification by Department staff. If the Department determines that the certification of "on time" performance is inaccurate and the performance is not in accordance with the expenditures and work plan accomplishments described in the subgrant agreement, then the application will not be considered further.

Specific Authority 290.048 FS. Law Implemented 290.044, 290.046, 290.047 FS. History–New \_\_\_\_\_.

#### 9B-43.005 Application Criteria.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.044, 290.046, 290.047 FS. History–New 11-30-87, Amended 10-11-88, 9-25-89, 10-14-90, 12-29-91, 1-30-95, 2-13-96, 12-25-96, 3-28-02, Repealed \_\_\_\_\_.

#### 9B-43.0051 Grant Administration and Project Implementation.

##### (1) Administrative Costs.

If proposed administrative cost percentages in an application are exceeded, as set forth in Section 290.047, F.S., the dollars for administrative costs shall be reduced prior to the offering of a subgrant award in order to bring the percentages into compliance based on the total eligible subgrant costs.

(2) Lead-Based Paint. The applicant shall adopt and implement procedures to fulfill regulatory and statutory requirements relating to Lead-Based Paint pursuant to 24 C.F.R. 570.487, 24 C.F.R. 35, and Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Section 1251 et seq.), as effective on \_\_\_\_\_. The applicant is required to:

- (a) Prohibit use of lead-based paint;
- (b) Notify potential beneficiaries of the hazards of lead-based paint;
- (c) Inspect properties prior to initiating rehabilitation to determine if lead-based paint is present;
- (d) Undertake appropriate protection of workers and occupants during abatement;
- (e) Ensure proper cleanup and disposal procedures are used; and
- (f) Retain records of enforcement and monitoring for at least three years.

(3) Rehabilitation Standards. Upon completion of the rehabilitation program, all housing units addressed with CDBG funds must be in compliance with the subgrantee's local

building code and the HUD Section 8, Housing Quality Standards detailed in 24 C.F.R. 882.109, as effective on \_\_\_\_\_. This requirement does not apply if the construction activity is limited to water hookups, sewer hookups, the abandonment of wells, or the abandonment of septic systems with no internal or external modifications to the housing structure.

(4) Architectural and Engineering Costs. The maximum percentage of subgrant funds allowed for architectural and engineering costs shall be based on the subgrant activities which require architectural design and engineering and shall not exceed the Rural Development (RD) Rural Utility Service (RUS) fee schedule (Form RD 1942-9) in Florida RUS Bulletin 1780-9, incorporated herein by reference, as effective on \_\_\_\_\_.

(a) If more than one design professional is needed for an activity or activities (e.g., a landscape architect in addition to an engineer for sidewalk construction in a Commercial Revitalization project), the local government shall not exceed the appropriate RD/RUS fee curve for each activity covered by each design professional negotiated separately. For projects involving both Table I and II activities, engineering costs shall be pro-rated appropriately.

(b) For each additional engineering service as defined in Rule 9B-43, F.A.C., and for preliminary engineering, the local government shall negotiate a reasonable fee for the service following procurement procedures in 24 C.F.R. 85.36, as effective on \_\_\_\_\_. Preliminary engineering costs not to exceed one-half of one percent of the estimated construction cost may be paid with CDBG funds over and above the amounts included in the RD/RUS fee schedule.

(c) If "readiness to proceed" points are part of the final application score, then CDBG subgrant funds for engineering costs shall not include preliminary engineering and shall not exceed \$10,000 for non-inspection engineering plus the percentage in the fee schedule for Table I-A, Table II-A, or a prorated amount of both tables for projects involving activities included in both tables for engineering inspection.

(5) Beneficiaries of Public Improvements.

For activities where hookups or connections are required for beneficiary access to the public improvement, low and moderate income benefit shall be determined by the number of low and moderate income persons in households connected to and able to use the water, sewer or other infrastructure.

(6) Underwriting Analysis. The provisions of 24 C.F.R. 570.482(e), as effective on \_\_\_\_\_, regarding underwriting analysis are incorporated herein by reference.

(7) Completion of Activities. The Department will acknowledge a local government's closeout by mailing an administrative closeout notification or providing a letter regarding Notice of Outstanding Closeout Issues (NOCISS).

(a) The NOCISS letter shall identify impediments to closeout which the local government must resolve before the Department's review of the closeout will proceed.

(b) A local government's response to a NOCISS letter must be received by the Department at least ten days before the application deadline in order for the local government to be eligible to apply during the next funding cycle. For a NOCISS response received at least ten days prior to application deadline, eligibility will be established if the response satisfies the deficiencies set forth in the NOCISS letter, regardless of whether or not the Department's closeout notification has been mailed.

(8) Non-performance Penalties. Subgrant application penalties and subgrant application restrictions shall be assessed based on non-performance of contractual requirements related to project accomplishments. The following penalties and restrictions will apply to subgrant agreements for which an administrative closeout was submitted prior to the upcoming application cycle deadline and will apply regardless of whether the subgrant agreement has been amended to permit the reduction in accomplishments:

(a) A penalty of five points per housing unit, up to a maximum of 50 points, for failure to address the number of housing units scored in the original Housing category application.

(b) A penalty of five points per low and moderate income household not served OR a penalty of five points for each business facade not addressed, as geographically displayed on the original application maps (as modified, if necessary, during the completeness process) in the Neighborhood Revitalization or Commercial Revitalization categories, up to a maximum of 50 points. All direct benefit proposed in the application (e.g., water hookups) must be completed to avoid this penalty. No penalty shall be assessed for failure to provide a water or sewer hookup if the hookup is not possible because the home is vacant or was damaged or destroyed after application submission and there are no other homes in the service area that were identified in the application as unmet need which qualify for a hookup.

(c) A penalty of five points per job, up to a maximum of 50 points, for failure to create or retain the total number of jobs in the original contract in the Economic Development category.

(d) A penalty of 150 points if the Department takes formal action under the terms of the contract to terminate a subgrant agreement for an event of default. This penalty will expire two years from the subgrant agreement termination date.

(e) Submission of inaccurate information may be subject to one or more of the following penalties:

1. In the case of monitoring or audit responses, it shall result in the revocation of closeout status, audit clearance, monitoring report clearance, etc.

2. In the case of any action which avoids a penalty, the penalty will be assessed.

3. In the case of an administrative closeout status, it shall result in the nullification of the eligibility of the local government to apply for and receive additional CDBG funding in accordance with Section 290.046(2)(c)(i), F.S. Such revocation of administrative closeout status will also affect subsequent Department actions made on that basis, including the cancellation of any subsequent awards and repayment by the local government of any funds previously expended under the nullified subgrant agreement.

(f) All penalties in subsection (8) will expire two years from the date of administrative closeout or subgrant termination by the Department.

(g) If the subgrant agreement is terminated with no expenditures, or is terminated with expenditures for administration and/or engineering only, no penalty will be assessed.

(h) The Department will waive these penalties if the local government is unable to meet subgrant agreement requirements due solely to a state or federally declared natural disaster or emergency.

(9) Procurement. Grant funds shall be used to obtain commodities and services only in accordance with written procurement procedures adopted by the local government and shall comply with the provisions of 24 C.F.R. 85.36, as effective on \_\_\_\_\_, and, for covered professional services contracts, Section 287.055, F.S., (Consultants Competitive Negotiation Act).

(a) Any procurement which requires public notice in a newspaper shall be published in a daily newspaper of general circulation in a nearby Office of Management and Budget (OMB) designated metropolitan statistical area (MSA). Alternatively, a local government may substitute such notice with a combination of local newspaper publication and mailed announcements to potential bidders, which generates at least three responsible and responsive bids or proposals. Such publication and/or mailing shall allow at least 12 days for receipt of the proposals or bids.

(b) The Department must provide written permission prior to the local government awarding any contract exceeding \$25,000 procured as a result of inadequate competition, a sole source or a noncompetitive procurement. For contracts below \$25,000, the local government's files must document the justification for such noncompetitive procurement which complies with 24 C.F.R. 85.36(b)(4), as effective on \_\_\_\_\_.

(c) All contracts for professional services shall conform to the following:

1. Any Request for Proposals which includes more than one service shall provide that:

a. Proposals may be submitted for one or more of the services;

b. Qualifications and proposals shall be separately stated for each service;

c. The evaluation of the proposals shall be separate for each service.

2. A written evaluation, such as a ranking sheet or narrative, shall be prepared for each proposal, ranking or comparing each proposal to the criteria in the published Request for Proposals. Based on that criteria, the written evaluation will document why the successful proposal was selected.

3. A separate professional services contract must be procured and executed between the local government and any professional services consultant for each particular CDBG subgrant and each service. Each advertisement for procurement of CDBG professional services, except for subgrant application preparation, must identify either the CDBG subgrant cycle by federal fiscal year or the CDBG subgrant agreement number.

4. Each professional services contract must reference the CDBG subgrant agreement to which it is applicable.

(d) Construction Contracts.

1. If CDBG and other sources of funding are being jointly used to fund activities under a single contract, the activities to be paid for with CDBG funds must be shown separately in the bid proposal so that the CDBG activities and the amount of the contract to be paid from CDBG funds are identifiable.

2. If, after applying any specified deductive alternates, construction bids exceed available funds, the local government shall not negotiate with the low bidder unless there is only one bidder or all bidders are allowed to submit revised bids for the revised project.

3. If the construction cost can be reduced by deleting entire line items or reducing quantities based on unit prices identified in the bid, the effect of such deletions or reductions on all bidders' prices shall be determined. Contract award shall be made to the low, responsive and responsible bidder for the revised project.

4. All contracts in excess of \$100,000 covered by Section 3 regulations shall contain the language required in 24 C.F.R. 135.38, as effective on \_\_\_\_\_.

5. The provisions of this subsection shall not be construed to conflict with or supersede the requirements of Section 287.055, F.S., or any other applicable State or federal law.

(10) Expenditures and Limitations.

(a) No payment from the Department shall be for an amount less than \$5,000, unless it is a local government's final request for funds.

(b) Local governments operating on a reimbursement of funds basis must submit at least one request for funds each quarter which reflects actual project expenditures for the quarter.

(c) Local governments may maintain no more than \$5,000 of cash-on-hand to meet daily cash needs. Amounts greater than \$5,000 shall be expended within 14 days or refunded to the Department.



(d) Escrow Accounts. Local governments may draw down CDBG funds and deposit them into an interest-bearing escrow account for housing rehabilitation. An escrow account may be established when direct grants or loans are made to owners of private property for the purpose of housing rehabilitation. Escrow accounts shall only be used pursuant to 24 C.F.R. 570.511, as effective on \_\_\_\_\_.

1. Funds may be requested only after approval of the contractor and amount of the contract by the local government. If funds are received by the local government prior to the execution of a contract that obligates those funds, those funds will be returned to the Department within seven days of their receipt.

2. The local government must track the requirements for, receipt of, and disbursement of all funds for each housing unit.

3. Funds requested and escrowed for use on housing units shall not be used for any other purpose.

4. Funds requested and escrowed for a housing unit must be expended on that housing unit within 45 days from date of deposit in the escrow account or be returned to the Department.

