

63L-1.007	Waivers and Alternative Compliance Measures
63L-1.008	Deemed Status
63L-1.009	Conditional Status
63L-1.010	Failure to Meet Minimum Levels of Performance or Compliance
63L-1.011	Internal Review Board
63L-1.012	Quality Assurance Reporting Requirements

PURPOSE AND EFFECT: The proposed rule specifies the process by which the department’s quality assurance system will evaluate state and contracted programs throughout the juvenile justice continuum.

SUBJECT AREA TO BE ADDRESSED: Quality assurance process for the inspection and evaluation of juvenile justice programs.

SPECIFIC AUTHORITY: 20.316, 985.405, 985.412 FS.

LAW IMPLEMENTED: 985.412 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, RULE DEVELOPMENT WORKSHOPS WILL BE HELD AT THE DATES, TIMES AND PLACES SHOWN BELOW:

DATE AND TIME: Monday, April 10, 2006, 10:00 a.m. – 12:00 Noon

PLACE: 5400 South University Drive, Ste. 202, Davie, Florida

DATE AND TIME: Monday, April 10, 2006, 10:00 a.m. – 12:00 Noon

PLACE: DJJ Residential Services Central Region Office, 4524 Oak Fair Blvd., Ste. 200, Tampa, Florida

DATE AND TIME: Monday, April 10, 2006, 10:00 a.m. – 12:00 Noon

PLACE: DJJ Headquarters, Knight Building, Room 108, 2737 Centerview Dr., Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Clyde Benedix, 2737 Centerview Drive, Ste. 312, Tallahassee, FL 32399-3100, e-mail clyde.benedix@djj.state.fl.us.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

Section II ProposeGd Rules

DEPARTMENT OF STATE

Division of Cultural Affairs

RULE NO.: IT-1.001 **RULE TITLE:** Division of Cultural Affairs

PURPOSE AND EFFECT: The purpose of this amendment is to establish in rule the most recent eligibility, matching funds, and grant administration criteria.

SUMMARY: The proposed rule details the eligibility, matching funds, and grant administration criteria for the Division’s Cultural Facilities Program and incorporates by reference the most recent application form.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost 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: 265.284(5)(d), 265.285(1)(c), 265.286(1), 265.701(4) FS.

LAW IMPLEMENTED: 215.97, 265.284, 265.285, 265.286, 265.701, 286.011, 286.012, 286.25 FS.

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

DATE AND TIME: Monday, April 17, 2006, 9:30 a.m.

PLACE: Division of Cultural Affairs, R. A. Gray Building, 3rd Floor, 500 South Bronough Street, Tallahassee, Florida 32399-0250

Pursuant to the provisions of the American with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting Morgan Barr, (850)245-6456.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sandy Shaughessy, Director, Division of Cultural Affairs, R. A. Gray Building, 3rd Floor, 500 South Bronough Street, Tallahassee, Florida 32399-0250

THE FULL TEXT OF THE PROPOSED RULE IS:

IT-1.001 Division of Cultural Affairs.

(17) Cultural Facilities Program. The purpose of this program is to coordinate and guide the State of Florida’s support and funding ~~for the of~~ renovation, construction, or acquisition of cultural facilities. This program ~~is~~ is not intended to fund project planning, such as feasibility studies and architectural drawings, or operational support.

(a) Administrative and Legal Eligibility. The applicant for a cultural facilities grant must:

1. Be a public entity governed by either a municipality, county, or qualified corporation as defined in Section 265.701(2), Florida Statutes.

2. Have ownership ~~or undisturbed use~~ of the land, and building(s), ~~or both situated upon the property where the cultural facility is or will be located; or~~

3. Have an executed lease for the undisturbed use of the land, building(s), or both upon the property where the cultural facility is or will be located. ~~In those the cases where either the land, or building(s), or both, are is leased and not owned, fee simple; by the applicant, the all underlying owner(s) must also~~

meet the requirements of Section 265.701(2), Florida Statutes ~~above criteria~~. For the purposes of this program, an applicant that leases state-owned land, building(s), or both must not be a political subdivision of the state.

~~4.3.~~ Retain ownership of all improvements to the facility and property made with under the grant funds for at least ten years following the execution of the grant award agreement. This paragraph does not apply to applicants that lease land and/or building(s) owned by the state.

5.4. Have satisfied the administrative requirements of previous grants received from the Division.

(b) Program Eligibility. All eligible applications shall consist of the following documents and information:

1. ~~Until directed to submit electronically on the Division's website, applicants must submit in hard copy, a~~ completed and signed Cultural Facilities Program Application Form (#CA2EO20, eff. 5/06), incorporated by reference and available from the Division, including the number of required application copies, submitted to the Division on or before the announced postmark deadline.

2. A description of the Project Scope of Work that shall include a project narrative, current phases, and prior phases.

3. Project Budgets including a summary and detail, a matching funds statement, match summary chart, and donor profile.

4. A description of the Need for the Project including an operating forecast detail, a list of the organization staff, and a statement on the fiscal stability of the organization.

5. A description of the project's impact on the city, county, or multi-county region.

6. Documentation of unrestricted ownership of the ~~land and facility located upon the property; or site and facility, or documentation undisturbed use of a site and facility for the following specific period of time as measured from the application deadline~~

~~a. For equipment or capital fixtures: minimum lease 10 years.~~

~~b. For building renovation, improvements: minimum lease 20 years.~~

~~c. For building renovation, increase of square footage: minimum lease 30 years.~~

~~d. For building construction where the land is leased: minimum lease 40 years.~~

7. An executed lease agreement between the applicant and owner(s) of the and, building(s), or both located upon the property, providing for undisturbed use for a minimum of 10 years following the execution date of the grant award agreement. Leases conditioned on the applicant's receipt of grant funds do not qualify.

~~8.7.~~ An independent certified audit or review of the applicant's financial records according to the following provisions:

a. Not-for-Profit, tax-exempt Florida corporations with total support and revenue in the unrestricted column of the audit ~~net unrestricted operating revenue~~ of less than \$500,000 must submit copies of the applicant organization's independent, certified audit or review for the last completed fiscal year. The publication date of the audit or review shall not be later than the date of the application deadline for which the audit or review is submitted.

b. Not-for-Profit, tax-exempt Florida corporations with total support and revenue in the unrestricted column of the audit ~~net unrestricted operating revenue~~ of \$500,000 or more must submit copies of the applicant organization's independent, certified audit for the last completed fiscal year. The publication date of the audit shall not be later than the date of the application deadline for which the audit is submitted.

c. Municipal or county governments shall submit either the audit for the last completed fiscal year, or an internally prepared financial statement of revenue and expenses.

~~9.8.~~ An 8 1/2" x 11" reduction of current architectural plans.

~~10.9.~~ Letters of Support: Submit letters or list of local officials lending support to this project.

(c) Funding Request.

1. The applicant shall not request more than \$500,000 in a single application. There is no minimum amount.

2. An applicant from the same organization shall not submit ~~2- or~~ more than one applications under a single application deadline for the same facility, project, site, or phase.

3. An organization shall not submit a funding request to both the Cultural Facilities Program and the Regional Cultural Facilities Program for the same project, facility, site, or phase in the same fiscal year.

(d) Time Limits and Funding Cap. No project shall receive more than \$1.5 million during five (5) consecutive state fiscal years. "Receive" means measured from July 1 of the fiscal year in which grant funds were awarded.

(e) Matching Funds.

1. For eligible organizations with total support and revenue in the unrestricted column of the audit ~~net unrestricted operating revenue~~ of less than \$500,000, eligible matching funds provided by the applicant organization or by a third party shall be on at least a one-to-one match of the amount requested.

2. For eligible organizations with total support and revenue in the unrestricted column of the audit ~~net unrestricted operating revenue~~ of \$500,000 or more, eligible matching funds provided by the applicant organization or by a third party shall be on at least a two-to-one match of the amount requested, except for eligible Rural Economic Development Initiative (REDI) applicants. REDI qualified means those counties or communities designated pursuant to Sections 288.0656 and 288.06561, Florida Statutes.

3. Eligible matching funds provided by eligible REDI applicants shall be at least a one-to-one match of the amount requested.

4. At least 50% of the required match must be in cash. For the purposes of this program, cash shall include cash-on-hand, and cash expenditures made on the project within the five-year period prior to the application deadline.

5. At least 50% of the cash match must be cash-on-hand and dedicated to the project. For the purpose of this program, cash-on-hand includes funds identified in executed award letters or contracts from third parties, provided that those funds are expressly for the project for which the grant application is submitted.

6. No more than 50% of the match may be irrevocable pledges or in-kind contributions. Irrevocable pledges and in-kind contributions must be documented in the application. For the purpose of this program, in-kind contributions by the applicant are not eligible for match.

7. Municipalities and counties must submit a copy of the approved resolution or minutes from the commission meeting, with the original application, which includes the dollar amount dedicated and available to the project if the grant is awarded and the date the funds will be available. Resolutions that have not been approved by the application deadline cannot be used as match documentation. Local funding, as indicated by the resolution, must be made available within 90 days of state award notification.

(f) Application Review Committee.

1. The application review committee shall review each eligible application based on the following criteria: Scope of Work (up to 15 points), Project Budget and Matching Funds (up to 25 points), Need for Program and Operating Forecast (up to 30 points), and Project Impact (up to 30 points).

2. All applications that receive an average score of at least of 75 out of 100 possible points will be recommended for funding.

3. The committee shall develop a priority list based on the average score for each application.

4. The committee shall submit the priority list to the Florida Arts Council for review and recommendation.

(g) Florida Arts Council shall review the priority list and submit the recommendations to the Secretary of State.

(h) The Secretary of State shall review the recommendations of the Council and provide the Legislature with an approved priority list with funding recommendations.

(i) Retaining Projects on the next grant cycle priority list.

1. Projects that are approved and recommended by the Secretary but are not funded by the Legislature shall be retained on the priority list for the next grant cycle only.

2. All projects that are retained shall be required by the Division to submit the information in subparagraphs (b)1.-3. above in order to reflect the most current status of the project.

3. The deadline for the receipt of updated information shall be the same annual deadline as for new applications.

4. Rollover updates will not be re-scored, but rather merged with the new applications using the original scores and recommended funding.

5. Rollover updates that are determined by the Division to be incomplete or ineligible, changed in scope or venue, or increased the funding request shall be removed from the priority list.

(j) No changes in project scope or venue will be permitted.

(k) Grant Award Agreement. The Grant Award Agreement (CA2EO38, eff. 5/06) incorporated by reference and available from the Division, is the document by which the organization enters into a contract with the State of Florida for the management of grant funds which shall include:

1. An update of the application project narrative and budget.

2. A completed Assurance of Compliance and Signature Authorization Form (Form CA2E059, eff. 6/00, incorporated by reference and available from the Division).

3. Other provisions that shall be agreed to by both the grantee and the state.

(l) The Division will further extend the provisions in section (10) of the Agreement in the event the grantee can clearly demonstrate extenuating circumstances. Extenuating circumstances encompass situations beyond the control of the grantee that prevent the timely completion of the project. Such circumstances include natural disaster, death or serious illness of the individual responsible for the completion of the project, litigation, failure of the contractor or architect to provide the services for which they were hired. Extenuating circumstances do not include failure to read or understand grant administrative requirements or failure to raise sufficient matching funds.

(m) Reporting Requirements.

1. Interim Reports shall be submitted at six-month intervals until the project is complete. For the purpose of this program, a project is considered complete when all grant and match funds have been expended. The first Interim Report is due on January 31 of the fiscal year in which the grant was awarded.

2. Final Report. A Final Report shall be submitted 45 days after the completion of the project.

3. All reports shall include the following information:

a.~~(a)~~ A description of the work completed.

b.~~(b)~~ A financial statement showing the expenditure of grant and match.

c.~~(c)~~ A state grant expenditure log that includes check number, amount of check, date of check, name of payee, and a description of the expenditure.

(n) Definitions. For the purposes of paragraphs (n), (o) and (p) of section (17) of this rule, a “grantee” is an applicant that has received a Cultural Facilities Program Grant Award. “Property owner” refers to the owner of land, building(s), or both situated upon the property. Section 265.701(4), F.S., requires that the grantee and the property owner either record a restrictive covenant or purchase a bond to ensure that the facility is used as a cultural facility for (10) years following the execution date of the grant award agreement. A “cultural facility” is “a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the cultural disciplines, such as: music, dance, theatre, creative writing, literature, painting, sculpture, folks arts, photography, crafts, media arts, and historical and science museums.”

(o) If the recordation of a restrictive covenant is chosen by the grantee and the property owner(s), a completed and executed Restrictive Covenant Form must be filed with the Clerk of the Circuit Court in the county where the property is located, prior to release of the grant funds.

1. The grantee’s legal interest in the land and/or building(s) determines which of the four restrictive covenant forms described below must be used.

a. A grantee that owns the land and the building(s) upon the property where the cultural facility is or will be located must complete Form CA2E108, eff. 5/06, incorporated by reference and available from the Division.

b. A grantee that owns the building(s) upon the property where the cultural facility is or will be located, but leases the underlying land, must complete Form CA2E110, eff. 5/06, incorporated by reference and available from the Division.

c. A grantee that leases the land and the building(s) upon the property where the cultural facility is or will be located must complete Form CA2E111, eff. 5/06, incorporated by reference and available from the Division.

d. A grantee that owns the land where the cultural facility is or will be located, but leases the building(s) upon the property where the cultural facility is or will be located must complete Form CA2E0112, eff. 5/06, incorporated by reference and available from the Division.

(p)1. If a bond is chosen in lieu of recording a restrictive covenant, the grantee must:

a. Purchase a bond prior to the release of grant funds from an insurer authorized to do business in Florida as a surety;

b. Include Form CA2E109, eff. 5/06, incorporated by reference and available from the Division, as an addendum to the grant award agreement;

c. Include in the bond that the facility described in the grant award agreement be used as a cultural facility for (10) ten years following the execution date of the grant award agreement, and that failure to do so shall constitute a violation of the bond;

d. Include in the bond that in the event of violation, the surety shall reimburse the Division pursuant to the amortization schedule set forth below.

2. A certified copy of the bond must be provided to the Division prior to the release of grant award funds.

3. If the bond is violated, the surety shall reimburse the Division pursuant to the following amortization schedule:

a. If a violation occurs within three (3) years following the execution of the grant award agreement, 100% of the grant amount;

b. If a violation occurs more than three (3) but less than four (4) years following the execution of the grant award agreement, 80% of the grant amount;

c. If a violation occurs more that four (4) but less that five (5) years following the execution of the grant award agreement, 70% of the grant amount;

d. If a violation occurs more that five (5) but less than six (6) years following the execution of the grant award agreement, 60% of the grant amount;

e. If a violation occurs more than six (6) but less than seven (7) years following the execution of the grant award agreement, 50% of the grant amount;

f. If a violation occurs more than seven (7) but less than eight (8) years following the execution of the grant award agreement, 40% of the grant amount.

g. If a violation occurs more than eight (8) but less than nine (9) years following the execution of the grant award agreement, 30% of the grant amount; and

h. If a violation occurs more than nine (9) but less than ten (10) years following the execution of the grant award, 20% of the grant amount.

Specific Authority 255.043(4), 265.284(5)(d), 265.285(1)(c), 265.286(1), (4), (6), 265.2861(2)(b), 265.2865(6), 265.605(1), 265.608(1), 265.609(1), (4), 265.701(4), 265.702(8) FS. Law Implemented 215.97, 255.043, 265.284, 265.285, 265.286, 265.2861, 265.2865, 265.601-.003, 265.605-.607, 265.608, 265.609, 265.701, 265.702, 286.011, 286.012, 286.25 FS. History—New 11-23-82, Formerly IT-1.01, Amended 10-1-96, 10-31-96, 2-2-97, 6-2-97, 7-17-97, 9-10-97, 1-4-98, 7-26-98, 8-2-98, 10-5-98, 10-25-98, 8-17-99, 8-1-02, 12-29-02, 10-14-03(17), 10-14-03(20), 11-16-03, 2-2-05, 5-16-05.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Donald R. Blancett

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Sandy Shaughnessy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 24, 2006

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Standards

RULE TITLE: 5F-3.001 **RULE NO.:** Adoption of Uniform Packaging and Labeling Regulation

PURPOSE AND EFFECT: The purpose of Rule 5F-3.001, F.A.C., is to amend it to adopt the most recent national standards for packaging and labeling requirements as adopted by the National Conference on Weights and Measures and published in 2006 edition of National Institute of Standards and Technology Handbook 130. Adoption of the current national standards will make Florida’s requirements uniform with the national requirements and facilitate interstate commerce and trade. Some rewording has also been done to promote editorial uniformity among the Bureau rules in Chapters 5F-3, 5F-5, 5F-7, and 5F-12, F.A.C. This does not cause any change in the content.

SUMMARY: Updates Rule 5F-3.001, F.A.C., to adopt the current national requirements for the packaging and labeling of commodities as adopted by the National Conference on Weights and Measures and published as the “Uniform Packaging and Labeling Regulation” in the 2006 edition of National Institute of Standards and Technology Handbook 130. **SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost 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: 531.41(3) FS.

LAW IMPLEMENTED: 531.41(4), 531.47, 531.49 FS.

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

DATE AND TIME: Monday, April 17, 2006, 10:00 a.m.

PLACE: Bureau of Weights and Measures, Doyle Conner Laboratory Complex, 3125 Conner Boulevard, Bldg. #2, Room 206, Tallahassee, Florida 32399-1650

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Max Gray, Bureau Chief, Bureau of Weights and Measures, 3125 Conner Blvd., Bldg. #2, Tallahassee, FL 32399-1650, phone: (850)488-9140

THE FULL TEXT OF THE PROPOSED RULE IS:

5F-3.001 Adoption of Uniform Packaging and Labeling Regulation

The Department of Agriculture and Consumer Services hereby adopts the Uniform Packaging and Labeling Regulation as published promulgated by the United States Department of

Commerce, National Institute of Standards and Technology (NIST), in NIST Handbook 130, 2006 ~~2005~~ Edition, as the Rule for packaging and labeling of commodities and incorporates said uniform regulation herein by this reference. A copy of NIST Handbook 130, 2006 ~~2005~~ Edition, may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, Phone: (202)512-1800 or <http://ts.nist.gov/ts/htdocs/230/235/pubs.htm>.