5. Interest earned on escrow accounts shall be returned quarterly to the Department.

(11) Amendments. All proposed amendments must be approved by the Department except for quantity revisions to accomplishments which do not reduce the number of beneficiaries and deobligation of funds at closeout.

(a) Only those amendments reducing the number of intended beneficiaries, or accomplishments, from the original application shall require review by the Citizens Advisory Task Force and a public hearing with public notice.

(b) An amendment reducing the score below the fundable range will not be approved by the Department.

(c) Documentation Required. All requests for subgrant agreement amendments shall include the following written documentation for review by the Department:

1. A cover letter signed by the Chief Elected Official or his or her designee which describes the need for the proposed changes and their effect upon the approved project. If the amendment involves a score reduction, the letter must state the amended score.

2. All application forms that would be changed by the proposed amendment.

3. If applicable, a revised activity work plan.

4. If applicable, a revised budget showing the current and amended budget.

5. If there is a change in activity location, a legible map which indicates the proposed change.

6. If applicable, a copy of the minutes of the meeting of the Citizen's Advisory Task Force (CATF) when the proposed amendment was reviewed.

7. If applicable, a copy of the public notice for the public hearing at which the amendment was approved, which shall evidence compliance with subsection 9B-43.001(19), F.A.C.

8. Signature of the Chief Elected Official on Form DCA-69 or documentation from the local governing body authorizing the proposed amendment.

(d) The amendment must be received by the Department at least 45 days prior to the end of the subgrant agreement. If the amendment is extending the subgrant agreement period, it must be received by the Department at least 90 days prior to the end of the subgrant agreement.

(e) If the local government requests administrative closeout prior to the termination date of the subgrant agreement, any amendment affecting closeout and requiring Department approval must be included with the closeout.

(f) Time Extensions to Subgrant Agreements. Any proposed amendment extending the termination date of the subgrant agreement must be approved by the Department. Each time extension amendment requested by the local government must explain the delay and justify the need for the extension. If such justification is not deemed reasonable by the Department, the request will be rejected.

(12) Subgrant Closeout.

(a) At the time of submission of the closeout report, the local government must have available documentation which verifies its certification that all construction has been completed, inspected and approved by all parties prior to the subgrant agreement end date and submission of the administrative closeout.

(b) An administrative closeout may be submitted only when the local government has no more than \$5,000 in total funds on hand. All funds drawn from the Department and not expended that exceed \$5,000 must be returned to the Department prior to or with the submission of the closeout. If the local government has transferred funds from the regular CDBG administrative account or the escrow account and these funds remain under the control of the local government, the funds are not considered expended for purposes of administrative closeout.

(c) Upon completion of the activities contained in the local government's CDBG subgrant agreement, including any amendments, the local government shall submit to the Department a closeout which, at a minimum, gives the final statement of costs, certifies that the project and all non-administrative activities are completed and accepted, that all costs except those reflected on the closeout have been paid, that the final score at closeout is within the fundable range as last amended and reports demographics of the program's beneficiaries.

(d) If any change has been made since the application map or the last map amendment in Commercial Revitalization or Neighborhood Revitalization, the closeout shall also contain a revised map of the activities completed during the term of the CDBG contract.

(e) The closeout for Housing contracts shall, at a minimum, include a list of the households assisted by the contract and certify that they were within the local government's jurisdiction. Additional information required by HUD may be requested.

(f) For activities where hookups or connections are required for beneficiary access to the public improvement, low and moderate income benefit shall be determined by the number of low and moderate income persons in households connected to and able to use the water, sewer or other infrastructure at the time of administrative closeout. At a minimum, evidence at the time of closeout must show:

1. The total number of persons in all households in the service area;

2. The number of low and moderate income persons in households connected to the infrastructure; and

3. Documentation that the number of LMI persons in households connected to the infrastructure divided by the total number of beneficiaries in the service area equals at least 51 percent or higher, if required to remain within the fundable range.

(i) CDBG funded activities may not extend beyond the location of the last LMI beneficiary except where it is required for sound engineering, operation, or design reasons as certified by a licensed engineer.

(ii) For activities where hookups or connections are required as a condition for beneficiary access to a CDBG funded public improvement, CDBG funds must be used to pay for direct access costs for LMI beneficiaries.

(iii) Where non-LMI beneficiaries will have to pay a one time fee (i.e., assessment, impact fee, etc.) to connect to or access the CDBG funded public improvement, and where a periodic service fee (i.e., water bill, sewer bill, etc.) will be charged, the proposed non-LMI beneficiaries will be advised of the estimated cost of the one-time fee and all beneficiaries will be advised of the estimated amount of any periodic service fee. The application narrative and budget will outline the estimated costs to be paid by non-LMI beneficiaries. Surveyed beneficiaries shall be advised of both fees in writing with signature acknowledgement of receipt and understanding prior to application submission. If census data is used, a random sample, representing 10 percent (%) of the beneficiaries must be advised writing with signature acknowledgement of receipt and understanding prior to application submission.

(g) A local government whose closeout is not received by the Department prior to the date of the opening of the application cycle, as defined in the Notice of Funding Availability (NOFA), shall not be eligible pursuant to subsection 9B-43.003(7), F.A.C.

(h) The closeout must contain original signatures. Facsimile (FAX) submissions are not acceptable.

(i) If a local government fails to meet contractual requirements on time, the Department reserves the right to require that a local government financially (not administratively) close out a subgrant agreement in order to meet federal requirements for the timely distribution of funds set by HUD.

(j) The closeout is due within 45 days after expiration or termination of the subgrant agreement.

#### (13) Audit Requirements.

(a) If an audit or an attestation statement has not been received from a local government with either an open or administratively closed contract by the April 30 deadline date, a 25 point penalty will be assessed. The penalty will expire two years from the date that the audit or attestation statement was due.

(b) If audit requirements are not documented at the time of site visit because a required audit was not performed, the Department shall find that the local government has inadequate administrative capacity. If a required audit was performed but not submitted to the Department, the application will be considered, but any funded CDBG contract will contain special conditions limiting expenditure of funds until all audit issues are resolved.

(14) Program Income. Any program income generated by a CDBG subgrant, whether open or closed, shall be reported and returned to the Department.

(15) Non-program Income. Liquidated damages, rebates, refunds, or any other "non-program income" funds received shall be used to conduct additional eligible CDBG activities or returned to the Department. Additional direct and quantifiable costs (i.e., legal fees, court costs, engineering fees or administrative fees as defined in this rule) generated by the incident creating the liquidated damages may be deducted from the total liquidated damages prior to undertaking additional activities or returning funds to the Department. Use of the funds for additional eligible CDBG activities must be preceded by an amendment to the CDBG contract detailing their use.

Specific Authority 290.048 FS. Law Implemented 290.044, 290.046, 290.047 FS. History--New \_\_\_\_\_.

#### 9B-43.006 Application Procedures for All Categories.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.044, 290.046, 290.047, 290.0475 FS. History--New 11-30-87, Amended 10-11-88, 9-25-89, 10-14-90, 12-29-91, 4-26-93, 1-30-95, 2-13-96, 12-25-96, 1-29-98, 3-28-02, Repealed \_\_\_\_\_.

9B-43.0061 Emergency Set-aside Assistance.

Applications will be accepted from eligible applicants for the Emergency Assistance Set-aside in accordance with the following criteria:

(1) The maximum funds available under this set-aside from each federal fiscal year's allocation shall be five percent (5%) of the funds and shall be available from April 1 of the year for which they are allocated through the third quarter (March 31) of the next State fiscal year.

(2) Any funds in this set-aside for which a notice of intent to submit an emergency application has not been received prior to March 31 shall be reallocated in accordance with Section 290.044(4), F.S.

(3) Applications will only be accepted from eligible local governments, as defined in Section 290.042(5), F.S., which have been declared by executive order of the Governor to be in a state of emergency as provided under Section 252.36, F.S., and any subsequent emergency rule criteria prepared by the Department to address the emergency.

(4) The purpose of funds shall be to meet serious, urgent community needs which pose an immediate and direct threat to the health, safety and welfare of eligible residents of low and moderate income and are eligible activities. The activities to be funded must be documented as being directly related to the disaster event covered in the executive order and documented through disaster assessment reports or similar documentation. The amount of funds requested shall be limited to that amount necessary to address the emergency need.

(5) Applicants under this category shall demonstrate that no other federal, State or local disaster funds to address the emergency are available.

(6) All other provisions of this Rule Chapter shall apply to the Emergency Assistance Set-aside unless otherwise stated.

Specific Authority 290.044 FS. Law Implemented 290.044 FS. History—New

9B-43.007 Scoring System.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.046 FS. History—New 11-30-87, Amended 10-11-88, 10-14-90. Repromulgated 1-30-95. Amended 2-13-96, 3-28-02, Repealed \_\_\_\_\_.

9B-43.0071 Section 108 Loan Guarantee Program.(1) Application Process.

(a) Projects which propose loans to a third party or parties shall include letters of commitment from all funding sources evidencing sufficient funds to complete the project. For economic development projects, these commitments shall include at a minimum those stated in the Economic Development section of the Florida Small Cities CDBG Application Manual under "Initial Participating Party Commitments."

(b) Following the receipt of a formal invitation to submit an application, the local government (Applicant/Borrower) shall have a third party conduct and complete a detailed underwriting analysis in accordance with 24 C.F.R. 570.482 (e) (2) and Appendix A of 24 C.F.R. Part 570, as effective on \_\_\_\_\_. The Department may, at its discretion, require additional underwriting standards, criteria or review.

(c) The Department shall retain the right of approval of the third party underwriter, the method of analysis and adherence to the guidelines in 24 C.F.R. 570.482 (e) (2) and Appendix A.

(d) The local government shall submit the underwriting analysis with the final application package. The Department reserves the right to require additional information from the local government, the underwriter and/or the third party to whom a loan is proposed. Once a financial underwriting analysis and other required documentation has been provided by the local government, any material change, including changes in corporate or ownership structure, which affects the underlying assumptions upon which the local government relied will require that the underwriting analysis be re-evaluated by the local government and any assistance requested for the participating party must be adjusted if a material change has occurred.

(2) Site Visit and Contracting Period.

(a) The Department will conduct a site visit following review and acceptance of the final application package. For projects which propose loans to a third party or parties, a representative of the third party(ies) shall attend the site visit or must meet with Department staff within 30 days after the site visit at the Department of Community Affairs.

(b) The local government shall submit a fully executed Participating Party Agreement meeting the requirements set out in the Economic Development section of the Florida Small Cities CDBG Application Manual.

(3) Administration and Reporting.

(a) The local government shall copy the Department on all written correspondence with HUD, the underwriter, the Participating Party and all other involved parties.

(b) The local government shall at a minimum provide the Department with quarterly progress reports until such time as the project is administratively closed. This report shall include documentation in a form acceptable to the Department of the project's draws and repayments, accomplishments to date and updates on previous areas of concern as determined by the Department.

Specific Authority 290.048 FS. Law Implemented 290.0455 FS. History—New

9B-43.009 Program Requirements for Housing.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.043, 290.044, 290.046 FS. History—New 11-30-87, Amended 10-11-88, 10-14-90, 12-29-91, 4-26-93, 1-30-95, 2-13-96, 12-25-96, 1-29-98, 3-28-02, Repealed

9B-43.010 Program Requirements for Neighborhood Revitalization.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.043, 290.044, 290.046 FS. History—New 11-30-87, Amended 10-11-88, 10-14-90, 12-29-91, 4-26-93, 1-30-95, 2-13-96, 12-25-96, 3-28-02, 3-28-02, Repealed

9B-43.012 Program Requirements for Economic Development.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.044, 290.046 FS. History—New 11-30-87, Amended 10-11-88, 10-14-90, 12-29-91, 1-30-95, 2-13-96, 12-25-96, 3-28-02, Repealed

9B-43.013 Program Requirements for Commercial Revitalization.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.044, 290.046, 290.047 FS. History—New 11-30-87, Amended 10-11-88, 9-25-89, 10-14-90, 12-29-91, 4-26-93, 1-30-95, 2-13-96, 12-25-96, 3-28-02, Repealed

9B-43.014 General Grant Administration of All Categories.

Specific Authority 120.53, 290.048 FS. Law Implemented 290.046 FS. History—New 11-30-87, Amended 10-11-88, 10-14-90, 12-29-91, 4-26-93, 1-30-95, 2-13-96, 12-25-96, 1-29-98, 3-28-02, Repealed

NAME OF PERSON ORIGINATING PROPOSED RULE: Monya Newmyer, Community Program Manager  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kimball Love, Director, Division of Housing and Community Development  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 10, 2006  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 30, 2005

DEPARTMENT OF TRANSPORTATION

RULE CHAPTER TITLE: State Highway System Connection RULE CHAPTER NO.: 14-96

RULE TITLE: Connection Categories and Fees RULE NO.: 14-96.004

PURPOSE AND EFFECT: The method of payment for fees is being expanded to include the use of personal or business checks.

SUMMARY: Subsection 14-96.004(4), F.A.C., is amended to include the use of personal or business checks for payment of fees.

SPECIFIC AUTHORITY: 334.044(2), 335.182(2), 335,183, 335.184 FS.

LAW IMPLEMENTED: 334.044(14), 335.18-.187 FS.

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

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

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

14-96.004 Connection Categories and Fees.

All connections, public or private, shall be determined by the Department to be in one of the following categories:

(1) through (3) No change.

(4) Fee Payment Type. Full payment of fees shall be made by cashier’s check, certified check, personal or business check, cash, or money order, and shall be made payable to the State of Florida Department of Transportation at the time of application. Checks drawn on governmental entity accounts will be accepted by the Department. The use of pre-paid accounts are also allowed in accordance with the Department’s pre-paid account practices. If at any time during the application process a check for the fee is returned for insufficient funds, the applicant will be notified that the application is not complete and no further processing will occur until a cashier’s check, certified check, personal or business check, cash, or money order is presented. The application fee is non-refundable, as required by Section 335.183, Florida Statutes.

Specific Authority 334.044(2), 335.182(2), 335,183, 335.184 FS. Law Implemented 334.044(14), 335.18-335.187 FS. History—New 4-18-90, Amended 7-16-95, 1-23-03, 1-25-04, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Joseph S. Kowalski, CPA, Deputy Comptroller, GAO

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Denver J. Stutler, Jr., P.E., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 18, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 23, 2005

**DEPARTMENT OF TRANSPORTATION**

RULE CHAPTER TITLE:                      RULE CHAPTER NO.:  
Toll Enforcement                              14-100

RULE TITLE:                                 RULE NO.:  
Prosecution of Unpaid Toll Violations      14-100.002

PURPOSE AND EFFECT: Rule 14-100.002, F.A.C., is being amended to comply with statutory revisions, incorporate new and revised forms, and include provisions for dealing with deferred payments of tolls and enforcement of such payments.

SUMMARY: This is an amendment to Rule 14-100.002, F.A.C., mainly regarding the prosecution of unpaid toll violations in connection with unpaid toll notice receipts.

SPECIFIC AUTHORITY: 334.044(2), 316.1001, 338.155(1) FS.

LAW IMPLEMENTED: 316.1001, 334.044(28), 338.155, 338.165, 338.231 FS.

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

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

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

14-100.002 Prosecution of Unpaid Toll Violations.

(1) Application and Scope. The purpose of this rule is to implement Section 316.1001, Florida Statutes, and provide guidance to toll enforcement officers for the issuance of Uniform Traffic Citations (UTC).

(a) It is in the public interest, fair to users who pay posted tolls, and necessary for toll collection and bond accountability, to enforce the payment of tolls and reduce the number of toll violations which occur when prescribed tolls are not paid by users of toll facilities. Failure to pay a prescribed toll is a violation of Section 316.1001, Florida Statutes. Violators of Section 316.1001, Florida Statutes, at Department owned or operated toll facilities are subject to issuance of a UTC by the Department.

~~(b) A violation of Section 316.1001, Florida Statutes, is punishable as a noncriminal moving traffic infraction under Section 318.18, Florida Statutes.~~

~~(b)(e)~~ After exhausting all internal Department SunPass® Sunpass™ database records, the license plate number of a ~~the~~ motor vehicle alleged to have committed a toll violation shall be forwarded to the Florida Department of Law Enforcement or the Department of Highway Safety and Motor Vehicles to obtain the name and address of the registered owner for use in prosecution of toll violations. ~~In the case of joint ownership of the motor vehicle, the UTC shall be issued to the individual whose name appears first on the motor vehicle registration.~~

(2) Issuance of a UTC.

(a) The registered owner of a vehicle, where the vehicle was observed proceeding through a facility at which the driver failed to pay the required toll, shall be subject to issuance of a UTC for a violation of Section 316.1001, Florida Statutes. Mailing the citation to the owner's address constitutes notification. ~~The UTC shall be sent by certified U.S. mail to the address of the registered owner of the motor vehicle involved in the violation. The UTC shall be issued within 14 days of the alleged violation.~~

(b) A photographic image of a vehicle using a toll facility in violation of Section 316.1001, Florida Statutes, captured by the Violation Enforcement System (VES) camera at the toll lane, shall be grounds for issuance of a UTC to the registered owner of the motor vehicle alleged to be involved in the violation.

(c) ~~A~~ Toll Enforcement Officer Observed Violation Form, Form SP050-A-004, Rev. 11/99, from a t~~t~~oll e~~e~~nforcement o~~o~~fficer consisting of the written account of the t~~t~~oll e~~e~~nforcement o~~o~~fficer's observed facts and circumstances indicating that a prescribed toll was not paid shall be grounds for issuance of a UTC.

(d) Florida Turnpike Unpaid Toll Notice Receipt - Driver, SP050-A-006A, Rev. 07/05, and Florida Turnpike Unpaid Toll Notice Receipt – Department, SP050-A-006B, Rev. 07/05, signed by the driver, acknowledging and documenting inability to pay a required toll while in the toll lane or using the toll facility, where the driver fails to send the toll amount as prescribed in the receipt within 10 calendar days, shall be grounds for the issuance of a UTC to the driver.

~~(e)(d)~~ The registered owner of the motor vehicle involved in a toll ~~the~~ violation is responsible for payment of the amount provided for in Section 318.18, Florida Statutes, in addition to any amount that is imposed as a result of a plea, finding of guilt, or other disposition pleading guilty or which is otherwise imposed by the court, unless the owner establishes that, at the time of the violation, the motor vehicle was ~~not~~ in the his or her care, custody, or control of another person. Such fact must be established in accordance with paragraph Rule 14-100.002(4)(b), F.A.C., unless the UTC was issued based on an unpaid toll notice receipt signed by the driver, in which case the requirement of the establishment of this fact by the registered owner is inapplicable.

(3) Validation of Digital Photographic Evidence.

(a) The Department's ~~Toll Enforcement Officer(s)~~, or his or her designee, shall review captured photographic images of vehicle license plates to ensure accuracy and data integrity. The ~~Toll Enforcement Officer(s)~~, or designee, shall also verify that the toll collection system and VES were performing properly, were functional, and were in operation at the time of the alleged toll violation. The ~~Toll Enforcement Officer(s)~~, or designee, shall review the transaction data to ensure that those transactions immediately prior and subsequent to the alleged toll violation transaction were processed correctly. Such information shall be recorded on a Toll Transaction Report, Form SP050-A-005, Rev. 11/99, and shall be used in the processing of the UTC and in any judicial proceeding. The ~~final decision of validation of violation data and decision to issue the issuance of a UTC shall be made by the Toll Enforcement Officer(s). The requirements of this paragraph do not apply to the issuance of a UTC by a toll enforcement officer that is based on an unpaid toll notice receipt signed by the driver and subsequent failure by the driver to properly remit payment. In that instance, a toll enforcement officer shall have knowledge of the procedures and internal controls in place for receiving, processing, and documenting such deferred payments, and shall issue a UTC based upon verification of the failure of the driver to properly remit payment.~~

(4) Response to a UTC.

(a) The UTC shall inform the registered owner that the vehicle registered in his or her name was observed proceeding through a toll facility at which the driver failed to pay the required toll, and provide the registered owner of the options to pay ~~the a fine, as well as in the event of noncontest of the UTC,~~ and instruction on how to contest the UTC.

(b) Upon receipt of a UTC, the registered owner of the motor vehicle involved in the violation is responsible for payment of the amount provided for in Section 318.18(7) ~~or 318.14(12), Florida Statutes, in addition to any amount that is imposed as a result of a plea, finding of guilt, or other disposition pleading guilty or which may be otherwise imposed by the court,~~ unless the owner ~~can~~ establishes that the motor vehicle was, at the time of violation, in the care, custody, or control of another person. In order to establish such facts, the registered owner of the motor vehicle is required to appear before the court and complete a sworn affidavit.

1. The Department will make the Affidavit, Form SP050-A-003, Rev. 07/05 04/02, available for use in ~~to the court. Should the court choose not to use the affidavit, Form SP050-A-003, Rev. 04/02, the court will provide an appropriate affidavit form.~~

2. Should the court accept the sworn affidavit from the owner, the UTC will be dismissed against the owner and the Department shall issue a UTC to the individual named in the affidavit as having had been in care, custody, or control of the vehicle.

(c) The requirements of paragraphs (4)(a) and (b), above do not apply where the issuance of the UTC is based on an unpaid toll notice receipt signed by the driver and subsequent failure by the driver to properly remit payment. In that instance, the UTC will inform the driver of that basis for the issuance of the UTC, and upon receipt of the UTC, the driver who signed the unpaid toll notice receipt, and subsequently failed to properly remit payment, is responsible for payment of the amount provided for in Section 318.18(7) or 318.14(12), Florida Statutes, in addition to any amount that is imposed as a result of a plea, finding of guilt, or other disposition.

~~(5)(6)~~ Forms. The following forms are incorporated by reference and made a part of this rule:

Form Number	Date	Title
SP050-A-002	<u>07/05 11/99</u>	Uniform Traffic Citation
SP050-A-003	<u>07/05 04/02</u>	Affidavit
SP050-A-004	11/99	Toll Enforcement Officer Observed Violation Form
SP050-A-005	11/99	Toll Transaction Report
SP050-A-006A	<u>07/05</u>	<u>Florida Turnpike Unpaid Toll Notice Receipt – Driver</u>
SP050-A-006B	<u>07/05</u>	<u>Florida Turnpike Unpaid Toll Notice Receipt – Department</u>

Copies of these forms may be obtained from the Florida Department of Transportation, Toll Violation Enforcement, Post Office Box 880069, Boca Raton, Florida 33488-0069.