Specific Authority 531.41(3) FS. Law Implemented 531.41(4), 531.47, 531.49 FS. History--New 1-1-73, Formerly 5F-3.01, Amended 6-14-95, 8-27-98, 8-19-99, 7-3-00, 9-3-01, 6-23-02, 6-29-03, 6-21-04, 6-2-05,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Max Gray, Chief, Bureau of Weights and Measures

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Paul Driggers, Director, Division of Standards

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 14, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 17, 2006.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Standards

RULE NO.: 5F-5.001 **RULE TITLE:** Adoption of Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices

PURPOSE AND EFFECT: The purpose of this rule is to amend Rule 5F-5.001, F.A.C., to adopt the most recent national standards for weighing and measuring devices developed by the National Conference on Weights and Measures and published in the 2006 edition of National Institute of Standards and Technology Handbook 44. Adoption of the current national standards will make Florida’s requirements uniform with the national requirements and facilitate interstate commerce and trade. Some rewording has also been done to promote editorial uniformity among the Bureau rules in Chapters 5F-3, 5F-5, 5F-7, and 5F-12, F.A.C. This does not cause any change in the content.

SUMMARY: Adopts the current national standards for specifications, tolerances and other technical requirements for commercial weighing and measuring devices as published in the latest edition of National Institute of Standards and Technology Handbook 44.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost 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: 531.40, 531.41(3) FS.

LAW IMPLEMENTED: 531.40 FS.

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

DATE AND TIME: Monday, April 17, 2006, 10:00 a.m.

PLACE: Bureau of Weights and Measures, Doyle Conner Laboratory Complex, 3125 Conner Boulevard, Bldg. #2, Room 206, Tallahassee, Florida 32399-1650

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Max Gray, Bureau Chief, Bureau of Weights and Measures, 3125 Conner Blvd., Bldg. #2, Tallahassee, FL 32399-1650, phone: (850)488-9140

THE FULL TEXT OF THE PROPOSED RULE IS:

5F-5.001 Adoption of Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices.

(1) The Department of Agriculture and Consumer Services hereby adopts t~~The S~~pecifications, T~~olerances, and O~~ther T~~echnical R~~requirements for C~~eommercial W~~weighing and M~~measuring D~~eveloped ~~published adopted~~ by the National Conference on Weights and Measures and contained in National Institute of Standards and Technology (NIST) NIST Handbook 44, 2006 2005 Edition, are hereby adopted as the ~~R~~ules for the requirements for commercial weighing and measuring devices, ~~of the Department of Agriculture and Consumer Services.~~ A copy of NIST Handbook 44, 2006 2005 Edition, may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, Phone (202)512-1800 or <http://ts.nist.gov/ts/htdocs/230/235/pubs.htm>.

(2) The violation of any of the provisions of these rules and regulations is subject to the penalties and remedies provided in the Weights, Measures, and Standards Law, Chapter 531, Florida Statutes.

Specific Authority 531.40, 531.41(3) FS. Law Implemented 531.40 FS. History—New 1-1-73, Amended 7-1-74, 4-18-75, 1-25-76, 1-17-77, 3-29-78, 2-15-79, 6-4-80, 4-5-81, 5-2-82, 6-30-83, 7-15-84, 8-11-85, Formerly 5F-5.01, Amended 7-7-86, 4-5-87, 4-27-88, 5-31-89, 8-21-90, 8-5-91, 12-10-92, 6-21-94, 8-16-95, 10-8-96, 8-27-98, 8-19-99, 7-3-00, 9-3-01, 6-23-02, 6-29-03, 6-21-04, 6-2-05,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Max Gray, Chief, Bureau of Weights and Measures

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Paul Driggers, Director, Division of Standards

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 14, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 17, 2006

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Standards

RULE NO.: 5F-7.005
 RULE TITLE: Adoption of Uniform Method of Sale Regulation

PURPOSE AND EFFECT: The purpose of this rule is to amend Rule 5F-7.005, F.A.C., to adopt the most recent national standards for the methods of sales of commodities developed by the National Conference on Weights and Measures and published in the 2006 edition of National Institute of Standards and Technology Handbook 130. Adoption of the current national standards will make Florida’s requirements uniform with the national requirements and facilitate interstate commerce and trade. Some rewording has also been done to promote editorial uniformity among the Bureau rules in Chapters 5F-3, 5F-5, 5F-7, and 5F-12, F.A.C. This does not cause any change in the content.

SUMMARY: Adopts the current national model methods of sale of commodities being sold by weight, measure or count, as published in National Institute of Standards and Technology Handbook 130 to provide for interstate commerce, facilitate value comparison and provide adequate quantity information for consumers and purchasers.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost 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: 531.41 (3) F.S.

LAW IMPLEMENTED: 531.41 (4), 531.45, F.S.

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

DATE AND TIME: Monday, April 17, 2006, 10:00 a.m.

PLACE: Bureau of Weights and Measures, Doyle Conner Laboratory Complex, 3125 Conner Boulevard, Bldg. #2, Room 206, Tallahassee, Florida 32399-1650

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Max Gray, Bureau Chief, Bureau of Weights and Measures, 3125 Conner Blvd., Bldg. #2, Tallahassee, FL 32399-1650, phone: (850)488-9140

THE FULL TEXT OF THE PROPOSED RULE IS:

5F-7.005 Adoption of Uniform Methods of Sale Regulation

The Florida Department of Agriculture and Consumer Services hereby adopts the Uniform Regulation for the Method of Sale of Commodities, as published by the United States Department of Commerce, National Institute of Standards and Technology (NIST), in NIST Handbook 130, 2006 2005 Edition, as the Rule for the method of sale for commodities, and incorporates said uniform regulation herein by this reference. A copy of NIST Handbook 130, 2006 2005 Edition, may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, Phone: (202)512-1800 or http://ts.nist.gov/ts/htdocs/230/235/pubs.htm.

Specific Authority 531.41(3), (4), 531.45 FS. Law Implemented 531.41(3), (4), 531.45 FS. History--New 1-8-90, Amended 6-14-95, 8-27-98, 8-19-99, 7-3-00, 9-3-01, 6-23-02, 6-29-03, 6-21-04, 6-2-05,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Max Gray, Chief, Bureau of Weights and Measures
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Paul Driggers, Director, Division of Standards
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 14, 2006
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 17, 2006

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Standards

RULE NO.: 5F-12.001
RULE TITLE: Adoption of Examination Procedure for Price Verification

PURPOSE AND EFFECT: The purpose of this rule is to adopt the most recent national standards for determining acceptable pricing practices developed by the National Conference on Weights and Measures and published in the 2006 edition of National Institute of Standards and Technology Handbook 130. Adoption of the current national standards will make Florida's requirements uniform with the national requirements and facilitate interstate commerce and trade. Some rewording has also been done to promote editorial uniformity among the Bureau rules in Chapters 5F-3, 5F-5, 5F-7, and 5F-12, F.A.C. This does not cause any change in the content.

SUMMARY: Adoption of this current national standard for determining acceptable pricing practices will make Florida's requirements uniform with the national requirements and facilitate interstate commerce and trade.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost 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: 531.41(3) FS.

LAW IMPLEMENTED: 531.44 FS.

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

DATE AND TIME: Monday, April 17, 2006, 10:00 a.m.

PLACE: Bureau of Weights and Measures, Doyle Conner Laboratory Complex, 3125 Conner Boulevard, Bldg. #2, Room 206, Tallahassee, Florida 32399-1650

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Max Gray, Bureau Chief, Bureau of Weights and Measures, 3125 Conner Blvd., Bldg. #2, Tallahassee, FL 32399-1650, phone: (850)488-9140

THE FULL TEXT OF THE PROPOSED RULE IS:

5F-12.001 Adoption of Examination Procedure for Price Verification Test Procedures to Determine Acceptable Pricing Practices.

The Department of Agriculture and Consumer Services hereby adopts the "Examination Procedure for Price Verification" published promulgated by the United States Department of Commerce, National Institute of Standards and Technology (NIST), in NIST Handbook 130, 2006 2005 Edition, as the Rule for the sampling procedures and compliance standards in testing the accuracy of pricing practices employed by businesses and other entities in the state and incorporates said regulation herein by this reference. A copy of NIST Handbook 130, 2006 2005 Edition, may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, Phone: (202)512-1800 or http://ts.nist.gov/ts/htdocs/230/235/pubs.htm.

Specific Authority 531.41(3) FS. Law Implemented 531.44 FS. History--New 4-9-98, Amended 6-2-05,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Max Gray, Chief, Bureau of Weights and Measures
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Paul Driggers, Director, Division of Standards
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 14, 2006
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 17, 2006

DEPARTMENT OF TRANSPORTATION

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
14-22	Contractors – Highway – Qualification to Bid
RULE NOS.:	RULE TITLES:
14-22.002	Regulations Covering Qualification of Contractors
14-22.003	Rating the Applicant
14-22.0042	Notification of Conviction of Contract Crime
14-22.005	Period of Validity of Qualification
14-22.006	Current Capacity Rating
14-22.008	Eligibility for Obtaining Proposal Documents
14-22.015	Forms

PURPOSE AND EFFECT: Rule Chapter 14-22, F.A.C., is being amended to update the requirements of the application process, to clarify the submittal of financial statements, to define accounting terms, and their effect on the Adjusted Net Worth, to establish the work class of Emergency Debris Removal, to clarify the Period of Validity of Qualification, and to clarify the Department’s definition of eligibility for obtaining bid proposal documents, and to update forms.

SUMMARY: Rule Chapter 14-22, F.A.C., is being amended and clarified. These amendments include updating the application process, revising definitions, establishing the work class of Emergency Debris Removal, clarifying the definition of eligibility for obtaining bid proposal documents, and updating forms.

SPECIFIC AUTHORITY: 334.044(2), 337.14(1) FS.

LAW IMPLEMENTED: 120.569, 337.11(3)(b), 337.11(5)(a)1.-3., 337.11(7)(b)1., 337.11(7)(c), 337.14, 337.16, 337.165, 337.167 FS.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was 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 RULES 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 RULES IS:

14-22.002 Regulations Covering Qualification of Contractors.

(1) Application for Qualification.

(a) Persons or firms who desire to qualify with the Department in order to bid for the performance of road, bridge, or public transportation construction projects in excess of \$250,000, shall file annually with the Department two copies of an application for qualification including audited financial statements as required by this section. For purposes of this rule, “filing” is defined as receipt of the application and audited financial statements by the Contracts Administration Office, MS 55, Room 60, Haydon Burns Building, 605 Suwannee Street, Tallahassee, Florida 32399-0455.

(b) A separate application must be submitted for each person, firm, or combination thereof for which qualification is desired.

(c) The applicant must indicate the classes of work for which qualification is sought.

(d) All statements made by the applicant in the application shall be furnished under oath.

(e) The data in the applicant’s financial statement must be reflected in the financial sections of the application.

(f) All applications must include the appropriate federal tax reference number.

1. For corporations (including Subchapter S corporations), partnerships, sole proprietorships, joint ventures, limited liability companies, and other entities the appropriate tax reference number is the federal Employer Identification Number (EIN).

2. For individuals the appropriate tax reference number is the Social Security Number (SSN) of the individual.

3. For foreign corporations organized outside the United States, the Department will assign a special identification number.

(g) In the event the Department finds an application is incomplete or contains inadequate or inaccurate information needed for processing of the application, or the Department needs more information to make a decision regarding the applicant’s competency, responsibility, or financial resources, the Department shall verbally request or request in writing that the applicant provide the necessary information or the source for verification of the information. If the requested information is not provided within 20 days, of the initial request, the Department shall request the information a second time in writing express delivery, delivery receipt. If the information is not provided within 10 days of receipt of the second request, the application shall be denied.

(h) The Department shall act upon the application for qualification within 30 days after the Department determines that the application is complete.

(2) Financial Statements. Each application shall include be accompanied by the latest annual audited financial statements including any supplementary information and schedules of the

applicant that were completed within the last 12 months. Audited financial statements required to be submitted with the application shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP). If the audited annual financial statements show the financial condition of the applicant more than four months prior to the date on which the application is filed with the Contracts Administration Office, then audited interim financial statements must also be submitted. The audited interim financial statements must cover the period from the ending date of the audited annual statements and must show the financial condition of the applicant no more than four months prior to the date on which the application is filed with the Contracts Administration Office. These annual and interim financial statements must be audited and accompanied by the opinion of a Certified Public Accountant.

(a) An adverse opinion or a disclaimer of an opinion shall result in disapproval of the application. A qualified opinion will result in adjustments to the financial portions of the application if such qualification arises because of the use of an accounting principle at variance with ~~Generally Accepted Accounting Principles~~ (GAAP) or the qualification is of such magnitude as to materially affect the current ratio, liabilities, or the adjusted net worth.

(b) When consolidated financial statements are required by GAAP, and qualification is desired for one or more of the subsidiary companies, a consolidating balance sheet is required and must be included by the Certified Public Accountant. When combined financial statements are allowed by GAAP, and qualification is desired for one of the combining affiliated entities, a combining balance sheet is required and must be included by the Certified Public Accountant.

1. For those applications described in paragraph (2)(b) above, financial information entered in the Details Relative to Assets and Details Relative to Liabilities sections of the Application for Qualification must be obtained from the consolidating or combining balance sheets, as appropriate, and reflect only those portions of the financial statements relative to the qualifying applicant.

2. Only the financial data of the applicant as shown on the consolidating or combining balance sheets and reflected in the application will be used in determining the applicant's Current Ratio Factor (CRF), Adjusted Net Worth, (ANW), and Maximum Capacity Rating (MCR).

(c) The financial statements shall include, but shall not be restricted to the following basic financial statements:

1. Statements (a. through d.) shown below and the opinion of the certified public accountant on these statements.

a. A balance sheet.

b. An income statement.

c. A statement of retained earnings or changes in stockholders equity.

d. A statement of cash flows.

2. The Income Statement above shall provide separate totals for "construction revenues", as defined by Rule paragraph 14-22.0011(3)(h), and all revenues earned during the audit period.

3. Notes to financial statements.

4. Supplemental data including a schedule of selling, general and administrative expenses, and a schedule of contracts in progress. ~~A statement of direct (operational) costs and a statement of indirect (general and administrative) costs.~~

5. Upon written request, such additional financial information necessary for the Department to verify the financial adequacy of the applicant as presented in their financial statements and the opinion of the Certified Public Accountant.

(d) Applicants not qualified with the Department the previous year shall furnish financial statements with each copy of the application form that covers the year preceding the year of the latest annual audited financial statements included in the application. This requirement is not applicable for newly established (in existence less than one year) firms.

(3) List of Equipment. Each major item of equipment owned by the applicant that is utilized in performing the requested classes of work shall be listed in the application with its book or salvage value, make, model, and description shown. Items held under capital lease agreements shall be identified so that the book value of these items can be readily determined. Items required for each class of work may be grouped together, but listed separately. An applicant who desires that the value of the equipment owned be calculated on 50 percent of appraised value shall provide an additional list which includes an appraisal by a qualified equipment appraiser. For an appraisal to be valid, the appraiser must state that they have personally inspected and/or examined the equipment. Certified statements of availability of equipment from affiliated companies may be used for obtaining classes of work. The same equipment may be used to qualify no more than two affiliated applicants. Letters of commitment from at least two equipment rental companies may be used to obtain certification in classes of work in which the applicant has expertise. The letters of commitment must list the equipment that the applicant intends to lease for the classes of work sought and commit the lessor for the maximum period the applicant is seeking qualification.

(4) Experience Record.

(a) Each application shall include a current list of projects completed within the past three years as prime or subcontractor stating the actual dollar amount of work executed and listing each class of work performed on those projects by the applicant's own employees. The list shall not include work sublet to others or performed with rented equipment and operators. Résumés must be submitted to show construction experience of personnel at superintendent level and above for

each class of work for which the applicant is requesting qualification. The same list of personnel shall not be used to qualify more than two affiliated applicants.

(b) Newly established firms, applicants qualifying for the first time and applicants whose Certificate of Qualification has been expired for more than two years shall provide letters of recommendation from at least two agencies or firms with direct knowledge of the applicant's key personnel and work performance in sufficient detail to assist in rating the applicant's ability to perform road and bridge construction and services incidental thereto. The letters must contain specific information regarding the following:

1. Specific projects, including project numbers and location.
2. Size of projects by dollar value.
3. Description of projects and classes of work performed with applicant's own employees and equipment.
4. Whether projects were timely completed.
5. Whether the applicant was cooperative and facilitated changes to the project when required.

Specific Authority 334.044(2), 337.14(1), 337.167 FS. Law Implemented 337.14, 337.164, 337.167 FS. History—Formerly Chapter 14-8, Amended 7-1-67, 8-20-68, 5-9-70, 1-6-72, 9-24-75, Formerly 14-22.01(1),(2),(3), Amended 3-23-79, 11-10-82, 8-25-83, 10-1-85, Formerly 14-22.02, Amended 12-20-89, 6-27-90, 1-4-94, 7-1-95, 6-27-04, _____.

14-22.003 Rating the Applicant.

(1) Verification of Information. The Department will make such inquiries and investigations as deemed necessary to verify and evaluate whether the applicant is competent, is responsible, and possesses the necessary financial resources to perform the desired work, based upon the following:

(a) Organization and management, including construction experience, and past work performance record of the applicant or applicant's employees, whether with or prior to their employment by that applicant, including deficiency in quality of completed work, any history of payment of liquidated damages, untimely completion of projects where liquidated damages were not paid, uncooperative attitude, contracts litigation, claims, unpaid bill(s), notices of non-payment filed by subcontractors or suppliers, and defaults in Florida or other states.

(b) Equipment, as shown on the equipment list for the requested classes of work. Adequate equipment shall be basic equipment used by the industry in the normal construction for each class of work or called for in the Standard Specifications for Road and Bridge Construction in force at the time of application.

(c) Integrity, including evaluation of truthfulness of statements in the application and in other contractual documents.

(d) Financial resources, sufficient to establish a Maximum Capacity Rating (MCR) as set forth in subsection (2) below. The Department will consider any other relevant financial information.