Specific Authority 334.044(2), 316.1001, 338.155(1) FS. Law Implemented 316.1001, 334.044(28), 338.155, 338.165, 338.231 FS. History—New 8-13-00, Amended 8-6-02, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Leigh Anne Yarbrough, Florida's Turnpike Enterprise, Toll Services Group

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Denver J. Stutler, Jr., P.E., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 13, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 16, 2005

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF CORRECTIONS**

RULE TITLE: Placement of Inmates into Community Release Programs

RULE NO.: 33-601.606

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to amend eligibility requirements for community release programs by expanding eligibility time periods prior to release date.

SUMMARY: Amends eligibility requirements for community release programs. Inmates with non-advanceable dates must be within 19 (rather than 15) months of their tentative release date or presumptive parole release date for CWA, community-based residential substance abuse program, or pre-work release program or within 14 (rather than 10) months of their earliest tentative release date for CWR. Inmates without non-advanceable dates must be within 28 (rather than 21) months of their tentative release date for CWA, community-based residential substance abuse program, or pre-work release program or within 19 (rather than 15) months of their tentative release date for CWR.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 945.091 FS.

LAW IMPLEMENTED: 945.091 FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.606 Placement of Inmates into Community Release Programs.

- (1) No change.
- (2) Eligibility and Ineligibility Criteria.
  - (a) No change.
  - (b) In order to be eligible for community release programs an inmate must:
    - 1. through 3. No change.
    - 4. Inmates with non-advanceable dates must be within 19 ~~15~~ months of their tentative release date or presumptive parole release date for CWA, community-based residential substance abuse program, or pre-work release program or within 14 ~~10~~ months of their earliest tentative release date for CWR.

5. Inmates without non-advanceable dates must be within 28 ~~21~~ months of their tentative release date for CWA, community-based residential substance abuse program, or pre-work release program or within 19 ~~15~~ months of their tentative release date for CWR.

- 6. No change.
- (3) through (5) No change.

Specific Authority 945.091 FS. Law Implemented 945.091 FS. History—New 3-14-01, Amended 9-2-01, 3-19-02, 11-18-02, 5-31-04, 11-25-04,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Franchatta Barber, Deputy Assistant Secretary of Institutions – Programs

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: George Sapp, Assistant Secretary of Institutions

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 16, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 30, 2005

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Building Code Administrators and Inspectors Board**

RULE TITLE: Disciplinary Guidelines

RULE NO.: 61G19-5.002

PURPOSE AND EFFECT: The Board proposes the rule amendments to clarify the legal responsibilities under Sections 553.73, 553.781, 553.79 and 553.791, F.S.; and, to set forth the insurance requirements under Section 553.791, F.S.

SUMMARY: The proposed rule amendments address the violations and penalties for failure to comply with the statutory provisions of Sections 553.73, 553.781, 553.79 and 553.791, F.S., including insurance requirements.

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

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

SPECIFIC AUTHORITY: 455.227, 455.2273, 468.606 FS.

LAW IMPLEMENTED: 455.227, 455.2273, 468.607, 468.621, 468.629 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: Robyn Barineau, Executive Director, Building Code Administrators and Inspectors Board, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G19-5.002 Disciplinary Guidelines.

(1) No change.

(2) Violations and Range of Penalties. In imposing discipline upon applicants and licensees, in proceedings pursuant to Sections 120.569 and 120.57(1) and (2), F.S., the Board shall act in accordance with the following disciplinary guidelines and shall impose a penalty within the range corresponding to the violations set forth below. The verbal identification of offenses is descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included.

VIOLATION	RECOMMENDED RANGE OF PENALTY
(a) through (t) No change.	
<u>(u) Failing to lawfully execute the duties and responsibilities specified in this part and in Sections 553.73, 553.781, 553.79 and 553.791, F.S.</u>	<u>(u)1. Unless otherwise specified in this rule, in the case of an applicant, the usual action of the Board shall be from licensure with an administrative fine and probation to denial; in the case of a licensee, the usual action of the Board shall be to impose a penalty from reprimand to probation and a fine of up to \$1,000.</u> <u>(u)2. After the first offense, a minimum of one year's probation to revocation or denial of licensure, and a fine of up to \$3,000 depending on the underlying offense and the magnitude of the violation.</u>
<u>(2)(v) Performing building code inspection services under Section 553.791, F.S., without satisfying the insurance requirements of said section.</u>	<u>(v)1. Unless otherwise specified in this rule, in the case of an applicant, the usual action of the Board shall be from licensure with an administrative fine and probation to denial; in the case of a licensee, the usual action of the Board shall be to impose a penalty from reprimand to probation and a fine of up to \$1,000.</u> <u>(v)2. After the first offense, a minimum of one year's probation to revocation or denial of license, and a fine of up to \$3,000 depending on the underlying offense and the magnitude of the violation.</u>

(3) through (5) No change.

Specific Authority 455.227, 455.2273, 468.606 FS. Law Implemented 455.227, 455.2273, 468.607, 468.621, 468.629 FS. History--New 5-23-94, Amended 8-14-96, 8-3-97, 11-2-00,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Building Code Administrators and Inspectors Board

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Building Code Administrators and Inspectors Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 14, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 9, 2005

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Department of Environmental Protection are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF HEALTH**

**Board of Medicine**

RULE TITLE: Dispensing Drugs  
RULE NO.: 64B8-30.006

PURPOSE AND EFFECT: The proposed rule amendment is intended to clarify dispensing procedures for physician assistants.

SUMMARY: The proposed rule amendment clarifies dispensing with regard to physician assistants who are employed in a county health departments.

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

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

SPECIFIC AUTHORITY: 458.309, 458.347 FS.

LAW IMPLEMENTED: 458.347 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, Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-30.006 Dispensing Drugs.

Only those physician assistants authorized by law and rule to prescribe shall be permitted to dispense sample drugs to patients. Dispensing of sample drugs to patients shall be permitted only when no charge is made to the patient or a third party for the service or the drugs and if the sample being dispensed could otherwise have been legally prescribed by the physician assistant. This rule shall not be construed to prohibit a physician assistant employed in a county health department from ordering and providing patients with prepackaged and prelabeled drugs in accordance with Section 154.04(1)(c), F.S.

Specific Authority 458.309, 458.347 FS. Law Implemented 458.347 FS. History--New 7-25-95, Formerly 59R-30.006, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Council on Physician Assistants

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 3, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 14, 2005



**DEPARTMENT OF HEALTH**

**Board of Osteopathic Medicine**

RULE TITLE: RULE NO.:

Dispensing Drugs 64B15-6.00365

PURPOSE AND EFFECT: The proposed rule amendment is intended to clarify dispensing procedures for physician assistants.

SUMMARY: The proposed rule amendment clarifies dispensing with regard to physician assistants who are employed in a county health departments.

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

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

SPECIFIC AUTHORITY: 456.033, 459.022 FS.

LAW IMPLEMENTED: 459.022 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: Pamela King, Executive Director, Board of Osteopathic Medicine/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B15-6.00365 Dispensing Drugs.

Only those physician assistants authorized by law and rule to prescribe shall be permitted to dispense sample drugs to patients. Dispensing of sample drugs to patients shall be permitted only when no charge is made to the patient or a third party for the service or the drugs and if the sample being dispensed could otherwise have been legally prescribed by the physician assistant. This rule shall not be construed to prohibit a physician assistant employed in a county health department from ordering and providing patients with prepackaged and pre-labeled drugs in accordance with Section 154.04(1)(c), F.S.

Specific Authority 456.033, 459.022 FS. Law Implemented 456.033, 459.022 FS. History–New 5-12-98, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Council on Physician Assistants

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Osteopathic Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 18, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 14, 2005

**DEPARTMENT OF HEALTH**

**Board of Physical Therapy Practice**

RULE TITLE: RULE NO.:

Requirements for Reactivation of an Inactive or Retired License 64B17-5.001

PURPOSE AND EFFECT: The Board proposes the rule amendment to address retired status licensees and criteria for reinstatement of licensure.

SUMMARY: The rule amendment addresses retired status licensees and the criteria for reinstatement of licensure.

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

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

SPECIFIC AUTHORITY: 486.025, 486.085(2),(4)(a), 486.108(2), 456.036 FS.

LAW IMPLEMENTED: 486.085, 486.108, 456.036 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: Susan Love, Executive Director, Board of Physical Therapy Practice/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B17-5.001 Requirements for Reactivation of an Inactive or Retired License.

(1) Depending upon the time of reactivation, an inactive or retired license shall be reactivated upon demonstration that the licensee has paid the reactivation fee, the biennial renewal fee for an active license or the difference between the inactive or retired status renewal fee and the active status renewal fee, and if applicable, a change of status and/or delinquency fee, provided that the licensee has:

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

(e) Documented successful passage of the Laws & Rules examination.

(2) The Board of Physical Therapy may reinstate the license of the licensee with any restrictions that the Board deems appropriate, including, but not limited to the requirement to practice under direct supervision, to ensure the safe practice of the licensee and to safeguard the health, safety and welfare of the citizens of Florida. A licensee seeking to reactivate an inactive or retired license, who has not practiced as a physical therapist or a physical therapist assistant or who has been practicing as a physical therapist or physical therapist

assistant in a setting that does not involve direct patient care, for a period greater than two (2) years shall be required to practice under direct supervision:

(a) Up to 3 months, if the time out of practice or practicing without direct patient care is greater than 2 years but less than 5 years;

(b) Up to 6 months if the time out of practice or practicing without direct patient care is 5 years or greater but less than 10 years;

(c) Up to 1 year if the time out of practice or practicing without direct patient care is 10 years or greater.

(d) If the licensee has been out of the practice of physical therapy or practicing physical therapy in a setting that does not involve direct patient care for a period of five (5) years or more, the Board may require the licensee to take and pass the licensing examination required for initial licensure.