(2) MCR.

(a) Definition and Formula. The MCR shall be the total aggregate dollar amount of uncompleted work an applicant may have under contract at any one time as prime contractor and/or subcontractor, regardless of its location and with whom contracted. The MCR shall be established by the Department using the following formula, and consideration of general qualification factors listed in subsection 14-22.004(1), F.A.C.:

$$MCR = AF \times CRF \times ANW, \text{ in which}$$

MCR = Maximum Capacity Rating
 AF = Ability Factor (determined from the Ability Score as provided below)
 CRF = Current Ratio Factor (determined as provided below)
 ANW = Adjusted Net Worth (for rating purpose, determined as provided below).

1. Ability Score.

a. New applicants and applicants who have not been qualified under this rule for more than two years shall have their Ability Factor determined from the total Ability Score resulting from evaluations of the applicant's organization, management, work experience, and letters of recommendation. The maximum values used in determining the ability score for the above applicants are as follows:

ABILITY SCORE	
Organization and Management	Maximum Value
Experience of Principals	15
Experience of Construction Supervisors	15
Work Experience	
Completed Contracts	
Highway and bridge related	25*
Non-highway and bridge related	10
Ongoing Contracts	
Highway and bridge related	25*
Non-highway and bridge related	10
TOTAL	100
*Maximum value shall be increased to 35 if applicant's experience is exclusively in highway and bridge construction.	

b. If the applicant has been qualified under this rule within the last two years, and the Department has three or more Prime Contractor Past Performance Reports on file for projects completed for the Department within five years of the application filing date which have not been previously used to determine an Ability Score, the applicant's Ability Score shall be calculated by adding the scores of these reports plus the average score from the previous application and dividing this sum by the number of scores used. Prime Contractor Past Performance Reports shall reflect the applicant's organization, management, and demonstrated work performance, including work sublet to others, set forth in Form 700-010-25, which is incorporated by reference in Rule 14-22.015, F.A.C.

c. If the applicant has been qualified under this rule within the last two years, and the Department does not have three or more Prime Contractor Past Performance Reports on file for the applicant for projects completed for the Department within five years of the application filing date, then the Ability Factor (AF) from the applicant's last successful application will be brought forward and used.

d. The average Ability Score determined in a. or b. above is converted to an AF pursuant to Rule subparagraph 14-22.003(2)(a)2., F.A.C., or the AF is brought forward as indicated in c. above. The AF is then used in the formula pursuant to Rule paragraph 14-22.003(2)(a), F.A.C., to compute the applicant's MCR.

2. Ability Factor. The Ability Score for new and active applicants shall determine the AF as follows:

Ability Score	AF
64 or less	1
65-69	2
70-73	3
74-76	4
77-79	5
80-84	8
85-89	10
90-93	12
94-97	14
98-100	15

a. Notwithstanding the requirements in paragraph 14-22.003(2)(a) and sub-subparagraphs 14-22.003(2)(a)1.a., 1.b., 1.c., 1.d., and subparagraphs 14.22.003(2)(a)2., F.A.C., above, the AF will be limited to a maximum of 4 if the applicant receives an ability score of 76 or less on the initial application, or receives an ability score of 76 or less on two or more Prime Contractor Past Performance Reports on file for projects completed during the 12 month period preceding the applicant's fiscal year ending date for which the Certificate of Qualification is being issued, unless the applicant's average ability score (inclusive of all scores received during the period) is 87 or greater. The use of a surety commitment letter to raise the MCR is prohibited.

b. This AF limitation will remain in effect during the current qualification period.

3. Current Ratio Factor (CRF). The current ratio is the number resulting from dividing the adjusted current assets by the adjusted current liabilities. The actual current ratio from 0.60 up to a maximum of 2.00 will be used as the CRF. For current ratios greater than 2.00, 2.00 will be used as the CRF. The applicant will be denied qualification if its current ratio is less than 0.60.

4. Adjusted Net Worth (ANW). The ANW must be a positive value for the applicant to be considered for qualification. The ANW used in the MCR formula will be the amount of capital and surplus (net worth) as adjusted, as follows:

5. The following adjustments shall be applied in the establishment of the CRF and ANW:

a. Value allowed for equipment shall be the book value, or 50 percent of actual value given by a qualified equipment appraiser, whichever is greater. Equipment appraisals must be dated no earlier than six months prior to receipt of the application.

b. Value allowed for real estate used for business purposes (road, bridge, or public transportation construction) shall be:

(I) The book value or the value given by a qualified real estate appraiser, (real estate appraisals shall be dated no earlier than two years prior to the date the application is filed), less

(II) Encumbrances against same (such encumbrances will not also be deducted elsewhere).

c. No value will be allowed for investments, real estate, or any other property not used in road, bridge, or public transportation construction, and no allowance shall be given for homesteads or personal property.

d. Assets of doubtful value, as more fully defined by GAAP, are recorded transactions that, based upon the known facts and circumstances, do not lead to the realization of value for use in the contractor's operations in the current operating period. These assets shall be eliminated in part or entirely.

e. Contingent liabilities, as more fully defined by GAAP, are debts or obligations that would require the use of the contractor's resources within the current operating period, given that certain events take place in the future. These shall be treated as actual liabilities, wholly or in part, depending on the probability of such liabilities becoming actual liabilities.

f. Patents, organizational expense, non-compete agreements, goodwill, and intangible assets, as defined by GAAP, shall be eliminated entirely.

g. Past due receivables or unexplained receivables, officer and employee receivables, or other related party receivables, unsecured notes receivable, and the interest for these notes shall be eliminated entirely. Subsidiary or affiliate receivables, based upon the known facts and circumstances, that do not lead to the realization of value for use in the contractor's operations shall be eliminated in part or entirely.

h. Prepaid expenses, Prepaid taxes and deferred interest shall be eliminated entirely.

i. Leasehold improvements and the excess of book value over liabilities for capital lease assets shall be eliminated entirely.

j. Cash surrender value life insurance shall be eliminated entirely.

k. Construction claims included as current assets associated with contracts shall be eliminated entirely.

~~6.5.~~ MCR. The calculated MCR shall be rounded off according to the following scale:

- Up to \$500,000 B round off to nearest \$10,000
- Above \$500,000 to \$2,000,000 B round off to nearest \$25,000
- Above \$2,000,000 B round off to nearest \$50,000

(b) Bonding Capacity.

1. Except for the provisions of Rule sub-subparagraph 14-22.003(2)(a)2.a., F.A.C., above, an applicant qualifying for a positive rating, or a contractor having a current certificate of qualification, has an Ability Score of 80 or higher, and has a Current Ratio Factor of at least 1.00, is eligible to request an increase in ~~shall be allowed to raise~~ its MCR upon receipt of evidence of a current bonding capacity exceeding the calculated MCR from a surety company authorized to do business in Florida. Such evidence shall be in the form of a Surety Commitment Letter and ~~letter of commitment~~ executed by an officer of the surety who is authorized to bind the surety, with a power of attorney attached. The ~~S~~surety Commitment Letter must be dated within four months of the request and cover the certification period. The limit for an MCR issued on the basis of such bond commitment for applicants with an Ability Score of 80 through 90 will be determined by the following "Surety Capacity" formula:

$$SC = SM \times MCR \times (CRV \div TRV)$$

In which:

- SC = Surety Capacity
- SM = Surety Multiplier (Determined from Ability Score – Surety Multiplier Table as provided below)
- MCR = Maximum Capacity ~~Rating~~ (Determined as provided in paragraph 14-22.003(2)(a), F.A.C.)
- CRV = Construction Revenues (As set forth in applicant's financial statements per subparagraph 14-22.002(2)(c)2., F.A.C.)
- TRV = Total Revenues (As set forth in applicant's financial statements)

ABILITY SCORE – SURETY MULTIPLIER TABLE	
Ability Score	Surety Multiplier
80	3.0
81	3.4
82	3.8
83	4.2
84	4.6
85	5.0
86	5.6

87	6.2
88	6.8
89	7.4
90	8.0

2. Except for the provisions of sub-subparagraph 14-22.003(2)(a)2.a., F.A.C., above, the MCR for firms that have an Ability Score of 91 or greater will be the "Aggregate of Contracts" amount stipulated in the surety commitment letter. An MCR established through the use of a surety commitment letter shall not exceed the "Aggregate of Contracts" amount stipulated in the surety commitment letter.

3. Except for the provisions of Rule sub-subparagraph 14-22.003(2)(a)2.a., F.A.C., above, use of a surety commitment letter to increase an applicant's MCR will only be considered if at the time of application the applicant's CRF is at least 1.00, as defined in Rule subparagraph 14-22.003(2)(a)3., F.A.C., and the applicant has an Ability Score of 80 or higher. No event(s) during the qualification period subsequent to the ending date of the audited financial statements used for qualification will be considered in determining an applicant's CRF. However, the Department will consider the general qualification factors listed in Rule subsection 14-22.004(1), F.A.C., in consideration of an increase to the applicant's MCR through the use of a surety commitment letter.

(3) Classification of Work.

(a) Applicant request for class(es) of work. Applicants shall indicate each class of work for which they desire qualification. The Department will consider qualifying the applicant only in the specific class or classes of work requested.

(b) The major classes of work are as follows:

1. Major Bridges:

- a. Bridges which include bascule spans.
- b. Bridges which include curved steel girders.
- c. Bridges with multi-level roadways.
- d. Bridges of concrete segmental construction.
- e. Bridges which include steel truss construction.
- f. Bridges which include cable stayed construction.
- g. Bridges of conventional construction which are over a water opening of 1,000 feet or more.

h. Cast-in-place post-tensioned superstructures.

2. Intermediate Bridges are bridges that contain none of the types of construction listed under Major Bridges and span lengths exceeding 50 feet (center to center of cap).

3. Minor Bridges are bridges with span lengths not exceeding 50 feet (center to center of cap) and total length not exceeding 300 feet. A Minor Bridge shall not contain any type of construction listed under Major Bridges or Intermediate Bridges.

4. Bascule Bridge Rehabilitation.

5. Grading (includes clearing and grubbing, excavation, and embankment).

6. Drainage (includes all storm drains, pipe culverts, culverts, etc.).

7. Flexible Paving (includes limerock, shell base and other optional base courses, soil-cement base, mixed-in-place bituminous paving, bituminous surface treatments and stabilizing).

8. Portland Cement Concrete Roadway Paving.

9. Hot Plant-Mix Bituminous (includes structural and surface courses).

(c) Specialty classes of work are as follows:

1. Electrical work (includes roadway, bridge, and runway lighting).

2. Fencing.

3. Guardrail.

4. Grassing, Seeding, and Sodding.

5. Landscaping.

6. Traffic Signals.

7. Computerized Traffic Control Systems.

8. Bridge Painting.

9. Pavement Markings (includes delineators, traffic stripe painting, and thermoplastics).

10. Roadway Signing.

(d) Such other classes of work not normally performed by road and bridge contractors as the applicant may request.

(e) For the Work Class of Emergency Debris Removal, the contractor(s) shall complete the Application for Qualification for Emergency Debris Removal, DOT Form 375-020-37, Rev. 01/06, incorporated herein by reference. The Application for Qualification shall be accompanied by a Reviewed Financial Statement prepared in accordance with GAAP.

Specific Authority 120.53(1)(a), 334.044(2), 337.14(1) FS. Law Implemented 337.11(3)(b), 337.11(5)(a) 1.-3., 337.11(7)(b)1., 337.11(7)(c), 337.14, 337.167 FS. History-Formerly Chapter 14-8, Amended 7-1-67, 8-20-68, 5-9-70, 1-6-72, 9-24-75, Formerly 14-22.01(4), Amended 3-23-79, 11-10-82, 8-25-83, 1-9-84, 10-1-85, Formerly 14-22.03, Amended 12-20-89, 4-22-92, 1-4-94, 7-1-95, 7-2-95, 7-8-01, 6-27-04,_____.

14-22.0042 Notification of Conviction of Contract Crime.

(1) A contractor who is currently qualified or seeking to be qualified shall notify the Contracts Administration Office in writing within 30 days after the filing of a criminal Information, an Indictment, or the conviction of a contract crime applicable to the contractor, or any affiliates, officers, directors, executives, shareholders active in management, employees, or agents of the contractor.

(2) Whenever the Department has reason to believe that a contractor or their affiliate, who is currently qualified or seeking qualification, has been convicted of a contract crime or is affiliated with a person or contractor so convicted, the Department may issue a written demand upon the contractor or

affiliate to appear for sworn testimony, to answer written interrogatories, or to produce documents or other tangible evidence for inspection or copying.

Specific Authority 334.044(2), 337.14(1) FS. Law Implemented 120.62, 337.164, 337.165(5), (6) FS. History-New 8-25-83, Amended 10-1-85, Formerly 14-22.042, Amended 12-20-89, 1-4-94,_____.

14-22.005 Period of Validity of Qualification.

(1) The applicant's period of qualification shall be 18 months from the ending date represented by the audited annual financial statements included in the application. For good cause, the Department will approve a period of qualification less than 18 months. Good cause shall mean as defined in Rule 14-22.0141, F.A.C. An applicant must submit a new application 30 days prior to the expiration of its current Certificate of Qualification to ensure no interruption in its qualification to bid. The Certificate of Qualification shall expire no later than the expiration date of the certificate, regardless of whether or not a hearing has been requested concerning the Department's action on the application. Submission of an application shall not affect expiration of the Certificate of Qualification.

(2) Qualified applicants in good standing shall be notified of the impending deadline date for submittal of their application for qualification at least 45 days prior to that date. Failure of notification shall not affect the deadline date for submittal of applications for qualification.

(3) Qualified entities shall submit a new application with financial statements as required by subsection 14-22.002(2), F.A.C., within four (4) months from the date that a change of ownership or incorporation of a non-incorporated firm occurs. Also, a new application shall may be required whenever the Department has reason to believe that the position of a qualified entity is less favorable than at the time of its last application or a subsequent event that is material and adversely affects the financial position of the entity.

(4) A qualified entity need not submit a new application solely because of any change in the officers or the name of a corporation, but such information shall be certified to the Department within 10 days of such events.

(5) A qualified entity shall notify the Department in writing within 10 days of the decrease in its available surety performance bond credit amount.

(6) A Certificate of Qualification shall not be issued to an applicant or affiliate that is insolvent.

(7) A qualified entity or applicant or affiliate shall notify the Contracts Administration Office in writing upon the filing of a bankruptcy petition. The notice shall be received by the Contracts Administration Office within 10 days of the initial filing.

(8) A qualified entity, upon written request from the Department (stating the reasons for this request), shall submit updated or other additional financial information necessary for the Department to verify the financial adequacy of the qualified entity during the period of validity of qualification.

Specific Authority 334.044(2), 337.14(1) FS. Law Implemented 337.14, 337.164 FS. History—Formerly Chapter 14-8, Amended 7-1-67, 8-20-68, 5-9-70, 1-6-72, 9-24-75, Formerly 14-22.01(7), Amended 3-23-79, 11-10-82, 8-25-83, 10-1-85, Formerly 14-22.05, Amended 12-20-89, 1-4-94, 6-27-04, _____.

14-22.006 Current Capacity Rating.

(1) The Certificate of Qualification shall establish an entity's Maximum Capacity Rating which will be reduced by the total value of their current uncompleted work, regardless of its location and with whom it may be contracted, to determine their bidding capacity at any particular time. This bidding capacity shall be called Current Capacity.

(2) In determining the Current Capacity of a prospective bidder, the deduction for uncompleted work shall include work subcontracted from others. The bidder will be given credit for work sublet to others; provided, for contracts with the Department, the request for authorization to sublet the work has been approved in writing. The Department, in determining the bidder's eligibility to be issued a bid proposal, will decrease a bidder's uncompleted work by deducting ten percent per month from the "Status of Contracts on Hand" report in the Certification of Current Capacity form submitted with the bidder's most recent bid or the uncompleted work listed in the bidders's Application for Qualification, whichever is most current, which will increase the Current Capacity accordingly.

(3) In order for the Department to have the information required to determine a bidder's Current Capacity, it is necessary that the bidder submit on the day of the letting, a Certification of Current Capacity, Form 375-020-22, Rev. 05/05, that shall be executed under oath. This form must be included in the at least one bid for the first letting in the calendar month that the bidder submits a bid each letting bid upon. Failure to submit this document shall may result in a determination that all bids submitted by the bidder for that letting are disqualified non-responsive or irregular and are rejected, pursuant to Rule 14-22.009, F.A.C. not to be considered. The Department shall include the Certification of Current Capacity, Form 375-020-22, Rev. 05/05 with the proposal documents issued to the bidder.

(4) In preparing the Certification of Current Capacity, Form 375-020-22, Rev. 05/05 the following shall apply:

(a) If the letting is not later than the 25th day of the month, the certification and report shall reflect the uncompleted work as of the 15th day of the month preceding the month of the letting.

(b) If the letting is after the 25th day of the month, the certificate and report shall reflect the uncompleted work in progress as of the 15th day of the month of the letting.

(c) In determining a bidder's Current Capacity, any projects in a prior letting pending award by the Department to such bidder also shall be debited against the bidder's Current Capacity unless the award is to be delayed for an indefinite period of time. Further, no credit shall be given for proposed subcontracting of any work included in such proposal pending award.

Specific Authority 334.044(2), 337.14(1) FS. Law Implemented 337.11(3)(b), 337.11(5)(a) 1.-3., 337.11(7)(b)1., 337.11(7)(c), 337.14, 337.164 FS. History—Formerly Chapter 14-8, Amended 7-1-67, 8-20-68, 5-9-70, 1-6-72, 7-24-75, Formerly 14-22.01(8), Amended 3-23-79, 11-10-82, 8-25-83, 10-1-85, Formerly 14-22.06, Amended 12-20-89, 6-27-90, 1-4-94, 7-1-95, 7-2-95, 12-18-05, _____.

14-22.008 Eligibility for Obtaining Proposal Documents.

(1) Proposal documents for a specific project(±) shall be issued only to a prospective bidder who has a Current Capacity equal to or larger than the budgeted contract amount and a Certificate of Qualification, which expires on or after the date proposals are to be received, covering one or more classes of work, as identified in paragraph 14-22.003(3)(b), F.A.C., which, in the aggregate, comprise 50 percent or more of the percentage of the Department's budget estimate of the major classes of work in the specific contract total value of normal work included in the proposal documents.