Specific Authority 486.025, 486.085(2),(4)(a), 486.108(2), 456.036 FS. Law Implemented 486.085, 486.108, 456.036 FS. History—New 8-6-84, Formerly 21M-8.11, Amended 9-22-87, 12-30-87, 6-20-89, Formerly 21M-8.011, Amended 3-24-93, Formerly 21MM-5.001, 61F11-5.001, Amended 12-22-94, 4-4-95, 8-16-95, 7-1-97, Formerly 59Y-5.001, Amended 8-9-04, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Physical Therapy Practice  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Physical Therapy Practice  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 30, 2005  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 30, 2005

**DEPARTMENT OF FINANCIAL SERVICES**

**Division of State Fire Marshal**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Uniform Firesafety Standards for Educational Facilities	69A-58
RULE TITLES:	RULE NOS.:
Administration and General Requirements	69A-58.001
Scope: New Construction and Existing Facilities	69A-58.002
Definitions	69A-58.003
New Construction	69A-58.0031
Firesafety Inspections	69A-58.004
Serious Life Safety Hazards	69A-58.005
Vacant and Abandoned Buildings	69A-58.006
Counties, Municipalities, and Special Districts Having Firesafety Responsibilities, Without Firesafety Inspectors	69A-58.007
Standards and Requirements for Existing Buildings; Exceptions to Rule Chapter 69A-60, Florida Administrative Code, the Florida Fire Prevention Code	69A-58.008

Means of Egress	69A-58.0081
Relocatable Buildings	69A-58.0082
Protection from Hazards	69A-58.0083
Seclusion Time Out Rooms	69A-58.0084
Florida Firesafety School Evaluation System	69A-58.009
Other Applicable Codes and Standards	69A-58.010

PURPOSE AND EFFECT: Update the firesafety codes and standards for educational facilities after experience in administering the rules currently in existence and after extensive and continued consultation with the Department of Education and representatives from various school boards. In addition, these rulemaking proceedings substantially rewrite Rule 69A-58.008, F.A.C., providing for codes and standards applicable to educational facilities, and also include new Rules 69A-58.0081 through 69A-58.0084, F.A.C., to provide better organization and more clarity to the rule subjects. The effect of the rule development proceedings will be to adopt changes which will result in the administration of Sections 633.01(7), 633.022, and 1013.12, F.S., relating to educational facilities, in a more efficient and economic manner.

SUMMARY: These rule provide updated codes and standards for firesafety in educational facilities.

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

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

SPECIFIC AUTHORITY: 633.01(7), 633.022, 1013.12 FS.

LAW IMPLEMENTED: 633.01(7), 633.022, 1013.12 FS.

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

TIME AND DATE: 9:00 a.m., February 27, 2006

PLACE: Room 116, Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0300

TIME AND DATE: 9:00 a.m., March 1, 2006

PLACE: Department of Environmental Protection, 2nd Floor Conference Room, 400 N. Congress Avenue, West Palm Beach, FL 33401

Pursuant to the provisions of the Americans with Disabilities Act and Section 286.26, F.S., any person requiring special accommodations to participate in this program please advise the department at least 5 calendar days before the program by contacting: Millicent King, (850)413-3619, Fax (850)414-6119.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Jim Goodloe, Chief, Bureau of Fire Prevention, 200 East Gaines Street, Tallahassee, FL 32399-0342, (850)413-3171, Fax (850)414-6119, e-mail: Jim.Goodloe@fldfs.com

THE FULL TEXT OF THE PROPOSED RULES IS:

UNIFORM FIRESAFETY STANDARDS FOR ~~IN~~ EDUCATIONAL FACILITIES

69A-58.001 Administration and General Requirements.

The Division of State Fire Marshal ~~division~~ in consultation with the Department of Education hereby adopts firesafety rules for the use by boards and local fire officials when conducting plans reviews for new construction and firesafety inspections of new construction and existing buildings located in educational facilities, educational plants, ancillary plants, and auxiliary facilities to ensure the safety of occupants.

Specific Authority 1013.12 FS. Law Implemented 1013.12 FS. History—New 2-18-03, Formerly 4A-58.001, Amended \_\_\_\_\_.

69A-58.002 Scope: New Construction and Existing Facilities.

(1) This rule chapter establishes uniform requirements to provide a reasonable degree of safety from fire in new construction and existing buildings located in educational facilities, educational plants, ancillary plants, and auxiliary facilities under the jurisdiction of a school board or a community college board of trustees ~~trustees' jurisdiction.~~

~~(2) Nothing in this rule chapter is intended to be more restrictive than a similar requirement for new construction.~~

~~(2)(3)~~ This rule chapter includes procedures for withdrawal of sites and facilities from use until unsafe conditions are corrected.

~~(3)(4)~~ Section 1002.33(1), F.S., states, "All charter schools in Florida are public schools." Charter schools shall utilize facilities that comply with the firesafety provisions specified within its charter, or if the charter does not address specific firesafety provisions, the charter school shall utilize facilities that comply with the Florida Fire Prevention Code, the edition as adopted in Rule Chapter 69A-60, F.A.C., pursuant to Section 1002.33(18), F.S.

(a) All charter schools are subject to the inspection requirements of Rule 69A-58.004, F.A.C.

(b) Each board shall conduct or cause to be conducted each inspection required by paragraph 69A-58.004(1)(a), F.A.C., and the reporting requirements of paragraph 69A-58.004(6)(a), F.A.C. ~~These rules apply to charter schools built on school district property and to charter schools electing to be constructed to State Requirements for Educational Facilities, or Florida Building Code, Section 423 Standards. Charter schools that are not located on school district property and elect not to be constructed under State Requirements for Educational Facilities, or Florida Building Code, Section 423 Standards, shall meet the firesafety standards set forth in NFPA 1 and NFPA 101, the editions as adopted in Rule 69A-3.012, F.A.C.~~

~~(4)(5)~~ Existing educational and ancillary facilities shall comply with the applicable provisions of NFPA 1 and NFPA 101, the Florida editions ~~edition~~ adopted in Rule Chapter 69A-60 ~~69A-3.012~~, F.A.C., except as modified by Chapter 1013, F.S., and this rule chapter.

~~EXCEPTION: NFPA 101, horizontal exits, which are referred to in subdivision 15-2.2.5, "and exit passageways, which are referred to in subdivision 15-2.2.7," are not permitted.~~

~~(5)(6)~~ Any time NFPA 1 or NFPA 101 refers to any other NFPA standard that has not been adopted by the Division of State Fire Marshal in this rule chapter, the referenced standard shall be the edition adopted in Rule Chapter 69A-60 ~~69A-3.012~~, F.A.C.

(6) Community colleges shall comply with the applicable chapters of NFPA 1 and NFPA 101, the Florida editions adopted in Rule Chapter 69A-60, F.A.C., in accordance with the following:

(a) Instructional buildings, classrooms with a capacity of fewer than 50 persons, and instructional laboratories are classified as a business occupancy.

(b) Classrooms with a capacity of 50 persons or more are classified as an assembly occupancy.

(c) Non-instructional laboratories are classified as an industrial occupancy.

~~These rules do not apply to any state owned building.~~

(7) Nothing contained in these rules prohibits a county, municipality, or special district having firesafety responsibility and a school board or community college from entering into an agreement or an understanding which governs inspections, reviews, and approvals of new construction in the subject jurisdiction.

(8) In the event of a conflict between the local fire official and the board on the requirement or interpretation of any provision of this rule chapter or Rule Chapter 69A-60, F.A.C., the Florida Fire Prevention Code, the conflict shall be resolved by agreement between the local fire official and the board in favor of the requirement or interpretation of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

(9) If the local fire official and the board are unable to agree on which requirement, interpretation, or system provides the highest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction, either official may petition the division for a declaratory statement in accordance with Section 120.565, F.S., and any rules applicable thereto, setting forth each one's positions and reasons therefor. If both the board and the local fire official choose to file a petition, a joint petition should be filed. The division will make every effort to expedite the process of issuing a declaratory statement commensurate, however, with the time and publication requirements of Chapter 120, F.S.

(10) The local fire official and the board are permitted to seek an informal nonbinding interpretation pursuant to Rule 69A-60.011, F.A.C. If such an informal opinion is requested, the request shall be given the highest priority by the Florida Fire Prevention Code Interpretations Committee and every effort shall be made to expedite a response.

Specific Authority 1013.12 FS. Law Implemented 1013.12 FS. History--New 2-18-03, Formerly 4A-58.002, Amended \_\_\_\_\_.

69A-58.003 Definitions.

As used in this rule chapter, the following definitions apply:

(1) No change.

(2) ~~“Authority having jurisdiction” means the county, municipality, or special district having firesafety responsibility or, where the context requires, the State Fire Marshal.~~

(2)(3) ~~“Auxiliary facility” means the spaces located at educational plants which are not designed for student occupant stations.~~

(3) ~~“Board” means the school district or community college employing or contracting with a firesafety inspector certified pursuant to Section 633.081(2), F.S., with jurisdiction to make inspections of buildings and to enforce the firesafety codes, as required by these rules, which establish standards for design, construction, erection, alteration, repair, modification, or demolition of school district buildings, structure, or facilities.~~

(4) No change.

(5) ~~“Division,” including the lower case “division,” means the Division of State Fire Marshal of the Department of Financial Services.~~

(6) ~~“Educational facilities” means the buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve primarily the educational purposes and secondarily the social and recreational purposes of the community and which may lawfully be used as authorized by the Florida Statutes and approved by the boards. As used in these rules and unless otherwise clearly indicated by the context, “educational facilities” includes each educational facility, educational plant, ancillary plant, and auxiliary facility and all buildings and structures contained therein and thereon.~~

(7) No change.

(8) ~~“Existing” facility means a facility or building that has been issued a certificate of occupancy prior to the effective date of this edition of this rule chapter occupied for one year or longer.~~

(9) No change.

(10) ~~“Florida Fire Prevention Code” means the Florida Fire Prevention Code as adopted in Rule Chapter 69A-60 69A-3.012, F.A.C.~~

(11) ~~“Local fire official” or “fire official” means the county, municipality or special district having firesafety responsibility employing or contracting with a firesafety~~

~~inspector certified pursuant to Section 633.081(2), F.S., with jurisdiction to make inspections of buildings and to enforce the firesafety codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities or, where the context requires, the State Fire Marshal, as referred to in Section 1013.12(2)(b), means a firesafety inspector certified under Section 633.081(2), F.S., and employed by or under contract with a county, municipality, or special district having firesafety responsibilities, and includes the chiefs of county, municipal, and special district fire departments. The term does not include a special state firesafety inspector employed by the board certified to conduct inspections of buildings as defined herein under Section 633.081(3), F.S.~~

(12) ~~“New” facility means a facility that has not been occupied nor issued a certificate of occupancy prior to the effective date of this edition of this rule chapter for more than one year.~~

(13) ~~“NFPA 1” means the National Fire Protection Code 1, entitled the “Uniform Fire Code,” the Florida edition as adopted in Rule Chapter 69A-60, F.A.C.~~

(14)(13) ~~“NFPA 101” means the National Fire Protection Association Code 101, entitled the “Life Safety Code,” the Florida edition as adopted in Rule Chapter 69A-60 69A-3.012, F.A.C.~~

(15)(14) ~~“Special district that has firesafety enforcement responsibilities” means a special fire control district or a special district which was created for the purposes of fire prevention, fire suppression, or fire protection.~~

(16) ~~“Student-occupied space” means any area planned primarily for use by six or more students.~~

(17)(15) ~~The definitions in Section 1013.01, F.S., of words and terms found in Section 1013.12, F.S., or of words or terms found in this rule chapter apply to this rule chapter; however, in the event of a conflict between the definitions in Section 1013.01 or 1013.12, F.S., and these rules, the definitions in Sections 1013.01 and 1013.12, F.S., control.~~

Specific Authority 1013.12 FS. Law Implemented 1013.12 FS. History--New 2-18-03, Formerly 4A-58.003, Amended \_\_\_\_\_.

69A-58.0031 New Construction.