(2) If the Department's budget estimate for a specific project has a majority of percentage of speciality classes of work, as identified in paragraph 14-22.003(3)(c), F.A.C., then a contractor must be qualified in 50 percent or more of the percentage of the Department's budget estimate for the total classes of all work in the specific project. The term "normal work" as used herein means all work in the contract not designated in the proposal document or the Specifications as Specialty Work.

(3) In determining whether a contractor shall receive proposal documents, the Department will automatically credit all contractors as being qualified in 50 percent of the Maintenance of Traffic percentage of the Department's budget estimate for a specific project.

(4)(±) The term "Current Capacity" as used herein is as defined in Rule subsection 14-22.006(1), F.A.C.

(5)(4) Eligibility for obtaining proposal documents shall have no effect on determination of the Current Capacity.

(6)(±) A qualified bidder will be issued proposal documents for any number of projects, provided the estimated contract amount of any individual project requested does not exceed their Current Capacity. Except for the provisions of Rule sub-subparagraph 14-22.003(2)(a)2.a., F.A.C., above, qualified firms that desire to bid a project which exceeds their Current Capacity, whose CRF was at least 1.00 based on the financial statements used for current qualification, and that have an Ability Score of 80 or higher, will be allowed to bid that specific project if the firm furnishes a commitment letter from a surety company, authorized to do business in Florida, that the project amount does not exceed the firm's Surety

Capacity as established by Rule subparagraph 14-22.003(2)(b)1., F.A.C. Issuance of proposal documents by the Department will be subject to payment of applicable costs by the qualified bidder.

~~(7)~~(6) The bid shall be signed by the owner for sole proprietorships; partner(s) authorized to bind the entity for a partnership; the president or vice president for corporations; and for limited liability companies an authorized executing official. Bids submitted by a joint venture shall be signed by the authorized executing officials of the business entities comprising the joint venture and the attorney-in-fact for the joint venture.

Specific Authority 334.044(2), 337.14(1) FS. Law Implemented 337.11(3)(b), 337.11(5)(a)1.-3., 337.11(7)(b)1., 337.11(7)(c), 337.14 FS. History—Formerly Chapter 14-8, Amended 7-1-68, 8-20-68, 5-9-70, 1-6-72, 9-24-75, Formerly 14-22.01(11), Amended 3-23-79, 11-10-82, 8-25-83, Formerly 14-22.08, Amended 12-20-89, 1-4-94, 7-1-95, 7-2-95, 7-8-01,_____.

14-22.015 Forms.

The following forms are incorporated by reference as part of the rules of the Department and are available from the Contracts Administration Office, 605 Suwannee Street, Mail Station 55, Room 1-B, Tallahassee, Florida 32399-0455:

Form Number	Date	Title
375-020-32	<u>01/06</u> 12/98	Application for Qualification
375-020-22	05/05	Certification of Current Capacity
700-010-25	<u>09/05</u> 11/03	Contractor Past Performance Report
<u>375-020-37</u>	<u>01/06</u>	<u>Application for Qualification for Emergency Debris Removal</u>

Specific Authority 334.044(2), 337.14(1) FS. Law Implemented 120.53(1)(b), 337.14, 337.167 FS. History—New 11-10-82, Amended 8-25-83, Formerly 14-22.15, Amended 12-20-89, 1-4-94, 7-1-95, 7-2-95, 7-8-01, 6-27-04, 12-18-05,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Juanita Moore, Manager, Contracts Administration Office

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Denver J. Stutler, Jr., P.E., Secretary
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 14, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 3, 2006

DEPARTMENT OF TRANSPORTATION

RULE CHAPTER NO.:	RULE CHAPTER TITLE.:
14-75	Qualification, Selection, and Performance Evaluation Requirements for Professional Consultants to Perform Work for DOT

- RULE NOS.:
- 14-75.0022
 - 14-75.003
 - 14-75.004
 - 14-75.0051
 - 14-75.0052

- RULE TITLES:
- Consultant Qualification Process
 - Minimum Qualification Standards by Type of Work
 - Consultant Competitive Selection Process
 - Revocation, Denial, or Suspension of Qualification
 - Professional Consultant Work Performance Evaluation System

PURPOSE AND EFFECT: This is a substantial amendment of Rule Chapter 14-75, F.A.C. Amendments to Rule Chapter 14-75, F.A.C. include clarification of audit report requirements, amendments to the types of work, clarification of the definitions and experience requirements for each, and revising the work performance evaluation of consultants. This notice replaces the notice of rulemaking, which was published in the December 16, 2005, *Florida Administrative Weekly*.

SUMMARY: This is a substantial amendment of Rule Chapter 14-75, F.A.C.

SPECIFIC AUTHORITY: 287.055, 334.044(2), 337.105, 837.06 FS.

LAW IMPLEMENTED: 287.055, 337.107, 337.1075, 337.167 FS.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Costs has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so 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 RULES 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 RULES IS:

14-75.0022 Consultant Qualification Process.

(1) This rule chapter establishes minimum qualification standards by type of work for consultants, the consultant competitive selection process, and the work performance evaluation system for professional consultants who seek to provide professional services to the Department pursuant to Sections 287.055, 337.107, and 337.1075, Florida Statutes.

(2) The provisions of Rule 28-106.103, F.A.C., will be used in computing any period of time prescribed by this rule chapter.

(3) Application for Qualification.

(a) A Professional Consultant who desires to qualify with the Department shall submit a Request for Qualification Package for Professional Consultants, Form No. 375-030-01, Rev. 01/06 ~~03/04~~, incorporated herein by reference, which may be obtained from the Procurement Office, MS 20, Haydon Burns Building, 605 Suwannee Street, Tallahassee, Florida 32399-0450, or from the Department's web page at <http://www.dot.state.fl.us/procurement/>.

(b) Professional Consultants who are not qualified at the time of advertisement for a consultant project must file with the Department a completed Request for Qualification Package for Professional Consultants on or before the project's advertised letter of response date. The Department is not obligated to delay any part of the consultant selection process or the execution of a contract, for a consultant who has not been qualified.

(c) The Request for Qualification Package for Professional Consultants will include the following items:

1. An audit report prepared by an independent Certified Public Accountant or governmental agency. The audit report must be received by the Department within six months of the end of the fiscal year it addresses, will be no more than twelve months old on the date of submission and will include the following:

a. A statement indicating the existence of an adequate accounting system that meets the Department's audit requirements, as evidenced by a certification by an independent Certified Public Accountant or governmental agency. The system must be adequate to support all billings made to the Department and other clients.

b. A ~~An~~ overhead statement indicating the direct labor costs incurred, listing allocable indirect costs, and listing other direct costs incurred and overhead rate for the most recently completed fiscal year.

c. A statement of reimbursement rates for indirect costs (overhead), direct expenses, and Facilities Capital Cost of Money (FCCM) for the most recently completed fiscal year.

~~d.~~ A statement that the consultant's method of estimating costs for proposals is consistent with the accounting system.

~~e.~~ A statement that the audit was performed in accordance with generally accepted governmental auditing standards, the Department's Reimbursement Rate Overhead Audit Guidelines, 2005, November 2002, and the Government Auditing Standards, 2003 Revision Revised July 1999 through Amendment No. 2, 8/18/99, published by the U.S. Government Printing Office, which are hereby incorporated by reference.

2. Consultants who have been operating for less than one complete fiscal year, consultants who have reorganized to the extent that the most recent reimbursement rate overhead audit does not reflect a currently valid reimbursement overhead rates, and consultants who have established and operated an accounting system in accordance with the minimum standards provided in the Department's Reimbursement Rate Overhead

Audit Guidelines, 2005 2002, for a period of less than one year, will prepare a projected overhead direct expense, and FCCM rates which will be supported by estimated revenues and expenditures for the first fiscal year's operations since organization, reorganization, or implementation of the acceptable accounting system. The Department's Office of Inspector General shall review the estimate and establish a provisional reimbursement combined overhead rates, which may be used in Department contracts until the consultant has completed its first fiscal year of operation, at which time the consultant shall submit an annual reimbursement rate overhead audit performed by an independent Certified Public Accountant or governmental agency.

3. Consultants requesting qualification for minor projects only, with contract fees under \$250,000, or consultants qualifying solely for contracting under Group 20, Appraisal Services, or Group 22, Acquisition Business Damage Estimating and Estimate Review, in any dollar amount, are not required to submit a reimbursement rate audit. They as certified public accountants, may submit a self-certified overhead report and statement describing their accounting system, certified by a principal, in lieu of an audit report and accounting system certification prepared by an independent Certified Public Accountant or governmental agency. Such report will be in the format specified in the Department's Reimbursement Rate Overhead Audit Guidelines, 2005 2002.

4. Proof of professional liability insurance by one of the following methods:

a. Submittal of a current certificate of professional liability insurance from a company or companies authorized to do business in Florida; or an unequivocal commitment letter from such an insurance company stating that professional liability insurance would be provided to the applicant; or

b. Submittal of a commitment letter from a financial institution meeting the requirements of Section 337.106, Florida Statutes, stating that a nonassignable and nontransferable irrevocable letter of credit, established pursuant to Chapter 675 and Section 337.106, Florida Statutes, and Rule Chapter 14-116, F.A.C., can be provided to the applicant in a minimum amount of \$250,000.

(4) Procedure.

(a) Within 30 days after receipt of a completed Request for Qualification Package for Professional Consultants, the Department shall examine the application and notify the applicant in writing of any apparent errors or omissions, and request any additional information required by the Department to properly evaluate the application. The applicant shall submit any requested information to the Department within 30 days of receipt of the Department's request for such information. The Department shall process the application within 30 days after receipt of the requested additional information or correction of

apparent errors or omissions. If the information is not provided within 30 days after receipt of the request, the application shall be processed with the information provided.

(b) Upon receipt of a complete application the Department shall make such inquiries and investigations as deemed necessary to verify and evaluate the applicant's statements and determine competency for qualification.

(c) Information which the Department shall consider in determining whether a consultant is qualified to perform the types of work shall include:

1. Current license or registration as regulated by the State of Florida or national organizations, as appropriate.

2. Personnel with appropriate experience and training as detailed in the type of work qualifications.

3. Registration with the Florida Department of State, if the applicant is a corporation or limited partnership.

4. ~~Past performance on Department contracts. History of suspension for failure to maintain adequate type of work performance grades with the Department in specified types of work.~~

5. Integrity and responsibility, which shall include history of debarment or suspension from consideration for work with any other governmental entity.

6. History of conviction for contract crime pursuant to Section 337.165, Florida Statutes, and Rule 14-75.0071, F.A.C., by the applicant or its affiliate, including reapplication or reinstatement.

7. Employment of, or otherwise providing compensation to, any employee or officer of the Department.

8. Willfully offering an employee or officer of the Department any pecuniary or other benefit with the intent to influence the employee or officer's official action or judgment.

9. The acceptability of the supporting reimbursement rate overhead, accounting system, and insurance information.

(d) Audit reports are subject to review by the Department. The consultant will provide additional information and documentation upon request by the Department.

~~(e) If the Department intends to deny the application, or deny qualification for any type of work, the Department shall state in writing and with particularity the grounds or reasons for the denial, and shall inform the applicant of the right to a hearing pursuant to Section 120.57, Florida Statutes. Delivery of the Notice of Intent to Deny shall be made by certified mail, return receipt, to the address listed in the applicant's application for qualification.~~

(5) Period of Validity of Qualification. The period of qualification will be no more than one year and will expire annually six months after the end of the consultant's fiscal year. Application for renewal must be received by the Department no later than five months after the end of such fiscal year. Should the applicant be found to possess the

~~prescribed qualification, the consultant will be randomly assigned a qualification expiration date, by which qualification must be renewed annually.~~

(6) Changes in Qualification Status.

(a) A consultant shall submit a revised application in the event a change in the status of its firm occurs, including a change of ownership, a change in the form of the business entity under which the firm operates, a ~~substantial~~ change in any of the staff used to qualify manpower ~~which affects the firm's qualifications~~ to perform any type of work, or any other change which affects an element the Department considers under Rule 14-75.0022, F.A.C., when initially qualifying consultants. A revised application may be the basis for notice of agency action under Rule 14-75.0051, F.A.C.

(b) A consultant need not submit a revised application solely because of any change in the officers or the name of a corporation, but such information shall be certified to the Department within ten days of its occurrence.

(7) A consultant may apply for qualification up to three months prior to the expiration of an existing qualification.

Specific Authority 287.055, 334.044(2), 337.105 FS. Law Implemented 287.055, 337.107, 337.1075, 337.167 FS. History—New 3-29-89, Amended 1-2-91, 9-29-92, 2-22-94, 8-5-96, 1-17-99, 8-2-01, 4-29-03, 6-15-04,_____.

14-75.003 Minimum Technical Qualification Standards by Type of Work.

~~In the Request for Qualification Package, the consultant will certify the standard types of work for which the consultant meets the minimum qualification requirements as stated in this section.~~ The Department will periodically audit a sampling of qualified consultants to ensure compliance with the qualification requirements, and consultants found to misrepresent their qualifications will be subject to suspension of qualifications with the Department in accordance with Rule 14-75.0051, F.A.C. The following criteria apply to the qualification of professional consultants:

(1) No professional or key personnel may be listed as employees of more than one consultant currently qualified with the Department. If a newly listed employee has been employed by a consultant currently qualified with the Department, within the 12 months immediately preceding the application, the application must so indicate and provide the date that such employee was hired by the consultant. The employee shall be deleted from the personnel list of the previous employer's firm, and if such deletion affects the qualification status of the previous employer, notice shall be given to said previous employer pursuant to Rule 14-75.0051, F.A.C.

(2) The Department shall not recognize joint ventures for purposes of qualifying consultants to work for the Department. Each individual or firm will be annually qualified based upon individual or firm capability.

(3) Appropriate type of work codes will be included in each public notice regarding needed professional services. Persons or firms responding to such notices must be qualified with the Department in the advertised types of work, unless otherwise specified in the notice. Subconsultants qualified with the Department may be used to meet the above requirements, where appropriate, so long as the responding consultant is also qualified with the Department in some standard type of work.

(4) All personnel listed by the consultant in order to qualify for any type of work or sub-category must be bona fide employees of the firm, or under exclusive contract to the firm, must be actively engaged in the type of work for which they are listed, and must have work experience demonstrating an ability to perform the activities normally associated with the particular type of work or sub-category for which qualification is sought. The Department must be notified within 10 days of the departure from the firm of personnel used to prequalify the firm in any type of work.

(5) Qualification may be sought in any of the following categories or sub-categories:

(a) Group 2. Project Development and Environmental (PD&E) Studies.

1. Type of Work. This work group involves the study and evaluation of the social, economic, and environmental effects on the human and natural environment by transportation systems and alternate transportation modes in meeting identified community transportation and growth needs. Such work also includes the evaluation of alternate transportation corridors, and location/design alternatives within viable corridors. The work involves preparing engineering studies to address economic and engineering feasibility of alternatives, level of service, traffic capacity, geometrics, soils, structures, intersection and interchange improvements, etc., to accommodate travel demand at an acceptable level of service. Additionally, the work entails the detailed study and preparation of environmental reports and documents which evaluate the physical, natural, social, cultural, economic, and human impacts of the alternatives under consideration upon the adjacent community. Public involvement and interagency coordination are integral parts of the assessment process. Potential mitigations that are identified in the studies and public involvement are evaluated and incorporated into the alternatives as appropriate.

2. Qualification Requirements. Group 2: PD&E Studies. This work group requires a professional engineer, a natural scientist, and a social scientist. The professional engineer must be registered with the Florida State Board of Professional Engineers and must have managed and completed at least one PD&E study or similar study, including roadway design and environmental engineering. This experience must include conducting environmental studies for transportation projects involving highway projects and public involvement issues. The natural scientist must have a four-year university or college

degree and experience in a natural science such as ecology, biology, environmental science, or wildlife management and have completed at least one PD&E study or similar study in a natural science area such as defined above. The social scientist must have a four-year university or college degree and experience in a social science such as psychology, sociology, statistics, political science, geography, urban planning demographics, archeology, or economics and have completed at least one PD&E study or similar study in a social science area such as defined above.

(b) Group 3. Highway Design – Roadway. This work group involves the production and/or review of highway plans, related design studies, creative utilization of roadsides, and the accommodation of utilities and utility crossings (where appropriate), which conform with acceptable design standards and which meet the specific requirements of the Department or the Federal Highway Administration.

1. This group includes the following sub-categories of qualification:

a. Type of Work 3.1: Minor Highway Design. This type of work includes roadway design for rural RRR and minor widening and resurfacing projects which do not involve major reconstruction, new curb and gutter, or substantial capacity improvements. This work type also includes interstate projects involving resurfacing only. Projects of this type generally involve minor drainage, utility relocation, traffic operations improvements, miscellaneous design services, etc.

b. Type of Work 3.2: Major Highway Design. This type of work includes roadway design for all urban highways with new curb and gutter and new or major reconstruction rural projects with substantial capacity improvements such as adding two or more lanes. Projects of this type generally include utility relocation plans, drainage design and permitting, maintenance of traffic plans, traffic engineering applications, intersection details, etc.

c. Type of Work 3.3: Controlled Access Highway Design. This type of work includes design of new and complex reconstruction projects on controlled access facilities including interstates, interchanges, and expressways. Projects of this type generally include the use of complex geometrics, substantial drainage evaluation and design features, permitting, traffic engineering applications, utility relocation plans, maintenance of traffic plans, interchange design, etc.

2. Qualification Requirements.

a. Type of Work 3.1: Minor Highway Design. This type of work requires at least one professional engineer, registered with the Florida State Board of Professional Engineers, having proficiency in civil engineering and at least one year of post-registration experience in the design and preparation of plans for highways.

b. Types of Work 3.2 and 3.3: Major Highway Design and Controlled Access Highway Design. These types of work require at least two professional engineers, registered with the

Florida State Board of Professional Engineers, having proficiency in civil engineering and at least two years of post registration experience in the design and preparation of plans for highways, one year of which must be in the category for which qualification is sought.

(c) Group 4. Highway Design – Bridges. This work group involves the production and/or review of competently engineered bridge plans which conform with acceptable design standards and which meet the specific requirements of the Department or the Federal Highway Administration.

1. This group includes the following sub-categories of qualification:

a. Type of Work 4.1: Miscellaneous Structures and Minor Bridge Design. This type of work is subdivided into two categories.

(I) Type of Work 4.1.1: Miscellaneous Structures. This group type of work includes the design of sound barriers, structural supports for highway signals, luminaries, and traffic signals.

(II) Type of Work 4.1.2: Minor Bridge Design. This type of work includes the design of conventional, non-complex bridges and the structural design of other highway-related structures such as non-standard concrete box culverts and retaining walls. Generally, this group is limited to designs utilizing conventional foundation types, simple geometry, and having total estimated bridge(s) plan area(s) no greater than 100,000 square feet (sum of the areas of multiple bridges). Typically, this includes design for the construction, rehabilitation, widening, or lengthening of box culverts, retaining walls, cast-in-place or precast prestressed short span slab type bridges, simple span prestressed concrete beam bridges, and simple span I-beam bridges.

b. Type of Work 4.2: Major Bridge Design. This type of work includes the design of structures that cannot be included in Type of Work 4.1 because of deck area, or complex geometry (curvature, skew, or variable width), complexity of design (including bridges with statically indeterminate superstructure components) with spans estimated to be less than 400 300 feet, non-conventional substructures, substructures requiring ship impact design, bridges over navigable waters, and railroad bridges. This type of work is subdivided into three categories: Typically, this includes design for the construction, rehabilitation, widening, or lengthening of bridges over navigable waters, bridges carrying rail traffic, steel box girders, structurally continuous superstructures, longitudinally post-tensioned concrete bridges, and curved girder bridges.

(I) Type of Work 4.2.1: Major Bridge Design – Concrete: This type of work includes design for construction, rehabilitation, widening, or lengthening of structurally continuous concrete superstructures (longitudinally post-tensioned concrete beam bridges, etc.), reinforced concrete boxes, and post-tensioned substructures.

(II) Type of Work 4.2.2: Major Bridge Design – Steel: This type of work includes design for the construction, rehabilitation, widening, or lengthening of structurally-continuous steel superstructures (steel box girders, curved steel girder bridges, etc.).

(III) Type of Work 4.2.3: Major Bridge Design – Segmental: This type of work includes design for the construction, rehabilitation, widening, or lengthening of precast or cast-in-place concrete segmental superstructures or substructures.

c. Type of Work 4.3: Complex Bridge Design. This type of work includes the structures that cannot be included in Type of Work 4.1 or 4.2 because of design of unique, specialized, and uncommon types of designs as determined by the Department. Typically, this includes design for the construction, rehabilitation, widening, or lengthening of bridges with estimated span(s) longer than 400 300 feet, tunnels, cable-stayed bridges, suspension bridges, steel truss spans, concrete arch bridges, and bridges requiring unique analytical methods or other design features not commonly addressed in AASHTO publications. This type of work is separated into two categories:

(I) Type of Work 4.3.1: Complex Bridge Design – Concrete: This group includes design for the construction, rehabilitation, widening, or lengthening of concrete superstructures of the structure types listed in this category.

(II) Type of Work 4.3.2: Complex Bridge Design – Steel: This group includes design for the construction, rehabilitation, widening, or lengthening of steel superstructures of the types listed in this category.

d. Type of Work 4.4: Movable Span Bridge Design. This type of work includes the design of bascule bridges and other movable bridges. The work includes all structural, electrical, and mechanical requirements. Typically, this includes design for the construction, rehabilitation, widening, or lengthening of bascule bridges, swing bridges, and vertical lift bridges.

2. Qualification Requirements. Qualification will be assessed from the résumés of individuals employed by the firm. The résumés must state which bridge components were actually designed by the individual. General oversight or project management activities will not be considered for qualification purposes.

a. Type of Work 4.1.1: Miscellaneous Structures. This type of work requires at least one professional engineer, registered with the Florida State Board of Professional Engineers, having a minimum of five years of structural experience, designing items such as sound barriers, structural supports for highway signs, luminaries, and traffic signals, or in bridge design; and two structural design engineers/technicians having a minimum of three years each of design experience, either designing items such as sound barriers, structural supports for highway signs, luminaries, and traffic signals, or in bridge design. The qualifying professional

engineer(s) shall be responsible for quality assurance of all the design services and shall sign a letter of certification stating the project documents have been reviewed under the quality assurance process and that all issues are resolved. Certifications will be pursuant to Section 837.06, Florida Statutes.

b.a. Type of Work 4.1.2: Minor Bridge Design. This type of work requires at least one professional engineer, registered with the Florida State Board of Professional Engineers, having a minimum of five years structural bridge design experience; and two structural design engineers/technicians having a minimum of three years each of bridge design experience. The qualifying professional engineer(s) shall be responsible for quality assurance of all the design services.

c.b. Type of Work 4.2.1: Major Bridge Design-Concrete. This type of work requires at least two professional engineers, registered with the Florida State Board of Professional Engineers, having a minimum of five years each of structural bridge design experience in continuous span concrete bridges as defined for Work Group 4.2.1, and three or more structural design engineers/technicians having a minimum of three years each of bridge design experience. Alternatively, this type of work requires two professional engineers registered with the Florida State Board of Professional Engineers, each having a minimum of five years each of structural bridge design experience in pre-cast or cast-in-place continuous span segmental concrete bridges as defined in Work Group 4.2.3, with an additional two years each of design experience in continuous span concrete bridges, and three or more structural design engineers/technicians having a minimum of three years each of bridge design experience. (steel plate girder and box girder), post-tensioned continuous concrete spans, and foundations subject to significant lateral loads; and three or more structural design engineers/technicians having a minimum of three years each of bridge design experience. The qualifying professional engineers shall be responsible for the quality assurance of all the design services and shall sign a letter of certification stating the project documents have been reviewed under the quality assurance process and that all issues are resolved. Certifications will be pursuant to Section 837.06, Florida Statutes.

d. Type of Work 4.2.2: Major Bridge Design – Steel. This type of work requires at least two professional engineers, registered with the Florida State Board of Professional Engineers, having a minimum of five years each of structural bridge design experience in continuous span steel bridges as defined in Work Group 4.2.2: Major Bridge Design – Steel and three or more structural design engineers/technicians having a minimum of three years of bridge design experience. The qualifying professional engineers shall be responsible for the quality assurance of all the design services and shall sign a letter of certification stating the project documents have been

reviewed under the quality assurance process and that all issues are resolved. Certifications will be pursuant to Section 837.06, Florida Statutes.

e. Type of Work 4.2.3: Major Bridge Design – Segmental. This type of work requires at least two professional engineers, registered with the Florida State Board of Professional Engineers, having a minimum of five years each of structural bridge design experience in continuous span segmental concrete (precast or cast-in-place) bridges as defined in Work Group 4.2.3 Major Bridge Design – Segmental and three or more structural design engineers/technicians having a minimum of three years of bridge design experience. The qualifying professional engineers shall be responsible for the quality assurance of all the design services and shall sign a letter of certification stating the project documents have been reviewed under the quality assurance process and that all issues are resolved. Certifications will be pursuant to Section 837.06, Florida Statutes.

f.e. Type of Work 4.3.1: Complex Bridge Design – Concrete. This type of work requires at least three professional engineers, registered with the Florida State Board of Professional Engineers, having a minimum of five years each of structural concrete bridge design experience in categories as defined listed in Work Group 4.3.1: Complex Major Bridge Design – Concrete, as well as spans estimated to be greater than 300 feet consisting of steel truss or arch, or steel or concrete cable-stayed and suspension type structures; and four or more structural design engineers/technicians having a minimum of three years each of bridge design experience. The qualifying professional engineers shall be responsible for the quality assurance of all design services and shall sign a letter of certification stating the project documents have been reviewed under the quality assurance process and that all issues are resolved. Certifications will be pursuant to Section 837.06, Florida Statutes.

g. Type of Work 4.3.2: Complex Bridge Design – Steel. This type of work requires at least two professional engineers, registered with the Florida State Board of Professional Engineers, having a minimum of five years each of structural steel bridge design experience in categories as defined in Work Group 4.3.2: Complex Bridge Design – Steel and four or more structural design engineers/technicians having a minimum of three years of bridge design experience. The qualifying professional engineers shall be responsible for the quality assurance of all the design services and shall sign a letter of certification stating the project documents have been reviewed under the quality assurance process and that all issues are resolved. Certifications will be pursuant to Section 837.06, Florida Statutes.

h.d. Type of Work 4.4: Movable Span Bridge Design. This type of work requires qualification in type of work 4.2.2: Major Bridge Design – Steel, and also requires an electrical engineer and a mechanical engineer both registered with the

Florida State Board of Professional Engineers. In addition to the experience requirements for type of work 4.2.2: Major Bridge Design – Steel, the professional engineers will have at least five years of movable bridge structural design experience and the three engineers/technicians shall have a minimum of three years of movable bridge design experience. At least one of the professional engineers or engineer/technicians will have experience in the design of at least three movable bridge electrical control systems within the last 10 years and one will have experience in the design of at least three movable bridge drive systems within the last 10 years. The electrical engineer will have experience in the design of at least three movable bridge electrical control systems within the last 10 years and experience with the commonly used bridge leaf motion control techniques used within the last 30 years. The mechanical engineer will have experience in the design of at least three movable bridge drive systems within the last 10 years and experience with the commonly used bridge drive systems used within the last 30 years. The qualifying professional engineers shall be responsible for the quality assurance of all the design services and shall sign a letter of certification stating the project documents have been reviewed under the quality assurance process and that all issues are resolved. Certifications will be pursuant to Section 837.06, Florida Statutes.

(d) Group 5. Bridge Inspection. This work group is defined as the on-site inspection, load rating, and preparation of bridge inspection reports in accordance with approved federal and state statutes, policies, guidelines, and standards. Availability of required equipment will also be considered, along with level of experience in evaluating qualification.

1. This group includes the following sub-categories of qualification:

a. Type of Work 5.1: Conventional Bridge Inspection. This type of work includes inspection and load rating of all types of bridges except movable bridges, box girders, bulb-tees, suspension, cable stayed, post-tensioned segmental concrete, large steel trusses, high-rise structures, and other complex bridge structures.

b. Type of Work 5.2: Movable Bridge Inspection. This type of work includes inspection and load rating of all types of movable structures (vertical lift, swing span, and bascule), utilizing specialty skills in inspection, load rating, and design of mechanical and electrical equipment.

c. Type of Work 5.3: Complex Bridge Inspection. This type of work includes inspection and load rating of all complex bridges except movable bridges. Typical types of structures will include box girders, bulb-tees, suspension, cable stayed, post-tensioned segmental concrete, high-rise structures, and large steel trusses.

d. Type of Work 5.4: Bridge Load Rating. This type of work involves the process of determining the live load capacity of a structure.

2. Qualification Requirements. Types of work 5.1, 5.2, 5.3, and 5.4: Bridge Inspection. This type of work requires at least one professional engineer registered with the Florida State Board of Professional Engineers, having experience appropriate to the sub-category requested. For types of work 5.1, 5.2, and 5.3, the engineer must have participated in field inspections meeting the requirements of the National Bridge Inspection Standards, Appendix C to U.S. Department of Transportation Federal Highway Administration, *Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges*, Report No. FHWA-PD96-001, December 1995, incorporated herein by reference, for the structure types in the sub-category for which qualification is requested. For type of work 5.4, the engineer must have performed a load rating of a bridge.

(e) Group 6. Traffic Engineering and Operations Studies. This work group includes the performance of studies of existing traffic problems within an urban area; and the determination of the most effective way to improve traffic flow and safety through the application of traffic engineering techniques and other corrective measures. It includes street and signal inventories; intersection and crossing diagrams; highway lighting information at nighttime high accident locations; and analysis of accident reports, traffic counts, travel times, parking practices, and laws and ordinances affecting transportation. This work group is limited to generalized description and schematic layouts of the proposed improvements, including right of way requirements, and generally does not include the preparation of construction plans and the writing of specifications for traffic system projects.

1. This group includes the following sub-categories of qualification:

a. Type of Work 6.1: Traffic Engineering Studies. This type of work is defined as the study of operational problems and the determination of traffic operational improvements for efficiency and safety. This ~~type of work group~~ type of work includes studies for the following: signing, marking, and signal inventories; traffic counts; intersection and collision diagrams; signal warrant and intersection analysis; and travel time and delay studies. Many of the traffic engineering studies require knowledge and experience with traffic engineering computer programs such as SOAP, PASSER, and TRANSYT. This type of work requires the consultant to make specific recommendations to improve the operational efficiency at a particular location.

b. Type of Work 6.2: Traffic Signal Timing. This type of work is defined as the timing of traffic signals to improve traffic flow and safety. Department approved traffic engineering computerized timing programs shall be used. This type of work includes data collection, intersection analysis and documentation, section analysis and documentation, timing implementation and fine tuning, and timing evaluation.

c. Type of Work 6.3: Intelligent Transportation Systems Analysis, Design, and Implementation. This type of work is defined as the use of electrical engineering, electronics engineering, computer science, and traffic engineering to analyze, design, and implement real-time intelligent transportation systems. This includes system performance and cost analysis, system hardware and software design, development of management plans, system installation and operation, system testing and debugging, system documentation, and the training of operations personnel. This work Type is subdivided into four categories: Type of Work 6.3.1: Intelligent Transportation Systems Analysis and Design, Type of Work 6.3.2: Intelligent Transportation Systems Implementation, Type of Work 6.3.3: Intelligent Transportation Traffic Engineering Systems Communications, and Type of Work 6.3.4: Intelligent Transportation Systems Software Development.

2. Qualification Requirements.

a. Type of Work 6.1: Traffic Engineering Studies. This type of work requires a professional engineer, registered with the Florida State Board of Professional Engineers, having at least two years of post-registration traffic studies experience.

b. Type of Work 6.2: Traffic Signal Timing. This type of work requires a professional engineer, registered with the Florida State Board of Professional Engineers, having demonstrated traffic signal timing experience in the application and interpretation of traffic flow and signal timing models.

c. Type of Work 6.3: Intelligent Transportation Systems Analysis, Design, and Implementation. This type of work requires a professional engineer, registered with the Florida State Board of Professional Engineers, having at least three years of post-registration experience in the technical skill area for which qualification is requested. These technical skill areas are as follows:

(I) Type of Work 6.3.1: Intelligent Transportation Systems Analysis and Design. This type of work requires experience involving the production of competently engineered design, and preparation of construction plans and specifications for traffic control systems, freeway operations systems, dynamic message sign systems, closed circuit television camera systems, detection systems, and automatic vehicle identification systems. The experience must also involve traffic engineering software applications, freeway control software, and computerized timing programs.

(II) Type of Work 6.3.2: Intelligent Transportation Systems Implementation. This type of work requires experience involving realtime traffic control systems, system installation and testing, and knowledge of Construction Engineering Inspection (CEI) requirements for intelligent transportation construction projects.

(III) Type of Work 6.3.3: Intelligent Transportation Traffic Engineering Systems Communications. This type of work requires documented experience involving electronic

engineering of system hardware, digital system design, specifications, and utilization. The experience must involve electrical engineering of power and communications, including power distribution, standby power supply, lightning protection, hardware interconnect, fiber optic networks, wireless communications networks, local area networks, wide area networks, Internet communications, data recording, data transmission, modulating, and multiplexing techniques.

(IV) Type of Work 6.3.4: Intelligent Transportation Systems Software Development. This type of work requires documented experience in software development, specifically with intelligent transportation systems applications, and computer science (realtime process control software systems, including realtime executive Input/Output (I/O) processing and priority interrupt based processing). The experience must also involve system software testing and debugging, data base software, graphical user interfaces, system documentation, and training of operations personnel.

(f) Group 7. Traffic Operations Design. This work group is defined as the production of competently engineered designs, and preparation of construction plans and specifications for a variety of traffic operations type work.

1. This group includes the following sub-categories of qualification:

a. Type of Work 7.1: Signing, Pavement Marking, and Channelization. This type of work includes designing, preparing construction plans, and writing specifications for signing, pavement marking, and channelization. Such work involves structural support and foundation calculations, and requires a basic knowledge of traffic engineering studies.

b. Type of Work 7.2: Lighting. This type of work includes designing, preparing construction plans, and writing specifications for roadway lighting improvements. Such work involves lighting calculations, pole location, foundation design, electrical circuit calculations, and power supply and distribution design, and requires a basic knowledge of traffic engineering studies.

c. Type of Work 7.3: Signalization. This type of work includes designing, preparing construction plans, and writing specifications for traffic signalization. Such work involves capacity calculations, signal operating plan development, timing calculations, equipment location, pole and foundation designs, etc., and requires a basic knowledge of traffic engineering studies and traffic signal retiming.

2. Qualification Requirements. Qualification for this work group requires a professional engineer, registered with the Florida State Board of Professional Engineers, who has served in responsible charge of at least one project in the type of work, as defined above, for which qualification is requested.

(g) Group 8. Surveying and Mapping. This work group includes surveying and mapping, as defined in Rule Chapter 61G17-6, F.A.C., required for the land acquisition, design, and construction of transportation projects.

1. This group includes the following sub-categories of qualification:

a. Type of Work 8.1: Control Surveying. This type of work provides horizontal and vertical control to a specified standard for Department projects.

b. Type of Work 8.2: Design, Right of Way, and Construction Surveying. This type of work includes boundary surveys, right of way surveys, as-built surveys, construction layout surveys, topographic surveys, hydrographic surveys, quantity surveys, record surveys, mean high water line surveys, and special purpose surveys.

c. Type of Work 8.3: Photogrammetric Mapping. This type of work includes surveys and the preparation of maps using photogrammetric methods.

d. Type of Work 8.4: Right of Way Mapping. This type of work includes the production of right of way related maps, as well as the preparation of legal descriptions and sketches of legal descriptions based on information supported by the applicable surveys or maps defined in the preceding types of work, title searches, and other documents.