(1) ~~New construction and new buildings are subject to and controlled by the Florida edition of NFPA 1, 2003 edition, in Chapter 20, relating to “Educational occupancies” and the Florida edition of NFPA 101, 2003 edition, Chapter 14, “New educational occupancies,” except where specifically otherwise provided in this rule chapter.~~

(2) ~~Notwithstanding any rule or adopted code or standard in conflict herewith, the following procedures apply with respect to new construction and new buildings.~~

(a) ~~Prior to commencement of any new construction or remodeling:~~

1. The board shall approve or cause to be approved the plans, drawings, designs, proposals, blueprints, and other construction or remodeling documents and evaluate the same for complete compliance with the Florida Fire Prevention Code in accordance with Chapter 1013.38(2), F.S., or

2. The board must show compliance with all applicable firesafety codes and standards by at least one of the other means provided in Section 1013.38(2)(a) through (d), F.S.

(b) The method of compliance must be documented and maintained as part of the construction records file.

(c) Upon request by the local fire official, the board shall provide reasonable access to all construction documents and provide in writing to the local fire official the method(s) employed to achieve compliance with the Florida Fire Prevention Code.

(d) The board shall provide to the fire fighting authority charged with responding to calls at the subject educational facility a copy of the site plan for each educational plant in which site conditions will be affected. Such local fire fighting authority shall review the site plans for compliance with Chapter 18 of the Florida Edition of NFPA 1, "Fire Department Access and Water Supply," and this rule chapter. The local fire fighting authority shall review and provide approval or comments to the board within 15 days of receipt. If the local fire fighting authority fails to provide approval or comments to the board within 15 days of receipt, the site plan shall be deemed compliant.

(3) A certificate of occupancy shall not be issued until the board has determined that the building or structure and its site conditions complies with all applicable statutes, these rules, and all applicable firesafety codes and standards.

(4) Horizontal exits referenced in NFPA 101, subdivision 14.2.2.5 and exit passageways referenced in NFPA 101, subdivision 14.2.2.7 are prohibited.

Specific Authority 633.01(7), 633.022, 1013.12 FS. Law Implemented 633.01(7), 633.022, 1013.12 FS. History—New \_\_\_\_\_.

#### 69A-58.004 Firesafety Inspections.

(1) There shall be two annual inspections of existing educational facilities, ancillary plants, and auxiliary facilities, as follows:

(a) Pursuant to Section 1013.12(1)(b), F.S., a firesafety inspection inspections of each building of each educational plant and each ancillary plant shall be made annually by the board a person certified by the division to conduct firesafety inspections of educational and ancillary plants pursuant to Section 633.081(3), F.S., which may be an employee of the board.

(b) Pursuant to Section 1013.12(2)(b), F.S., a firesafety inspection of each building of each educational plant and each ancillary plant shall be made by annually by the local fire official each county, municipality, or special district having firesafety responsibilities shall, by and through a local

firesafety inspector certified pursuant to Section 633.081(2), F.S., conduct at least one firesafety inspection of each building of each educational plant and each ancillary plant, whether owned or leased, each calendar year to determine compliance with this rule chapter.

(2) The inspections in subsection (1), paragraphs (a) and (b):

(a) through (b) No change.

(c) Shall be performed in accordance with any applicable firesafety code or standard, such as NFPA 101, the edition as adopted in Rule Chapter 69A-60 69A-3.012, F.A.C., or any other applicable code or standard which has been adopted in this rule chapter; and

(d) Are permitted and encouraged to be conducted jointly by the board and the local fire official and documented on one inspection form. If the inspection is performed jointly, the inspection form shall clearly identify the name and certification number of each inspector and his or her employer. Each inspector must sign the inspection report. Are not applicable to new construction or new buildings. New construction and new buildings are subject to and controlled by Section 1013.38, F.S.

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

(b) The name of the board and the local fire official authority having jurisdiction (i.e., municipality, county, or special district);

(c) through (f) No change.

(g) The name, address, and phone number of each inspector, and the designation of whether such inspector is employed by or under contract with a board or is a local fire official a special firesafety inspector or a municipal firesafety inspector;

(h) The date of the inspection;

(i) A report of each Each violation or deficiency noted during the inspection. Each violation or deficiency report shall contain:

1. The building name or number and, if applicable, the FISH room number of the room building in which the violation was noted;

2. A description of the violation or deficiency and the specific code citation for the violation or deficiency;

3. through 7. No change.

8. A statement that the district or board has or has not complied with Section 1013.12(1)(c), F.S., as applicable;

9. A statement that the county, municipality, or special district having firesafety responsibilities local authority having jurisdiction has or has not complied with Section 1013.12(2)(c), F.S., as applicable;

10. No change.

11. The signature of the firesafety district inspector or inspectors conducting the inspection if the inspection was made by the special inspector, or the signature of the local fire

official if the inspection was made by the local fire official. If the inspection was made by both the special firesafety inspector and the local fire official, each one must sign.

(6) When the violation or deficiency has been corrected, the board sending the report required by paragraph (i) shall notify the division of such correction.

(6)(7) The inspection reports required by ~~in~~ subsection (1) together with the plan and schedule for correction of any deficiency shall be submitted to the division by June 30, of each year.

(a) The board shall either:

1. Forward one copy of the completed inspection report for each inspection conducted by the board to the division electronically by entering it into the "School Inspection Reporting System" database, or

2. Submit the report in any legible format with each violation coded in accordance with the "School Inspection Reporting System" database schedule which is adopted herein by reference (Schedule A) and retain the original.

(b) The local fire official shall either:

1. Forward one copy of the completed inspection report for each inspection conducted by the local fire official to the division electronically by entering it into the "School Inspection Reporting System" database, or

2. Submit the report in any legible format with each violation coded in accordance with the "School Inspection Reporting System" database schedule which is adopted herein by reference (Schedule A) and retain the original.

(c) The inspection report resulting from a joint inspection shall be submitted by the board.

(d) The board shall maintain with each yearly inspection report a list of corrected deficiencies from the prior fiscal year report.

(7) Any firesafety inspector authorized by a unit of government who is certified in accordance with Section 633.081(2) or Section 633.081(3), F.S., may enter the "School Inspection Reporting System" via the internet at [www.fldfs.com/sfm](http://www.fldfs.com/sfm).

Specific Authority 1013.12 FS. Law Implemented 1013.12 FS. History--New 2-18-03, Formerly 4A-58.004, Amended \_\_\_\_\_.

69A-58.005 Serious Life Safety Hazards.

(1) Serious life safety hazards as set forth in Section 1013.12, F.S., and in paragraph (b), below, require prompt corrective action by the board or withdrawal of the educational or ancillary plants or affected portions thereof from use until corrected.

(2)(a) Serious life safety hazards include:

1. A non-functional fire alarm system; ~~Non-functional fire alarm systems;~~ A non-functional fire alarm system is one impaired to the extent that any initiating device or any notification appliance is incapable of functioning as it was designed.

2. A non-functional fire sprinkler system; ~~Non-functional fire sprinkler system;~~ A non-functional fire sprinkler system occurs any time any sprinkler head component is incapable of automatic activation within the protected space or when any system component lacks an adequate water supply.

3. A door ~~Doors~~ with a padlock ~~padlocks~~ or other lock ~~locks~~ or device ~~devices~~ which precludes ~~preclude~~ egress at any time;

4. An inadequate exit ~~Inadequate exits;~~

5. A hazardous electrical system condition ~~conditions;~~

6. through 7. No change.

(b) Other conditions may be identified to the division by the board or local fire official authority having jurisdiction for designation as a serious life safety hazard, including but not limited to:

1. The placement ~~Placement~~ of a functional smoke and heat detector ~~detectors~~ in a manner not consistent with NFPA 72, the edition as adopted in Rule 69A-60.005 ~~69A-3.012~~, F.A.C.;

2. An inaccessible ~~Inaccessible~~ or expired fire extinguisher extinguishers; and

3. A door required to be self-closing ~~Fire doors with a doorstop, wedge, or other device or object~~ doorstops or wedges holding it them open.

(c) No change.

1. Those conditions located in subdivision ~~Section~~ 6.2, NFPA 101, the Florida edition as adopted in Rule 69A-60.004 ~~69A-3.012~~, F.A.C., to wit:

a. The relative danger of ~~to~~ the start and spread of fire,

b. No change.

c. The danger of explosion or other occurrence potentially endangering the life ~~lives~~ and safety of any occupant ~~the occupants~~ of the building or structure.

2. Hazard of contents shall be determined by the board or local fire official ~~authority having jurisdiction~~ on the basis of the character of the contents and the processes or operations conducted in the building or structure. For the purposes of these rules, where different degrees or hazard of contents exist in different parts of a building or structure, the most hazardous shall govern the classification unless hazardous areas are separated or protected as specified in subdivision ~~Section~~ 8.4 and the applicable subdivisions ~~sections~~ of Chapters 11 through 42 of NFPA 101, the edition as adopted in Rule 69A-60.004 ~~69A-3.012~~, F.A.C.; or

~~3.2.~~ The criteria located in NFPA 1 of the Florida Fire Prevention Code, subdivision ~~Section~~ 2-28.1, the edition as adopted in Rule 69A-60.003 ~~69A-3.012~~, F.A.C., for hazardous occupancies, to wit, the total amount of Class A combustibles and Class B flammables present, in storage, production, use, finished product, or combination thereof, is over and above those expected in occupancies classed as ordinary (moderate) hazard. Those occupancies could consist of woodworking,

vehicle repair, cooking areas, product displays, and storage and manufacturing processes such as painting and coating, including flammable liquid handling. Also included is warehousing of or in-process storage of other than Class I and Class II commodities as defined by NFPA 13, *Standard for the Installation of Sprinkler Systems*, subdivision Section 10:1-5.3, the edition as adopted in Rule ~~69A-60.003~~ 69A-3.012, F.A.C.

Specific Authority 1013.12 FS. Law Implemented 1013.12 FS. History—New 2-18-03, Formerly 4A-58.005, Amended \_\_\_\_\_.

69A-58.006 Vacant and Abandoned Buildings Inspections in General.

~~(1) Each building inspected shall be accounted for on the inspection report.~~

~~(2) The board shall forward one copy of the completed inspection report to the division and retain one copy for its files.~~

~~(3) The board shall maintain with each yearly inspection report a list of corrected deficiencies from the prior fiscal year report.~~

~~(4) Remodeling and Renovation shall be performed in accordance with the requirements of the Florida Building Code Section 423.~~

~~(1)(5) Returning Buildings to Use.~~ Any existing building which has been removed from instructional use for more than 180 days shall be inspected for deficiencies, and remodeled, renovated, or have its deficiencies corrected in accordance with the new construction requirements of the Florida Building Code before returning it to instructional purposes.

~~(2)(6) Abandoned Buildings.~~ Board buildings no longer in use and abandoned shall be free of combustible waste and secured in such a manner as to prevent safety hazards and unauthorized or unlawful entry, and undue vandalism from occurring.

Specific Authority 1013.12 FS. Law Implemented 1013.12 FS. History—New 2-18-03, Formerly 4A-58.006, Amended \_\_\_\_\_.

69A-58.007 Counties, Municipalities, and Special Districts Having Firesafety Responsibilities, Without Firesafety Inspectors.

(1) Any county, municipality, or special district having firesafety responsibilities which does not employ or has not contracted with a firesafety inspector certified under Section 633.081(1), F.S., to enforce the Florida Fire Prevention Code as required by Section 633.025(2), F.S., at the time of the adoption of this rule chapter is permitted to ~~may~~ contact the division and request that the division perform the inspections required by the local fire official pursuant to Section 1013.12(2), F.S., and this rule chapter and performed under Section 633.081(1), F.S.

(2) Upon receiving such request, the division shall perform the inspections required by this rule chapter during the period of time the county, municipality, or special district is not in compliance with Section 633.081(1), F.S., and does not

employ or is not under contract with a firesafety inspector certified under Section 633.081(1), F.S., not, however, to exceed one annual inspection per facility.

(3) Each such county, municipality, or special district having firesafety enforcement responsibilities shall, ~~if practicable,~~ employ or contract with a firesafety inspector certified under Section 633.081(2)(4), F.S., pursuant to the requirement of Section 633.081(1), F.S., to fulfill the obligation imposed by Section 633.024(2), F.S. within one year after the county, municipality, or special district first contacted the division requesting the division to perform the inspection.

(4) No change.

Specific Authority 1013.12 FS. Law Implemented 1013.12 FS. History—New 2-18-03, Formerly 4A-58.007, Amended \_\_\_\_\_.

(Substantial rewording of Rule 69A-58.008 follows. See Florida Administrative Code for present text.)

69A-58.008 Standards and Requirements for Existing Buildings Building; Exceptions to Rule Chapter 69A-60, Florida Administrative Code, the Florida Fire Prevention Code.

(1) General Safety Requirements for all Buildings in all Facilities or Plants.

(2) Except as set forth in Section 1013.12, F.S., and this rule chapter, educational facilities are subject to Rule Chapter 69A-60, Florida Administrative Code, the Florida Fire Prevention Code.

(3) The standards and requirements in this rule chapter pertain to educational facilities and are exceptions to Rule Chapter 69A-60, Florida Administrative Code. In the event of a conflict between this rule and Rule Chapter 69A-60, Florida Administrative Code, and notwithstanding paragraph 69A-60.002(3)(d), F.A.C., relating to this rule chapter, the provisions of this rule chapter control the standards and requirements for educational facilities.

(4) Fire department access roads. Paved fire department access roads shall not completely encircle an educational plant or portions thereof.

Specific Authority 1013.12 FS. Law Implemented 1013.12 FS. History—New 2-18-03, Formerly 4A-58.008, Amended \_\_\_\_\_.

69A-58.0081 Means of Egress.

(1) Doors.

(a) All doors in fire rated or smoke proof corridors shall be self-closing doors.

(b) Opposite swinging smoke stop doors in smoke partitions within the corridor shall meet the smoke compartment separation requirements.

(c) Darkroom doors.

1. In darkrooms with a capacity of 10 or more persons, a revolving darkroom door, if used, shall:

a. Have a pop-out safety feature; and

b. Be equipped with a remotely located side-hinged door for secondary egress.

2. In darkrooms with a capacity of fewer than 10 people, a revolving darkroom door with a pop-out safety feature is permitted to be used as the primary means of egress.

3. Revolving darkroom doors with a pop-out safety feature shall be conspicuously labeled.

4. In buildings designed on or after October 18, 1994, the requirements of this section apply to darkrooms with an occupancy of 6 or more.

(d) Exit doors shall swing in the direction of exit travel.

(e) All egress doors and gates, regardless of use or location serving spaces designed to be occupied by 6 or more students, shall swing in the direction of exit travel.

(2) Existing smoke stop doors shall be 1 3/4 inch solid core wood, or equivalent.

(a) Smoke stop doors may be used to:

1. Create a secondary means of egress from interior instructional spaces; or

2. Divide corridors into segments not to exceed 300 feet in aggregate length.

(b) View panels of clear fire-rated glazing (including existing wire glass) mounted in steel frames shall be permitted in smoke stop doors.

(c) When a pair of smoke stop doors is located within a corridor, each leaf shall be designed to swing in a direction opposite from the other and each leaf in the pair of doors shall swing in a right-hand direction.

(d) Door stops shall be provided at the head and sides of smoke stop door frames.

(e) Smoke stop door frames shall be free of center mullions.

(f) Smoke stop doors shall be free of locking devices and may be held in the open position only in accordance with section 7.2.1.8 of NFPA 101.

(3) Special Function Doors.

(a) Special function doors such as revolving doors, power operated doors, or horizontal sliding doors shall not be used as a means of egress.

(b) Revolving doors shall have a side-hinged exit door within 10 feet and within the same wall.

(c) Turnstiles shall be placed to allow free access through a means of egress or have an emergency break-away feature or other similar type feature.

(4) Folding Doors and Folding Partitions. Where permanently mounted folding or movable partitions are used to divide a room into smaller spaces capable of being occupied by 6 or more persons a separate exit from each space or a permanent full height 5 foot wide opening between the spaces shall be provided. This requirement applies to spaces occupied by 10 or more persons in buildings occupied prior to October 18, 1994.

(5) Gates used to secure buildings or used for egress shall be side-hinged and shall allow egress at all times without assistance from the side from which egress is to be made.

(6) Screen and storm doors on exits shall be hinged on the same side as the exit door and swing in the direction of exit travel.

(7) Doors and gates shall be equipped with hardware which allows egress at all times.

(8) All fire-rated doors and solid core doors in partitions rated at 1/2 hour or more, or installed in smoketight partitions, shall be self-closing.

(9) Emergency Rescue (Escape) Openings (Secondary Means of Egress).

(a) In existing non-sprinklered buildings, every instructional space, and other spaces normally subject to student occupancy of 10 or more, shall have at least one (1) window, panel, or door leading to the exterior or to a separate atmosphere.

(b) For buildings designed after October 18, 1994, the emergency rescue (escape) opening shall be provided in rooms over 250 square feet used for classroom or other educational purposes or normally subject to student occupancy of 6 or more.

(c) Windows and panels shall be operable from the inside by a single operation and without the use of tools.

(d) A security screen or grill installed on a window or panel shall be operable from the inside by the same single operation as the window or panel and without the use of tools. The release device shall be readily identifiable and accessible.

(10) Interior instructional spaces shall be provided with side-hinged or double acting communicating doors providing secondary means of egress and emergency rescue (escape). The door shall provide direct access to:

(a) A separated exit corridor;

(b) A separate atmosphere;

(c) At least one enclosed exit stair; or

(d) Another classroom which has a minimum of two doors that open to separate atmospheres.

(11) Specialties and Signage.

(a) Emergency rescue openings shall be marked with a sign that reads: "EMERGENCY RESCUE – KEEP AREA CLEAR".

(b) Secondary means of egress and emergency escape openings shall be marked with a sign that reads: "EMERGENCY ESCAPE" or "EMERGENCY EGRESS – KEEP AREA CLEAR".

(c) Where manual pull stations are located inside student-occupied spaces, a permanently affixed sign reading "FIRE ALARM PULL STATION INSIDE" shall be placed outside that space and adjacent to the door. The door to the occupied space shall be unlocked at all times the facility is occupied.



(d) A graphic diagram of primary and secondary evacuation routes shall be posted adjacent to the primary exit door from each student-occupied space. The diagram shall clearly indicate, by contrasting color and number, the primary and secondary route of evacuation.

Exception: When an exit door from a self-contained classroom opens directly to the exterior.

(12) Open Plan Schools.

(a) Each space designed to be occupied by 50 persons or more shall have 2 or more means of egress.

(b) Open plan assembly areas shall have exits leading directly to the exterior and shall be separated from other required exits of the open plan.

(13) Maximum travel distances.

(a) Exits shall be maintained so that the maximum length of travel from any point in the building or space (including places of assembly) to an exit shall not exceed 150 feet.

(b) In a building equipped with a fully automatic fire sprinkler system, the travel distance to an exit may be increased to 200 feet.

(c) Open mezzanines shall be permitted to exit to the exterior from within the space below.

(14) Corridors and hallways.

(a) Corridors shall be arranged so that each end leads to an exit and shall be without pockets or dead ends more than 20 feet in length.

(b) Hallway widths in office and service areas shall be a minimum of 44 inches in width.

(c) Interior corridors, including contiguous dead-end cross corridors, shall be divided by smoke stop doors in sections not to exceed 300 feet in length.

(d) Child Care. Areas designated for children's sleeping mats, cots, or cribs shall include a clearly marked exit passageway.

(15) Interior Stairs, Exterior Stairs, and Smoke-Proof Towers.

(a) The minimum clear width of stairways serving as a required means of egress for student occupied areas shall be 44 inches.

(b) All interior stairways shall open directly to the exterior, into a protected vestibule or into a protected corridor that opens to the exterior.

(c) The areas above or below exit stairs and ramps, whether interior or exterior, shall not be used as a closet for storage of any kind, or for any other purpose.

(d) Interior corridors or stairwells shall be free of piping systems designed for flammable liquids or gases.

(16) Kilns.

(a) Kiln rooms and areas shall be provided with adequate exhaust to dispel emitted heat to the exterior.

(b) Kilns shall be located away from paths of egress or exits.

(c) Kilns shall be located in separate rooms when serving students through grade three.

(d) Kiln rooms shall be provided with automatic heat or smoke detection devices appropriate for the environment.

(17) Boiler Rooms.

(a) Boilers shall comply with Chapter 554, F.S., and Rule Chapter 69A-51, F.A.C. A valid boiler inspection certificate of compliance issued by the State Fire Marshal shall be displayed and clearly visible.

(b) All Boiler rooms housing equipment with an input capacity of 60,000 BTU's per hour or more and that is intended to supply hot water or steam shall be equipped with heat detectors connected to any required fire alarm system.

1. Each boiler room door shall open directly to the outside and, if opening toward a building or path of egress, shall have opening protection in accordance with Section 8.3.4 of NFPA 101.

2. If an additional door serving a boiler room opens into the interior of the building, the door shall swing into the boiler room and have opening protection in accordance with Section 8.3.4 of NFPA 101.

(18) Shade Houses or Green Houses.

(a) A minimum of two remotely located side hinged doors that swing in the direction of egress shall be provided from each shade or green house.

(b) Fire alarm pull stations shall be located within 200 feet of any shade or greenhouse.

(c) Fire alarm horns shall be audible inside the shade or greenhouse.

(19) Stages and Platforms.

(a) Stages, and platforms, including props and equipment, shall conform to the specific requirements of this section.

(b) All curtains and flies on stages shall have attached labels verifying their flame resistance or equivalent documentation as approved by the AHJ.

(c) All scenery and stage props shall be free of any foam plastics.

(d) All steps leading to a stage shall have a minimum of 1 handrail.

(20) Electrical: Emergency lighting shall be provided in all student-occupied areas and group toilets.

Specific Authority 1013.12 FS. Law Implemented 1013.12 FS. History--New

69A-58.0082 Relocatable Buildings.

(1) Relocatable buildings: Relocatable buildings sited after March 1, 2002 shall be separated as required by the Florida Building Code.

(a) Relocatable buildings shall be located to allow access by emergency vehicles to at least one elevation of each building as approved by the local fire fighting authority that services the site in accordance with Chapter 18 of NFPA 1.