2. Qualification Requirements: To qualify to perform surveying and mapping services as defined above, the consultant must employ at least one professional surveyor and mapper, registered with the Florida Board of Professional Surveyors and Mappers, having at least one year of documented post registration experience in the specific type of work for which qualification is requested. The consultant must also employ at least two additional technical personnel, each having at least one year of documented experience in the specific type of work for which qualification is requested. In addition, the consultant must submit a written statement of intent to use equipment and software meeting the accuracy, formatting, and other requirements defined in Department policies, procedures, manuals, or handbooks, related to the type(s) of work for which qualification is sought.

(h) Group 9. Soil Exploration, Material Testing, and Foundations.

1. This group includes the following sub-categories of qualification:

a. Type of Work 9.1: Soil Exploration. This type of work includes acquisition and reporting of subsurface material, hydrological, and environmental information to be used for the planning, design, construction, and performance of transportation facilities. The methodology involved includes on-site investigations by performing borings, Standard Penetration tests, Cone Penetration tests, and rock coring; the use of specialized test equipment, such as the field vane, pressuremeter, or dilatometer; and the use of geophysical methods. Also included is the field classification of materials and acquisition of soil and rock samples.

b. Type of Work 9.2: Geotechnical Classification Lab Testing. This type of work includes conducting tests on soil and rock according to Department approved specifications for

the purpose of classifying materials. The methodology involved includes testing moisture content, grain size, Atterberg limits, compaction, and Limerock Bearing Ratio (LBR) tests.

c. Type of Work 9.3: Highway Materials Testing. This type of work includes sampling and testing various materials and reporting results and recommendations. Work will be performed at mines, quarries, mills, refineries, processors, producers, fabricators, constructors, laboratories, and project construction sites; some of which will be outside the State of Florida. Materials to be tested include aggregates; concrete products; cements and additives, including water, epoxies, and curing compounds; bituminous materials, mixtures, additives, and joint fillers; metals; galvanizing, rubber, paints, and other coatings; and soils and limerock.

d. Type of Work 9.4: Foundation Studies. This type of work is subdivided into two categories:

(I) Type of Work 9.4.1: Standard Foundation Studies: This type of work includes producing reports which include selection of the type (shallow foundations footings, piles, and redundant drilled shafts,—etc.—) and depth of foundation for bridges and other structures; bearing capacity and the predicted settlement of the selected foundation; slope stability; surcharge or stage construction time schedules for construction over soft ground; pile load tests; soil treatment; stabilization; and direction of field instrumentation installation, including the interpretation of data obtained and other foundation studies using the applicable Department Standard Specifications for Road and Bridge Construction, and Federal Highway Administration guidelines and checklist.

(II) Type of Work 9.2.2: Non-redundant Drilled Shaft Bridge Foundation Studies. This type of work includes the work activities described in Type of Work 9.4.1: Standard Foundation Studies and, in addition, the complex geotechnical analyses required for the design and construction of non-redundant drilled shaft bridge foundations.

e. Type of Work 9.5: Geotechnical Specialty Lab Testing. This type of work includes conducting tests on soil and rock according to Department approved specifications for the purpose of identifying their physical properties. The methodology involved includes testing permeability, consolidation, unconfined compression, direct shear, splitting tensile, and triaxial.

2. Qualification Requirements. For all sub-categories this work requires at least one professional engineer, registered with the Florida State Board of Professional Engineers, having a minimum of five years of experience in the activities normally associated with the category(ies) under consideration.

a. Type of Work 9.1: Soil Exploration. This type of work requires one professional engineer, registered with the Florida State Board of Professional Engineers, having a minimum of five years of experience in activities normally associated with soil exploration. The consultant must have equipment

(in-house or subcontracted) necessary to perform the work. It should be noted that the qualified consultant shall be solely responsible for any and all explorations work, whether performed by the consultant or its subcontractor.

b. Type of Work 9.2: Geotechnical Classification Lab Testing. This type of work requires one professional engineer, registered with the Florida State Board of Professional Engineers, having a minimum of five years of experience in activities normally associated with geotechnical testing. The consultant must have at least one technician with a minimum of two years of experience in geotechnical testing and LBR Technician qualification under the Department's Construction Training Qualification Program. In addition, the consultant must have in-house the following equipment: oven, balance, stirring apparatus, hydrometer bulb, hydrometer bath, thermometer, sieves, sieve shaker, liquid limit device, grooving tool, pycnometer, molds, compaction hammer, straightedge, and LBR loading device with penetration piston.

c. Type of Work 9.3: Highway Materials Testing. This type of work requires one professional engineer, registered with the Florida State Board of Professional Engineers, having a minimum of five years of experience in activities normally associated with highway materials testing. Among the consultant's personnel, at least one individual must possess LBR Technician qualification, one individual must possess Asphalt Plant Level I qualification, one individual must possess Concrete Field testing Technician Level I qualification under the Department's Construction Training Qualification Program, and one individual must possess nuclear gauge operator certification as provided by a gauge manufacturer. In addition, the consultant must have (in-house) at least the following test equipment: oven, balances, sieves, mechanical shaker, colorimetric kit, compression testing machine, moisture curing room or tanks, slump cone, air meters, gravity apparatus, thermometers, pycnometer, pulverizing apparatus, jaw crusher apparatus, splitter or quartering device, Los Angeles machine, flowmeter, water bath, muffle furnace, compaction hammer, molds LBR loading devices with penetration piston, soak tanks, and ignition furnace.

d. Type of Work 9.4: Foundation Studies.

(I) Type of Work 9.4.1: Standard Foundation Studies. This type of work requires one professional engineer, registered with the Florida State Board of Professional Engineers, having a minimum of five years of experience in activities normally associated with standard foundation studies. The qualifying professional engineer shall be responsible for the quality assurance of the design services, and shall sign a letter of certification stating that the project documents have been reviewed under the quality assurance process, and that all issues are resolved. Certification will be pursuant to Section 837.06, Florida Statutes.

(II) Type of Work 9.4.2: Non-redundant Drilled Shaft Bridge Foundation Studies. This type of work requires qualification in Type of Work 9.4.1: Standard Foundation Studies, and, in addition, two professional engineers, registered with the Florida State Board of Professional Engineers, having a minimum of three years of experience each in activities normally associated with non-redundant drilled shaft foundation design. The qualifying professional engineers shall be responsible for the quality assurance of the design services, and shall sign a letter of certification stating that the project documents have been reviewed under the quality assurance process, and that all issues are resolved. Certifications will be pursuant to Section 837.06, Florida Statutes.

(III)d. Type of Work 9.5: Geotechnical Specialty Lab Testing. This type of work requires one professional engineer registered with the Florida State Board of Professional Engineers, having a minimum of five years of experience in activities normally associated with Geotechnical Security Lab Testing. The consultant must have at least one staff member with at least four years of experience performing the tests, or an equivalent bachelor's degree. In addition, the consultant must have (in-house) at least the following test equipment: oven, balances, permeameter, consolidation load device, load frame, direct shear machine, triaxial panel, and a triaxial cell.

(i) Group 10. Construction Engineering Inspection (CEI). This type of work group involves the monitoring and inspection of the work required under various construction contracts. This type of work includes coordinating with other public agencies, utilities, and affected property owners.

1. This group includes the following subcategories of qualification:

a. Type of Work 10.1: Roadway ~~CEI Construction Engineering Inspection~~. This type of work includes the administration and inspection of single or multiple construction contracts on rural, municipal, urban, and interstate facilities; including necessary minor bridges as defined in Type of Work 3.1.

b. Type of Work 10.2: ~~Reserved. Major Bridge Construction Engineering Inspection.~~ This type of work includes the administration and inspection of single or multiple construction contracts involving the construction of major bridges as defined in Types of Work 4.2, 4.3, and 4.4.

c. Type of Work 10.3: Construction Materials Inspection. This type of work includes conducting inspections and investigations of various highway materials or products, together with the proper recording, analysis, and reporting of results and recommendations. The work will be performed at mines, quarries, mills, refineries, processors, producers, fabricators, constructors, and project construction sites; some of which will be outside the State of Florida.

d. Type of Work 10.4: Major Bridge CEI. This type of work includes the CEI of conventional, non-complex bridges and other highway-related structures such as non-standard

concrete box culverts, retaining walls, sound barriers, structural supports for highway signs, luminaries, and traffic signals. Generally, this group of structures is limited to conventional foundation types, simple geometry, and having total estimated bridge(s) plan area(s) no greater than 100,000 square feet (sum of the areas of multiple bridges). Typically, this includes the construction, rehabilitation, widening, or lengthening of box culverts, retaining walls, cast-in-place or precast prestressed short span slab type bridges, simple span prestressed concrete beam bridges, and simple span I-beam bridges.

e. Type of Work 10.5: Major Bridge CEI. This type of work includes CEI of structures that cannot be included in Type of Work 10.4 because of deck area, complex geometry (curvature, skew, or variable width), complex design (including bridges with statically indeterminate superstructure components) with spans estimated to be less than 400 feet, non-conventional substructures, bridges over navigable waters, and railroad bridges. This type of work is separated into three categories:

(I) Type of Work 10.5.1: Major Bridge CEI – Concrete. This type of work includes CEI for the construction, rehabilitation, widening, or lengthening of structurally-continuous concrete superstructures (longitudinally post-tensioned concrete beam bridges, etc.), reinforced concrete boxes, and post-tensioned substructures.

(II) Type of Work 10.5.2: Major Bridge CEI – Steel. This type of work includes CEI for the construction, rehabilitation, widening, or lengthening of structurally-continuous steel superstructures (steel box girders, curved steel girder bridges, etc.).

(III) Type of Work 10.5.3: Major Bridge CEI – Segmental. This type of work includes CEI for the construction, rehabilitation, widening, or lengthening of precast or cast-in-place concrete post-tensioned segmental superstructures or substructures.

f. Type of Work 10.6: Movable Span Bridge CEI: This type of work includes the CEI of structures that cannot be included in Type of Work 10.5.1 or 10.5.2 because of unique, specialized, or uncommon types of designs. Typically, this includes the construction, rehabilitation, widening, or lengthening of bridges with estimated span(s) longer than 400 feet, tunnels, cable-stayed bridges, suspension bridges, truss spans, arch bridges, and bridges requiring unique analytical methods or other design features not commonly addressed in AASHTO publications. This group is separated into two categories:

(I) Type of Work 10.6.1: Complex Bridge CEI – Concrete: This type of work includes CEI for the construction, rehabilitation, widening, or lengthening of concrete superstructures of the structure types listed in Type of Work 10.6.

(II) Type of Work 10.6.2: Complex Bridge CEI – Steel: This type of work includes CEI for the construction, rehabilitation, widening, or lengthening of steel superstructures of the structure types listed in Type of Work 10.6.

g. Type of Work 10.7: Movable Span Bridge CEI: This type of work includes the CEI of bascule bridges and other movable bridges. The work includes all structural, electrical, and mechanical requirements. Typically, this includes CEI for the construction, rehabilitation, widening, or lengthening of bascule bridges, swing bridges, and vertical lift bridges.

2. Qualification Requirements.

a. Type of Work 10.1: Roadway CEI Construction Engineering Inspection. This type of work requires at least one professional engineer, registered with the Florida State Board of Professional Engineers, having at least two years of responsible charge experience as a project engineer on a roadway construction inspection project.

b. Type of Work 10.2: Reserved Major Bridge Construction Engineering Inspection. This type of work requires a minimum of three professional engineers, registered with the Florida State Board of Professional Engineers. One of these engineers must have at least five years of demonstrated major bridge construction inspection experience.

c. Type of Work 10.3: Construction Materials Inspection. This type of work requires a minimum of one professional engineer, registered with the Florida State Board of Professional Engineers, having at least three years of responsible experience in bridge or roadway construction inspection.

d. Type of Work 10.4: Minor Bridge and Miscellaneous Structures CEI. This type of work requires at least one professional engineer, registered with the Florida State Board of Professional Engineers, having a minimum of five years experience in the performance of CEI for Type of Work 10.4; and two engineers/project administrators having a minimum of three years each CEI for Type of Work 10.4.

e. Type of Work 10.5.1: Major Bridge CEI – Concrete. This type of work requires at least two professional engineers, registered with the Florida State Board of Professional Engineers, having a minimum of five years each in the performance of CEI for Type of Work 10.5.1 in continuous span concrete bridges as defined in Type of Work 10.5.1, excluding segmental bridges, or qualified as required in Type of Work 10.5.3 with one additional year of CEI experience in continuous span concrete bridges as defined in Type of Work 10.5.1, and three or more engineers/technicians having a minimum of three years each in the performance of CEI for Type of Work 10.5.2.

f. Type of Work 10.5.2: Major Bridge CEI – Steel. This type of work requires at least two professional engineers, registered with the Florida State Board of Professional Engineers, having a minimum of five years each in the performance of CEI for Type of Work 10.5.2 in continuous

span steel bridges as defined for Type of Work 10.5.2 above and three or more engineers/technicians having a minimum of three years each in the performance of CEI for Type of Work 10.5.2.

g. Type of Work 10.5.3: Major Bridge CEI – Segmental. This type of work requires at least two professional engineers, registered with the Florida State Board of Professional Engineers, having a minimum of five years each in the performance of CEI for Type of Work 10.5.3 in continuous span post-tensioned segmental concrete (precast or cast-in-place) bridges as defined for Type of Work 10.5.3 and three or more engineers/technicians having a minimum of three years each in the performance of CEI for Type of Work 10.5.3.

h. Type of Work 10.6.1: Complex Bridge CEI – Concrete. This type of work requires at least three professional engineers, registered with the Florida State Board of Professional Engineers, having a minimum of five years experience each in the performance of CEI for Type of Work 10.6.1 in categories as defined in Type of Work 10.6.1 and four or more engineers/technicians having a minimum of three years each in the performance of CEI for Type of Work 10.5.1.

i. Type of Work 10.6.2: Complex Bridge CEI – Steel. This type of work requires at least three professional engineers, registered with the Florida State Board of Professional Engineers, having a minimum of five years experience each in the performance of CEI for Type of Work 10.6.2 and four or more engineers/technicians having a minimum of three years each in the performance of CEI for Type of Work 10.6.2.

j. Type of Work 10.7: Movable Span Bridge CEI. This type of work requires qualification in Type of Work 10.5.2 and also requires an electrical engineer and a mechanical engineer both registered with the Florida State Board of Professional Engineers. In addition to the experience requirements for Type of Work 10.5.2, the professional engineers will have at least five years of experience in the performance of CEI for Type of Work 10.7 and three engineers/technicians shall have a minimum of three years of movable bridge experience in the performance of CEI for Type of Work 10.7. At least one of the professional engineers or engineer/technicians will have experience in CEI of at least three movable bridges electrical control systems within the last 10 years and one will have experience in CEI of at least three movable bridge drive systems within the last 10 years. The electrical engineer will have experience in CEI of at least three movable bridge electrical control systems within the last 10 years and experience with the commonly used bridge leaf motion control techniques used within the last 30 years. The mechanical engineer will have experience in CEI of at least three movable bridge drive systems within the last 10 years and experience with the bridge drive systems commonly used within the last 30 years.

(j) Group 11. Engineering Contract Administration and Management.

1. Type of Work: Engineering Contract Administration and Management. This type of work is defined as the administration and management of engineering activities. Consultants applying for qualification in this type of work must be determined qualified in a number of categories under this rule chapter. Examples of assignments made to a consultant qualified for this type of work are:

a. Engineering analysis of transportation facility deficiencies; and the preparation of an engineering scope of services and staff hour estimate to correct those deficiencies.

b. Project schedule development for planning, environmental, design, and construction engineering inspection activities.

c. Review and analysis of professional engineering issues contained in statements of qualification and technical proposals submitted by consultants competing for professional contracts.

d. Conduct Scope of Service meetings with professional consultants.

e. Preparation of contractual agreements for professional services in accordance with Department policies and procedures.

f. Supervision and management of engineering consultants on individual projects, responding to their technical questions, and reviewing their work in progress and completed work.

g. Representing the Department during professional service negotiations with consultants, utilities, and other entities.

h. Other professional engineering activities associated with the acquisition and management of professional consulting services.

2. Qualification Requirements. Engineering Contract Administration and Management. To be determined qualified for this type of work, a consultant must be qualified by the Department in the following Groups and Types of Work under this rule chapter: Group 3, Types of Work 4.1.1, 4.1.2, 4.2.1, 4.2.2 4.1, 4.2, and 6.1, Group 7, and Type of Work 10.1. Firms deemed qualified in these groups and requesting qualification for Group 11 will be deemed qualified without a requirement to submit additional qualification documentation or materials.

(k) Group 13. Planning. This work group involves the determination of future actions necessary to address the need for transportation facilities and services. The work effort may involve planning both short range (up to 10 years) and long range (more than 10 years) time periods, and may involve any or all typical activities of planning, including development and refinement of processes and procedures; development and analysis of policies, goals, and objectives; data collection and analysis; issue analysis; development and use of forecasting and other models; analysis of transportation/land use relationships; assessing the impact that planning transportation improvements may have on private property; establishment of standards and performance criteria; forecasts of transportation

and transportation related data; determination and analysis of alternatives; multimodal/intermodal tradeoff analysis; analysis of alternatives; multimodal/intermodal tradeoff analysis; development of recommended plans and courses of action; financial feasibility; assessment of the impacts of growth management requirements on transportation; and public participation and coordination with other planning processes and plans.

1. This group includes the following sub-categories of qualification:

a. Type of Work 13.1: Reserved.

b. Type of Work 13.2: Reserved.

c. Type of Work 13.3: Policy Planning. This type of work involves transportation and transportation related planning activities in the broadest or most general way. Planning in this sub-category usually occurs at levels where difficult trade-offs in the use and allocation of resources must be made and where many people will be affected in important but often subtle ways. Hence, the ability to use judgement, both political and technical/professional, is very important, as is the ability to effectively communicate using a variety of media. Included in this sub-category are development and refinement of statewide transportation plans or plan components, and activities involving the determination of the impacts and implications of policies, legislative issues, processes, and standards on a wide variety of subjects, including: transportation facilities and services; land use; the environment; the private sector; and the public.

d. Type of Work 13.4: Systems Planning. This type of work deals with planning for entire systems (one or several modes) of transportation covering an entire geographic area such as the development of long range transportation plans for an MPO, county, or region; or the development of an ITS Strategic Plan for a region. Included in this sub-category are activities involving the systematic analysis of future demand for transportation facilities and services, leading to recommendations for addressing that demand. Typical activities include: data collection and analysis, including analysis of transportation/land use relationships; estimation, forecasting, and assignment of travel demand, including modeling the characteristics and use of transportation systems; mode split and multimodal tradeoff analysis; development of ITS strategies; impact analysis; evaluation and decision making; cost analysis and financial feasibility; and modal coordination and management. Although recommendations as to the type, number, and approximate location of transportation facilities are to be made, this sub-category does not include determination of the precise location or design of facilities or systems.

e. Type of Work 13.5: Subarea/Corridor Planning. This type of work deals with planning for entire systems or portions of systems (one or several modes) of transportation covering a smaller geographic area than Systems Planning or for a

specific transportation corridor. Included in this sub-category are activities involving the systematic analysis of future demand for transportation facilities and services, leading to recommendations for addressing that demand. Typical activities, usually performed at a more detailed level than with systems planning, include data collection and analysis, as well as: analysis of transportation/land use relationships; estimation, forecasting, and assignment of travel demand, including modeling the characteristics and use of transportation systems; mode split and multimodal tradeoff analysis; development of ITS strategies to maximize the operation of the corridor; impact analysis; evaluation and decision making; cost analysis; and financial feasibility; and modal coordination and management. Although recommendations as to the type, number, and approximate location of transportation facilities are to be made, this sub-category does not include determination of the precise location or design of facilities or systems.

f. Type of Work 13.6: Land Planning/Engineering. This type of work involves planning and engineering in support of assessing the impacts that proposed transportation improvements may have on private property. Included in this sub-category are activities involving site analysis for compliance with comprehensive plans, local ordinances, and appraisers' cost to cure; reviewing and providing engineering opinions of site plans for feasibility and conformance with applicable codes and regulations; assessing the impact to drainage and environment; and preparing site plan and studies which may encompass parking layout, vehicle use areas, and general site consideration in conformance with applicable codes, laws, and regulations.

g. Type of Work 13.7: Transportation Statistics. This type of work involves data collection, analysis, editing, processing, and reporting to support planning, design, and maintenance of the transportation network. This type of work also involves the construction, replacement, or repair of traffic monitoring equipment including sensors (either installed in, or along the roadway) and associated equipment and appurtenances. The construction of traffic monitoring sites may include design, preparing construction plans, writing specifications, and construction engineering supervision. Special traffic counts may also be performed under this activity to support production and development activities and special needs.

2. Qualification Requirements.

a. Type of Work 13.1: Reserved.

b. Type of Work 13.2: Reserved.

c. Type of Work 13.3: Policy Planning. This type of work requires at least one professional engineer, registered with the Florida State Board of Professional Engineers, having at least five years of training and experience in areas directly related to policy planning; or at least one professional engineer, registered with the Florida State Board of Professional Engineers, with at least one employed planner having training

and experience in areas directly related to policy planning; or at least one planner, certified with the American Institute of Certified Planners, having training and experience in areas directly related to policy planning.

d. Type of Work 13.4: Systems Planning. This type of work requires at least one professional engineer, registered with the Florida State Board of Professional Engineers, having at least five years of training and experience in areas directly related to systems planning; or at least one professional engineer, registered with the Florida State Board of Professional Engineers with at least one employed planner having at least five years of training and experience in areas directly related to systems planning; or at least one planner, certified with the American Institute of Certified Planners, having at least five years of training and experience in areas directly related to systems planning.

e. Type of Work 13.5: Subarea/Corridor Planning. This type of work requires at least one professional engineer, registered with the Florida State Board of Professional Engineers, having at least one year of post-registration experience in areas directly related to subarea/corridor planning; or at least one professional engineer, registered with the Florida State Board of Professional Engineers, with at least one employed planner having at least one year of experience in areas directly related to subarea/corridor planning; or at least one planner, certified with the American Institute of Certified Planners, having at least one year of experience in areas directly related to subarea/corridor planning.

f. Type of Work 13.6: Land Planning/Engineering. This type of work requires at least one professional engineer, registered with the Florida State Board of Professional Engineers, having a minimum of three years of experience in comprehensive planning or areas directly related to assessing impacts to private property; or at least one professional engineer, registered with the Florida State Board of Professional Engineers, with at least one employed planner having a minimum of three years of experience in comprehensive planning or areas directly related to assessing impacts to private property; or at least one landscape architect registered with the Florida State Board of Landscape Architecture, having at least one year of post registration experience in areas directly related to assessing impacts to private property. or at least one planner, certified with the American Institute of Certified Planners, with a minimum of three years of experience in comprehensive planning or areas directly related to assessing impacts to private property.

g. Type of Work 13.7: Transportation Statistics. This type of work requires at least one professional engineer, registered with the Florida State Board of Professional Engineers, having at least one year of post-registration experience in activities associated with the collection of traffic data of a statistical nature that can be used in the Department's databases such as the Rail-Highway Crossing Inventory (RHCI), Traffic

Characteristics Inventory (TCI), and Roadway Characteristics Inventory (RCI), or used to support other Department activities such as highway design. In addition, either the same engineer, or an additional professional engineer registered with the State Board of Professional Engineers with at least one year of post-registration experience in the construction, replacement, or repair of traffic monitoring equipment, including sensors (either installed in, on, or alongside the roadway) and associated equipment and appurtenances, and maintenance of traffic is required.

(l) Group 14. Architect.

1. Type of Work. This type of work is defined as the rendering of services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning; providing preliminary study designs, drawings, and specifications; architectural supervision; job-site inspection; and administration of construction contracts.

2. Qualification Requirements. This type of work requires at least one architect, registered with the Florida State Board of Architecture and Interior Design, with a minimum of five years of post-registration experience in commercial design and favorable references.

(m) Group 15: Landscape Architect.

1. Type of Work. This type of work is defined as the rendering of services in connection with the design and construction of landscape projects. These services include planning; site planning; providing preliminary study designs, drawings, and specifications; landscape architectural supervision; job-site inspection; and administration of construction contracts.

2. Qualification Requirements. This type of work requires at least one landscape architect, registered with the Florida State Board of Landscape Architecture, with at least five years of post-registration experience in landscape architecture projects.

(n) Group 20. Appraisal Services.

1. This type of work is defined as the services provided by an appraiser to the State of Florida Department of Transportation. Appraisal Services include: "Appraisal Assignment" in which a person is employed or retained to act as a disinterested third party in rendering objective and unbiased analyses, opinions, reviews, or conclusions relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property. Such appraisal services must be in compliance with the Uniform Standards of Professional Appraisal Practice, as incorporated by reference in Section 475.628, Florida Statutes.

2. Qualification Requirements. This type of work requires a minimum of one person licensed as a State Certified General Real Estate Appraiser issued by the Florida Department of

Business and Professional Regulation, with a minimum of three years experience in appraising for eminent domain purposes.

(o) Group 21. Acquisition, Negotiation, Closing, and Order of Taking.

1. Type of Work. This type of work involves notifying all affected parties of their rights pursuant to Section 73.015, Florida Statutes; reviewing and verifying all title work; reviewing right of way maps and construction plans and verifying that all legal descriptions, right of way maps, and appraisals correspond; conducting surveys to identify all businesses operating on property being acquired; preparing real property/personal property inventories; making purchase offers including the approved market value estimate, and conducting negotiations in accordance with state policies and procedures and all applicable laws; when applicable, making business damage counteroffers and conducting negotiations to settle business damage claims in accordance with state policies and procedures; participating in the non-binding pre-litigation mediation process; preparing recommendations for administrative settlements; preparing and processing invoices for requesting warrants for settlements, and order of taking deposits; conducting all necessary closings as well as preparation, styling, and filing of lawsuit packages under the direction of the Department's attorney; providing assistance to the Department's attorneys in obtaining Orders of Taking, including providing testimony and responding to interrogatories; and maintaining complete written documentation of all contacts with property owners or property owners' representatives.

2. Qualification Requirements. This type of work requires registration of the consultant with the Florida Real Estate Commission and, at a minimum, one real estate broker and one real estate salesperson licensed by the State of Florida Department of Business and Professional Regulation. These employees each must have at least three years of demonstrated experience in transportation acquisition projects.

(p) Group 22. Acquisition Business Damage Estimating and Estimate Review.

1. Type of Work. This type of work is defined as the preparation of business damage estimate reports describing the impact of a right of way acquisition on the income, expenses, and profits of a particular business, in accordance with the standards established in Rule Chapter 14-102, F.A.C., and all other recognized accounting and performance standards; and the critical and analytical review and evaluation of business damage estimate reports, exhibits, and other documentation submitted to the Department by the business damage estimator on behalf of the Department or business owners.

2. Qualification Requirements. This type of work requires a minimum of one employee, registered as a Certified Public Accountant in the State of Florida, with a minimum of three years of demonstrated professional accounting work, after

registration. This type of work also requires the Certified Public Accountant to demonstrate previous experience in the preparation of accepted business damage estimate reports for the Department within the last three years immediately preceding application for qualification; or have served as an expert witness in the State of Florida in eminent domain cases or other legal cases regarding business valuation or damages within the last three years immediately preceding application for qualification; or a minimum of 48 hours of completed course work, directly related to business valuation. Verification of course work shall be by copies of course certificates of completion issued by the course provider which will indicate the number of hours that may be counted for continuing professional education credits.

(q) Group 24. Acquisition Relocation Assistance.

1. Type of Work. This type of work is defined as relocation planning at the conceptual stage of a transportation project and the preparation of the Relocation Needs Assessment Survey, identifying displaced persons and likely business damage candidates pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act and 49 C.F.R., Part 24, incorporated herein by reference, and available at: <http://www.fhwa.dot.gov/realestate/ua/index.htm>. Advisory services, including personal interviews and coordination with displaced persons, must be provided to ensure the timely relocation to replacement properties. Relocation assistance also involves the delivery of all required notices and offers to owners and tenants, the location and offer of comparable decent, safe, and sanitary replacement dwellings available for sale or rent, the computation of replacement housing payments, the determination of appropriate move cost payments, the monitoring of moves, the preparation of claim packages, invoicing of payment amounts, and delivery of warrants. The work also entails obtaining all information pertinent to evictions and relocation appeals, and includes providing testimony.

2. Qualification Requirements. This type of work requires a minimum of one full time employee with a minimum of three years of demonstrated current experience in administering and providing relocation assistance for transportation projects under the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act and 49 C.F.R., Part 24.

(r) Group 25. Right of Way Clearing and Leasing.

1. Type of Work: This type of work involves preparing real property/personal property inventories and inventory updates up to and including final disposition of the property; performing property inspections on an ongoing basis to determine the need for rodent control, maintenance, and security; conducting negotiations for short-term leases and preparing leasing documents for real and personal property prior to construction of a project; preparing, obtaining, managing, and reviewing contracts for consultant services to

perform asbestos surveys, preparing asbestos operation and maintenance plans, preparing asbestos abatement specifications, and performing air and asbestos project monitoring; preparing, obtaining, and managing departmental contracts for asbestos abatement services; preparing, obtaining, and managing departmental contracts for demolition and removal services; inspecting demolition sites and documenting demolition activities; and preparing, obtaining, and managing Department contracts for removal of pollutant storage tanks.

2. Qualification Requirements. This type of work requires registration of the consultant with the Florida Real Estate Commission and, at a minimum, one real estate broker and one real estate salesperson licensed by the Florida State Department of Business and Professional Regulation. These employees each must have at least three years of demonstrated experience in managing properties acquired for transportation purposes and managing contracts for demolition activities. Additionally, at least one employee must be certified as an Asbestos Inspector and as an Asbestos Management Planner, and have a minimum of three years of administrative experience in the asbestos field.

Specific Authority 287.055, 334.044(2) FS. Law Implemented 287.055, 337.105, 337.1075 FS. History—New 6-30-73, Amended 3-24-77, 5-1-77, 8-31-77, 11-13-77, 9-20-83, 10-21-85, Formerly 14-75.03, Amended 3-29-89, 1-2-91, 9-29-92, 2-22-94, 8-5-96, 6-30-98, 8-2-01, 4-29-03,_____.

14-75.004 Consultant Competitive Selection Process.

Selection of professional consultants by the Department shall be in accordance with the provisions enumerated below.

(1) Notice.

(a) Except when there is a public emergency certified by the Secretary of Transportation, the Department shall provide notice whenever it requires professional services for a project, the basic construction cost of which is estimated by the Department to be more than the threshold amount in Section 287.017, Florida Statutes, for category five, or when the fee for professional services for a fixed capital outlay study or planning activity exceeds the threshold amount provided in Section 287.017, Florida Statutes, for category two. The Department will provide the foregoing notice at its Internet address: (<http://www.dot.state.fl.us/procurement/> ~~www11.myflorida.com/procurement/~~). A project may include the following:

1. Professional services associated with a specifically identified project.

2. A grouping of professional service assignments for substantially similar activities where the grouping of assignments provides advantage to the Department because of the geographic proximity of the existing or proposed transportation facilities involved, or use of shared resources for multiple projects, or to allow multiple use of a single design concept.

3. Miscellaneous minor professional services, performed on a task assignment basis. The total contract fee may not exceed \$1,500,000 and individual assignments may not exceed \$300,000. However, these limits may be exceeded due to unplanned cost increases.

4. Professional services of a general consultant, which include the administration, support, and management of engineering, architectural, surveying, planning, or right of way acquisition and appraisal activities.

(b) The notice shall contain time frames for submittal of a letter of response, a general description of the project, including where a detailed description may be obtained, the Department district and county where the project is located, a list of the major types of work, an indication as to whether the project is considered a minor project for qualification purposes, and a description of the means by which interested consultants can apply for consideration. Projects that do not conform to the prequalified types of work shall be advertised requesting any interested consultant to submit a Letter of Qualification. Consultants responding to advertisements for such non-standard types of work do not need to possess previous qualification.

(2) Response to Advertisement and Selection.

(a) Professional consultants who desire work with the Department shall timely submit a maximum of a two page letter of response, or a letter of qualification, to the Department whenever they feel qualified to perform projects for which notice has been provided in accordance with paragraph (1)(a). To be considered for selection, the letter of response or letter of qualification must be received in the format and by the date specified in the advertisement and will include a list of all affiliates as defined in Section 337.165(1)(a), Florida Statutes. Only one letter of response/qualification will be considered from any consultant firm.

(b) After receipt of a letter of response, or letter of qualification, the Department shall review the submittal and verify that the consultant possesses current qualification with the Department to perform the major type(s) of work specified in the advertisement. In order to be considered for selection, any consultant which does not possess current qualification to perform the major type(s) of work specified in the advertisement shall submit a completed Request for Qualification Package, including the required overhead audit (if applicable), on or before the date letters of response are due. A qualified consultant may use a qualified sub-consultant to meet the requirements of the major type(s) of work for which it is not currently qualified when responding to advertisements. The Department will not be obligated to delay any part of the consultant selection process or the execution of a contract for a consultant who has not been qualified for the major types of work or who cannot provide the required documentation prior to the process of selection.

(c) If fewer than three consultants respond to the advertisement, the Department shall review its list of firms prequalified for the major type(s) of work advertised, and select no fewer than ten prequalified firms (or all prequalified firms if fewer than 10 are prequalified) deemed to be the most highly qualified, based on the criteria in Section 287.055(4)(b), Florida Statutes. The Department shall then contact each of the listed consultants and conduct similar discussions concerning the project, until it has at least three consultants interested in the project.

(d) When the fee for professional services is less than the threshold amount provided in Section 287.017, Florida Statutes, for category two, or when the Department's estimated basic construction cost is less than the threshold amount provided by Section 287.017, Florida Statutes, for category five, the Department may request, review, and approve the technical qualifications of the selected consultant if the consultant is not currently qualified in the requested type of work.

(e) Selection of consultants will be in accordance with Section 287.055, Florida Statutes.

Specific Authority 334.044(2), 837.06 FS. Law Implemented 287.055, 337.105 FS. History--New 6-30-73, Amended 3-24-77, 6-30-83, 10-21-85, Formerly 14-75.04, Amended 3-29-89, 1-2-91, 9-29-92, 2-22-94, 8-5-96, 2-12-98, 8-2-01, 4-29-03, _____.

14-75.0051 Revocation, Denial, or Suspension of Qualification.

(1) Department will, for good cause, deny or suspend the qualification of any professional consultant, or other provider of service, to render services to the Department. A denial or suspension for good cause pursuant to this rule shall remove the person or firm from consideration for award of professional service contracts for a particular type of work for a period not to exceed three years. Such good cause shall include paragraphs (a) through ~~(c)(e)~~ below:

~~(a) One of the circumstances specified under Section 337.105(1)(a) through (i), Florida Statutes.~~

~~(a)(b)~~ The consultant defaulted on any Department contract, or the contract of any other governmental entity.

(b) The consultant's work performance in one of the work types defined in Rule 14-75.003, F.A.C., is not satisfactory. Unsatisfactory performance shall consist of failure to meet project:

1. Schedule requirements,
2. Management requirements, or
3. Quality requirements.

Unsatisfactory performance will result in revocation, denial, or suspension of qualifications for that type of work for a period not to exceed one year.

~~(e) The consultant failed to timely furnish all contract documents required by the contract specifications, or special provisions, to be provided after the Department's offer of final payment.~~

~~(d) The consultant has an unsatisfactory work performance grade average. A consultant must maintain a final grade of 70 to remain qualified with the Department to provide services in each type of work. A composite final average grade between 60 and 69 for schedule, management, and each quality grade will result in the consultant being suspended from the qualified list for three months for each type of work graded within this range. A composite final average grade below 60 for schedule, management, and each quality grade will result in the consultant being suspended from the qualified list for six months for each type of work graded within this range.~~

~~(c)(e)~~ Any other good cause, as defined in Section 337.105(1), Florida Statutes, established by the factual circumstances.