(b) Relocatable buildings sited within a cluster in accordance with this section are permitted to achieve emergency vehicle access by providing vehicular access to within 200 feet of the entrance of the most remote relocatable unit and shall be either provided with an independent fire alarm system with a manual pull station within 100 feet of each egress door or provided with a fire alarm system tied to the main school facility. In addition, all of the following shall be met:

1. Maximum conditioned gross area of the units in a cluster is 12,000 square feet.
2. Minimum separation between individual units is 20 feet.
3. Nearest permanent building or cluster is 60 feet.
4. Maximum of 20% unprotected opening between adjacent wall spaces.
5. Minimum overhead open space within the perimeter of the cluster is 50 percent, and
6. Minimum setback for Type I, II or IV (non-combustible) relocatable buildings shall be 25 feet or less if permitted by local zoning requirements.

(2) Egress doors in relocatable buildings shall be provided as follows:

(a) Classroom units of Type III or Type V (combustible) construction shall have 2 remotely located doors opening directly to the outside.

(b) Multi-classroom units of Type I, II or IV (non-combustible) construction shall have a primary exit door opening directly to the exterior or if served by interior corridors, shall have a primary exit door and an emergency rescue opening in each space designed to be occupied by 6 or more students.

1. This requirement applies to spaces occupied by 10 or more persons for buildings designed prior to October 18, 1994.

2. An emergency rescue opening is not required when a door opens directly to the outside.

(3) Fire Alarm Systems.

(a) In Type III and Type V (combustible) construction, heat or smoke detectors connected to the building's fire alarms system shall be installed in every classroom, unsupervised space, storage space, and custodial closet.

(b) In Type I, II or IV (non-combustible) construction, heat or smoke detectors connected to the buildings fire alarm system is located in storage and custodial closets.

(c) Relocatable buildings sited a minimum of 60 feet from another relocatable building and a minimum of 60 feet from any permanent building may be served by an independent fire alarm system.

Specific Authority 1013.12 FS. Law Implemented 1013.12 FS. History--New

69A.58.0083 Protection from Hazards.

(1) Interior vertical openings such as stairways, elevator shafts, light and ventilation shafts and all service chutes between floors shall be enclosed or protected to prevent the spread of fire and smoke, and shall be maintained in their original fire and smoke-tight condition.

(2) Draftstopping. Any concealed space, such as a utility chase, attic, crawl space, or other vertical or horizontal opening between floors in which combustible material is exposed shall either be:

(a) Provided with draftstopping and automatic heat detection, or

(b) Provided with automatic fire sprinklers.

(3) Fire extinguishers: Fire extinguishers may be located inside student-occupied spaces only when:

(a) The fire extinguisher is located adjacent to the primary exit door;

(b) The door remains unlocked when the facility is occupied; and

(c) There is posted a permanently affixed sign reading "FIRE EXTINGUISHER INSIDE."

(4) Existing on-site incinerators and waste burners shall be equipped with a wire screen stack guard and shall be used for burning Class A materials only.

(5) High Rise Buildings. All existing high-rise structures and buildings more than 4 stories or 45 feet in height shall be equipped with automatic fire sprinkler systems.

(6) Home Economics Instructional Spaces. Residential style ranges installed in home economics instructional spaces, classrooms, faculty lounges, and similar areas shall not be required to comply with the provisions for commercial cooking appliances under NFPA 96 provided all of the following requirements are met:

(a) The space contains only residential-type ranges with hoods vented to the outside.

(b) Fire extinguishers are installed in accordance with NFPA 10.

(c) The space containing the residential style range is not classified as an assembly.

(7) These requirements place no limitations on the use of other residential type appliances within the space.

Specific Authority 1013.12 FS. Law Implemented 1013.12 FS. History--New

69A-58.0084 Seclusion Time Out Rooms.

(1) Egress. Secured seclusion time-out rooms, when provided, shall be equipped with doors which allow egress at all times in the event of an emergency.

(2) Locking devices.

(a) Locking devices on secured seclusion time-out rooms are permitted only when such room is in full compliance with the criteria in this section.

(b) The use of a secured seclusion time-out room must be explicitly stated in the student's exceptional student educational (ESE) records and shall include parental notice for the use of a secured seclusion time-out room. The use of secured seclusion time-out rooms by the district must be expressly permitted by the action of the school board. Compliance with this section shall be certified by the school administrator or their designee.

(c) An electro-magnetic locking device is the only approved device to secure a secured seclusion time-out room. The lock shall remain engaged only when the human hand is in contact with it placing pressure on it.

1. Upon release of pressure, the door shall unlock. The locking device shall be designed, and shall be operated, so that it cannot be engaged by leverage of an inanimate object or in any manner except by constant human contact.

2. The push button shall be recessed from the face of the unit housing, or in some other way designed to prevent taping or wedging the button in the engaged mode.

3. The device shall have an interface with the fire alarm system and shall automatically release and disengage upon activation of the fire alarm. The locking device shall automatically release and disengage in the event of power failure.

4. A timer shall not be used on the locking device.

(3) Door Requirements. The door shall have only a push panel exposed on the interior of the room. A vision panel shall be provided in the door, and it shall be no larger than 12"x12" (144) square inches. The view panel shall consist of clear one-quarter (1/4) inch thick unbreakable plastic panel, flush with the face of the door on the inside. The view panel shall be positioned in the door so that a staff member continuously keeps the student under observation. The view panel shall not be covered with any material.

(4) Finishes and materials. The ceiling, floor, and walls must be free of any loose, torn or potentially hazardous materials. All surfaces must be kept smooth and free of any hooks, outlets, switches or similar items. Construction materials shall meet all applicable provisions of the Florida Fire Prevention Code and the Florida Building Code. Each secured seclusion time-out room must be identified with a permanently mounted room number.

(5) All secured seclusion time-out rooms must have natural or mechanical ventilation.

(6) Students in a secured seclusion time-out room must be observed continuously by a teacher or trained staff member.

(7) The division and the local fire official are permitted to conduct unannounced inspections of all secured seclusion time-out rooms to ensure compliance with this rule chapter. A written record of each inspection must be made and a copy must be provided to the school administrator or designee.

(8) During each unannounced inspection, the division or the local fire official is permitted to inspect secured seclusion time-out rooms for compliance, interview staff, review staff development activities, and conduct other activities as deemed appropriate to ensure compliance with this rule chapter.

(9) Permit Required.

(a) Any secured seclusion time-out room which is constructed following the effective date of this rule shall be allowed to become operational only after the issuance of a permit.

(b) Any secured seclusion time-out room which is in operation upon the effective date of this rule shall be allowed to continue in use provided a secured seclusion time-out room operational permit has been issued by the board on Form No. DFS XX-XXX.

(c) Each school wishing to use a secured seclusion time-out room shall apply to the board for a permit to operate a secured seclusion time-out room.

(d) Each secured seclusion time-out room must be constructed and operated in accordance with this rule chapter.

(e) A permit shall be issued only after an inspection by the board and a determination by the board that such secured seclusion time-out room has been designed and constructed in accordance with this rule chapter.

(f) Application for a permit need not be on any specific form and is permitted to be in the form of a letter, a memorandum, or a similar document; however, the application must be signed by the school administrator or his or her designee and must include the district's name, the school's name, the school's address, and contact information which must designate the name and phone number of the contact person at the school who is permitted to be the school administrator or anyone designated by the school administrator.

(g) Each permit shall be valid for a period of not more than one year from the date of issue.

(10) If during any firesafety inspection, a secured seclusion time-out room is found in violation of this rule chapter, the board or the local fire official shall immediately report the deficiency to the division and in accordance with subsection 1013.12(1)(c) or 1013.12(5), F.S., and the secured seclusion time-out room shall be immediately withdrawn from use.

Specific Authority 1013.12 FS. Law Implemented 1013.12 FS. History--New

69A-58.009 Florida Firesafety School Evaluation System.

(1) through (3) No change.

(4) For buildings occupied after January 1, 2085, boards and fire officials may use the equivalency provisions of Section 1.4 of the Florida Edition of NFPA 101, the edition as adopted in Rule Chapter 69A-60, F.A.C.

Specific Authority 1013.12 FS. Law Implemented 1013.12 FS. History--New 2-18-03, Formerly 4A-58.009, Amended \_\_\_\_\_.

69A-58.010 Other Applicable Codes and Standards.

No change.

Specific Authority 1013.12 FS. Law Implemented 1013.12 FS. History--New 2-18-03, Formerly 4A-58.010.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jim Goodloe, Chief, Bureau of Fire Prevention, Division of State Fire Marshal, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0340

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Randall A. Napoli, Director, Division of State Fire Marshal, Department of Financial Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 28, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 23, 2005

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF STATE

Division of Elections

RULE NO.: 1S-2.034
RULE TITLE: Polling Place Procedures Manual
NOTICE OF CHANGE

Notice is hereby given that the further changes are being made solely to the proposed revised Form DS DE #11, entitled "The Polling Place Procedures Manual", which is incorporated by reference into the above-referenced rule.

The changes are made in response to comments from the Joint Administrative Procedures Committee and to comments received before and at the public hearing held on January 17, 2006, pursuant to Section 120.525, Florida Statutes. The notice of the January 17, 2006, public hearing was published in Vol. 32, No. 2, December 2, 2006, and Vol. 32, No. 2, January 13, 2006, issues of the Florida Administrative Weekly. The changes are summarized as follows:

- (1) The title page is changed to add the word "manual"
(2) On page 5, under the heading "The Voting Process" and item #4, a correction is made as to the applicable process for resolving a discrepancy in a voter's signatures versus a discrepancy in the photo identification.
(3) On page 3, clarification is made as when the public including the media has access to the polling room.

(4) On page 16, under the heading "Ballot Accounting," second column, the instructions for ballot accounting on touch screen systems is changed to replace the word "shall" to "should" when reconciling the number of voters with the number of ballots cast.

(5) On page 16, under the heading "Ballot Accounting," second column, the phrase "the number or voter authority slips" is corrected to read "the number of voter authority slips."

(6) On page 16, under the heading "Ballot Accounting," the tallying process is clarified including when voter authority slips may be used for ballot accounting.

(7) It is clarified that all procedures, with limited exceptions, that apply to polling places apply to early voting, with including but not limited to procedures relating to ballot accounting and public access.

(8) The manual is changed throughout as needed to note that signatures may be captured on electronic devices versus precinct registers.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Maria Matthews, Assistant General Counsel, Florida Department of State, Division of Elections, R.A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399, (850)245-6520

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection's home page at http://www.dep.state.fl.us/ under the link or button titled "Official Notices."

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.737
RULE TITLE: Visiting - Forms
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. 31, No. 44, (November 4, 2005), issue of the Florida Administrative Weekly:

Form DC6-111D, Visitor Screening Matrix, is being amended for consistency with rules governing inmate visiting. Section VII, line b., is being amended to include "attempting to escape" and "attempting to assist an escape" as grounds for denial. Section VII, line e. is being amended to include "possession" and "attempted possession," "contraband" is defined as that described in Section 944.47, F.S., and the 5 year limitation is being removed.

The "Purpose and Effect" and "Summary" in the notice of proposed rulemaking incorrectly identified the title of Form DC6-111D as the "Visitor Information Summary"; the correct title of Form DC6-111D is the "Visitor Screening Matrix."