(2) For any of the reasons provided in Section 14-75.0051(1), ~~other than receipt of an unsatisfactory work performance grade,~~ the Department will revoke, deny, or suspend a consultant's qualification for a period of time based upon the seriousness of the deficiency. Factors to be considered in determining the length of the suspension or denial include, but shall not be limited to, the following:

- (a) Impact on project design or construction schedules;
- (b) Frequency or number of occurrences;
- (c) Impact on the Department, financial or otherwise;
- (d) Potential for repetition;
- (e) Length of bar or suspension from consideration of work by another governmental entity; and
- (f) Severity or length of noncompliance with the requirements for qualification, found in Rule Chapter 14-75, F.A.C.

(3) The Department shall deny or revoke the qualification to bid of any consultant, and its affiliates, for a period of 36 months, pursuant to Section 337.165, Florida Statutes, when it is determined that the consultant has, subsequent to January 1, 1978, been convicted of a contract crime within the jurisdiction of any state or federal court.

(4) Any decision by the Department to suspend, revoke, or deny a consultant's qualification will be provided to the consultant in accordance with Rule 28-106.111, F.A.C. The Department's action will become final, unless a petition for a hearing is filed in accordance with Rules 28-106.104, 28-106.201 and 28-106.301, F.A.C., within 21 days after receipt of the Department's notice. Where a consultant's qualification has been denied or revoked for conviction of a contract crime, a hearing shall be held within 30 days of the receipt of the request for hearing if the request for hearing is filed within 10 days of the Department's notice of intent. All requests for hearing shall be in writing and shall be filed with the Clerk of Agency Proceedings, 605 Suwannee Street, MS 58, Haydon Burns Building, Tallahassee, Florida 32399-0458. A request for hearing is filed when it is delivered to, and received by, the Clerk of Agency Proceedings at the above

address, and accordingly is not timely filed unless it is received by the Clerk of Agency Proceedings within the appropriate time period.

(a) Reapplication or Reinstatement. A consultant whose qualification has been denied or revoked for conviction of a contract crime may petition for reapplication or reinstatement at any time after denial or revocation in accordance with Section 337.165(2)(d), Florida Statutes.

1. The petition for reapplication or reinstatement shall be in writing and shall be filed with the Clerk of Agency Proceedings, Department of Transportation, 605 Suwannee Street, MS 58, Haydon Burns Building, Tallahassee, Florida 32399-0458, and shall include:

- a. The name and address of the party making the request;
- b. A statement of the specific grounds upon which the petition is based and the proposed terms and conditions upon which reapplication or reinstatement is sought;
- c. A list of all witnesses and exhibits to be presented; and
- d. A statement whether the consultant requests that the hearing be held by the Division of Administrative Hearings.

2. Upon the filing of a petition for reapplication or reinstatement, the Department shall:

- a. Conduct a hearing within 30 days after receipt of the petition, unless otherwise stipulated by the parties; or
- b. Notify the Division of Administrative Hearings within five days after receipt of the petition for scheduling of the hearing in accordance with Sections 337.165(2)(d) and 120.57, Florida Statutes.

3. If the petition for reapplication or reinstatement is denied, the consultant may not petition for a subsequent hearing for a period of nine months following the date of the order of denial or revocation.

4. If the petition for reinstatement is granted, the consultant shall file a current Request for Qualification with the Procurement Office, 605 Suwannee Street, MS 20, Haydon Burns Building, Tallahassee, Florida 32399-0450, before the reinstatement shall become effective.

(b) Notification of Contract Crime. A consultant who is qualified with the Department, or who has a letter of response or qualification, or who has a request for qualification pending before the Department pursuant to this Rule Chapter, shall notify the Department within 30 days after conviction of a contract crime applicable to it or to any of its affiliates or to any officers, directors, executives, shareholders active in management, or employees or agents of it or any of its affiliates. The notification shall be forwarded to the Department of Transportation, Procurement Office, 605 Suwannee Street, MS 20, Haydon Burns Building, Tallahassee, Florida 32399-0450.

Specific Authority 334.044(2), 337.105 FS. Law Implemented 287.055(3), (6), 337.105, 337.165 FS. History--New 3-29-89, Amended 1-2-91, 9-29-92, 2-22-94, 1-17-99, 8-2-01, 4-29-03,_____.

14-75.0052 Professional Consultant Work Performance Evaluation System.

(1) The Department shall have a system to evaluate the performance of consultants on professional services contracts. The system shall consider the consultant's performance for the entire length of the contract and evaluate the products produced by the consultant. A copy of the completed evaluation shall be provided to the consultant's project manager and the officer who executed the agreement. A final composite evaluation of the consultant's contract performance shall be developed by combining all of the consultant's evaluations for the full length of the contract. The consultant's work performance on each professional service contract must be evaluated by the Department's project manager(s) or task manager(s). A work performance grade for each major type of work shall be based on an evaluation of Schedule, Management, and Quality. The schedule rating shall be based on the consultant's compliance with the contract schedule. The Management rating shall be based on the consultant's ability to manage all necessary project resources. The Quality rating shall be based on the consultant's attention and concern to the established quality control plan and a quality product. The project manager shall assign the Quality rating to any qualified consultant named in the agreement for any major type of work performed. For all professional services contracts that result in the preparation of construction plans, a Constructibility rating shall also be assigned. The Constructibility rating shall be based on the design consultant's ability to develop practical, accurate, complete, and cost effective construction plans. A minimum of one interim evaluation shall be conducted for all contracts with a duration of 18 months or more. A final evaluation shall be conducted for all contracts within 30 days of approval of the final invoice for basic services. A work performance grade for each major type of work shall be based on an evaluation of Schedule, Management, and Quality. The project manager shall assign the Quality Grade to any qualified consultant named in the agreement for each major type of work performed. The Department's contracted consultant shall also receive a Schedule, Management, and Quality Grade in the same type of work as any technically qualified consultant.

(2) The rating system for all work types shall be on a 1 to 5 rating scale with 1 equating to poor performance and 5 representing outstanding performance. Ratings will be assigned on a continuum of 1 to 5. Each interim grade shall be based upon an evaluation of the consultant's work performance for the period of time since a previous interim evaluation was made. The Final Grade shall reflect the overall contract performance for the entire contract period. Interim grades shall be entered into the Department's Professional Services Information System until replaced by the final grade.

(3) Each professional service contract evaluation shall be based on an evaluation of contract performance using a grading system for Schedule, Management, and Quality, except for

Groups 10.1 and 10.2, which will be scored one composite grade. The scoring system for all work groups will be as follows:

- Excellent—100 points
- Average—80 points Good—90 points
- Marginal—70 points
- Unsatisfactory—0—60 points

(a) ~~The Schedule Grade. The schedule grade shall provide an indication of the consultant's compliance with the contract schedule.~~

(b) ~~The Management Grade. The management grade shall provide an indication of the consultant's managerial knowledge and ability to manage all necessary resources to deliver a high quality product.~~

(c) ~~The Quality Grade. The quality grade shall provide an indication of the consultant's attention and concern to the established quality control plan and a quality product. A quality grade is prepared, at a minimum, for each major type of work as advertised. The quality grade for each type of work shall consider a minimum of four quality tests with a standard score range assigned to each test. The maximum grade for the summation of all quality tests for an individual quality grade is 100%.~~

(4) ~~For all professional service contracts that result in the preparation of construction plans, a construction plan quality evaluation will be performed by the Department's Resident Engineer within 30 days after final acceptance of the construction project. The resulting Constructibility Grade shall provide an indication of the design consultant's ability to develop practical, accurate, complete, and cost effective construction plans. The Department's CEI project manager or resident engineer shall assign a grade on the design consultant's plan quality.~~

(5) ~~Additional interim consultant work performance evaluations can be submitted by the Department's project manager as needed. Items to be considered for submitting additional interim evaluations are:~~

- (a) ~~Examples of extremely outstanding performance;~~
- (b) ~~Examples of extremely poor performance;~~
- (c) ~~Completion of critical phases of work, such as preliminary design, submittal of draft environmental documents and reports, initial and final submittals, etc.; and~~
- (d) ~~Requests from the consultant based on possible improved performance when its most recent grade was low.~~

(6) ~~Evaluation Processing. The Department's project manager will prepare the completed consultant performance grade, interim or final for entry into the Professional Services Information System. All final grades will be retained in the system for five years, and may be referred to by the Department for use in future qualification selection matters. Each interim grade shall be replaced by the succeeding interim grade and eventually by the final grade for each contract. A performance grade is established for each major type of work~~

by averaging the schedule, management, and quality grade. An average grade of 70 or more for each type of work is considered satisfactory.

(7) ~~Within 10 days after the Procurement Office receives the completed grades, a copy of the performance grades with a cover letter shall be provided to the consultant's project manager and officer who executed the agreement, as well as to any other consultant who was named in the agreement and was assigned a Quality Grade for work it performed.~~

Specific Authority 287.055, 334.044(2) FS. Law Implemented 287.055, 337.105 FS. History—New 3-29-89, Amended 1-2-91, 9-29-92, 2-22-94, 8-5-96, 8-2-01, 4-29-03,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Terry Cappellini, Manager, Procurement Office

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 10, 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."

COMMISSION ON ETHICS

RULE NO.: 34-7.010 RULE TITLE: List of Forms and Instructions

PURPOSE AND EFFECT: The purpose of the proposed amendment is to revise CE Forms 20 and 20-R, and replace CE Form 22 with a new form-CE Form 24. These forms implement the Executive Branch lobbyist registration and compensation reporting requirements imposed by Section 112.3215, F.S., as amended by Chapter 2005-359, L.O.F., and which are adopted by reference in Rule 34-7.010, F.A.C.

SUMMARY: CE Forms 20 (Executive Branch Lobbyist Registration) and 20-R (Executive Branch Lobbyist Renewal) are being amended, and CE Form 22 (Executive Branch Lobbyist Expenditure Report) is being replaced with CE Form 24 (Executive Branch Quarterly Compensation Report).

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated regulatory costs has been prepared.

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

SPECIFIC AUTHORITY: Art. II, Sec. 8(i), Fla. Const., 112.3144, 112.3145, 112.3147, 112.3215(14), 112.322(9) FS., Chapter 2005-359, LOF.

LAW IMPLEMENTED: 112.313(9), (12), 112.3143, 112.3144, 112.3145, 112.3148, 112.3149, 112.3215 FS., Art. II, Sec. 8(a), (f), (h), Fla. Const., Chapter 2005-359, LOF.

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

DATE AND TIME: April 21, 2006, 8:30 a.m.

PLACE: Florida Parole Commission, Room C307, Hearing Room A, 2601 Blainstone Road, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Julia Cobb Costas, Senior Attorney, Florida Commission on Ethics, (850)488-7864

THE FULL TEXT OF THE PROPOSED RULE IS:

34-7.010 List of Forms and Instructions.

(1) The following forms and instructions are adopted by reference and are used by the Commission in its dealings with the public:

(a) through (h) No change.

(i) Form 20, Executive Branch Lobbyist Registration. To be utilized by lobbyists for compliance with subsection 112.3215(3), F.S. Effective 5/2006 ~~1/2002~~.

(j) Form 20-R, Executive Branch Lobbyist Renewal. To be utilized by lobbyists for compliance with subsection 112.3215(3), F.S. Effective 5/2006 ~~1/2002~~.

(k) Form 24 ~~22~~, Executive Branch Quarterly Compensation ~~Lobbyist's Expenditure~~ Report. To be utilized by executive branch lobbying firms ~~lobbyists~~ for compliance with Section 112.3215(5), F.S. Effective 5/2006 ~~1/2004~~.

(l) through (r) No change.

(2) Any of the above forms and instructions may be obtained without cost upon request to the Florida Commission on Ethics, P. O. Drawer 15709, Tallahassee, Florida 32317-5709 and may also be downloaded from the Commission's website: www.ethics.state.fl.us.

Specific Authority Art. II, Sec. 8(i), Fla. Const., 112.3144, 112.3145, 112.3147, 112.3215(14)(~~13~~), 112.322(9) FS., Chapter 2005-359, LOF, Law Implemented 112.313(9), (12), 112.3143, 112.3144, 112.3145, 112.3148, 112.3149, 112.3215 FS., Art. II, Sec. 8(a), (f), (h), Fla. Const., Chapter 2005-359, LOF, History—New 4-11-76, Formerly 34-7.10 through 7.22, 8.10, Amended 2-23-77, 4-7-77, 5-17-77, 10-20-77, 2-25-79, 1-29-80, 4-29-81, 1-12-82, 3-25-82, 2-21-83, Formerly 34-7.10, Amended 7-10-88, 3-4-91, 10-6-91, 10-29-91, 12-22-91, 7-5-92, 10-15-92, 12-6-92, 11-10-93, 12-27-93, 11-21-94, 2-16-95, 12-26-95, 1-27-97, 1-1-98, 11-19-98, 12-28-99, 1-1-00, 12-4-00, 12-21-00, 10-14-01, 11-22-01, 1-1-02, 1-1-03, 1-1-04, 1-1-05, 1-1-06,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Julia Cobb Costas, Senior Attorney

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Commission on Ethics

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 3, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 17, 2006

COMMISSION ON ETHICS

RULE CHAPTER NO.: 34-12
 RULE CHAPTER TITLE: Executive Branch Lobbyist Registration

RULE NOS.:
 34-12.010 Purpose and Scope of Rules
 34-12.015 Prohibitions
 34-12.020 Definitions
 34-12.100 "Lobbyist" Defined
 34-12.190 Indirect Expenditures
 34-12.200 Lobbyist Registration Requirements
 34-12.300 Registration Forms
 34-12.310 Registration Fees
 34-12.320 Filing Registration Forms and Fees
 34-12.330 Annual Renewals
 34-12.340 Cancellation of Registration
 34-12.400 Compensation Reporting Requirements
 34-12.405 Penalties for Late Filing
 34-12.407 Appeal of Statutory Fines: Hearings, Unusual Circumstances
 34-12.420 Notification of Compensation Reporting Deadlines
 34-12.430 Lobbyist's Expenditure Reports
 34-12.450 Expenditure Categories
 34-12.460 Calculating Amounts of Expenditures
 34-12.660 Records Retention and Inspection

PURPOSE AND EFFECT: The proposed amendments to Chapter 34-12, F.A.C., are intended to implement Section 5, Chapter 2005-359, Laws of Florida. With its January 1, 2006 effective date, it is necessary to amend Chapter 34-12 to provide for the registration of Executive Branch lobbyists, require lobbying firms to file quarterly compensation reports, provide an automatic fine process for late-filed compensation reports, and implement other statutory changes. The proposed rules will supplant the emergency rules that became effective March 17, 2006.

SUMMARY: With the enactment of Chapter 2005-359, Laws of Florida, Executive Branch lobbyists are no longer required to file bi-annual expenditure reports. Instead, lobbying firms (as defined in the statute and rule) are now required to file quarterly compensation reports, reporting compensation they received from principals in specified ranges. Thus, many of the proposed changes to Chapter 34-12 replace the term "expenditure reports" with "compensation reports," replace "lobbyists" with "lobbying firms," list prohibitions and definitions, and describe the process to register as an Executive

Branch lobbyist and file compensation reports. Guidance is given on indirect expenditures. Rules that implement the registration process (Rules 34-12.300, 34-12.310, and 34-12.320) are repealed and combined into one rule (34-12.200), and rules that addressed expenditure reporting requirements (Rules 34-12.430, 34-12.440, and 34-12.460) are repealed and replaced with rules implementing the compensation reporting requirements. The automatic fine process for late-filed compensation reports is applied to lobbying firms (not individual lobbyists), and other proposed changes track language in Section 5, Chapter 2005-359, Laws of Florida.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated regulatory costs has been prepared.

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

SPECIFIC AUTHORITY: 112.3215, 112.322(9) FS., Section 5, Chapter 2005-359, LOF.

LAW IMPLEMENTED: 112.3215 FS., Section 5, Chapter 2005-359, LOF.

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

DATE AND TIME: April 21, 2006, 8:30 a.m.

PLACE: Florida Parole Commission, Room C307 – Hearing Room A, 2601 Blainstone Road, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Julia Cobb Costas, Senior Attorney, Florida Commission on Ethics, (850)488-7864

THE FULL TEXT OF THE PROPOSED RULES IS:

34-12.010 Purpose and Scope of Rules.

(1) No change.

(2) The rules of this Chapter shall apply to the functions and proceedings of the Commission on Ethics under Section 112.3215, Florida Statutes, including registration of persons who lobby agencies of the Executive Branch or the Constitution Revision Commission, reports which must be filed by lobbying firms ~~such persons and their principals~~, opinions which may be requested from the Commission concerning the application of Section 112.3215, Florida Statutes, and proceedings involving complaints of a violation of the provisions of Section 112.3215, Florida Statutes. The rules do not apply to any of the other functions of the Commission under Article II, Section 8, Florida Constitution, under Part III, Chapter 112, Florida Statutes, or under provisions of law other than Section 112.3215, Florida Statutes.

Specific Authority 112.3215, 112.322(9)(40) FS., Section 5, Chapter 2005-359, LOF. Law Implemented 112.3215 FS., Section 5, Chapter 2005-359, LOF. History—New 10-12-89, Amended 1-4-94, 7-2-00, _____.

34-12.015 Prohibitions.

(1) No lobbyist or principal shall make, directly or indirectly, and no agency official or employee shall knowingly accept, directly or indirectly, any expenditure made for the purpose of lobbying.

(2) No person shall provide compensation for lobbying to any individual or business entity that is not a lobbying firm.

(3) No person who is a “lobbyist” as defined in Section 112.3215(1)(h), F.S., and this Rule Chapter may lobby an agency until such person has registered as a lobbyist with the Commission.

Specific Authority 112.3215(14), 112.322(9) FS., Section 5, Chapter 2005-359, LOF. Law Implemented Section 5, Chapter 2005-359, LOF. History—New _____.

34-12.020 Definitions.

As used in this Chapter, unless the context otherwise requires:

(1) “Agency” means the Governor, Governor and Cabinet, or any department, division, bureau, board, commission, or authority of the executive branch, or the Constitution Revision Commission.

(2) “Agency official or employee” means an officer, employee, or other individual of the Executive Branch or the Constitutional Revision Commission who is required by law to file full (CE Form 6) or limited (CE Form 1) public disclosure of her or her financial interests, but does not mean officers or employees of political subdivisions of the State.

(3) “Compensation” means a payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a lobbying firm, directly or indirectly, by a principal for any Executive Branch lobbying activity.

(4)(2) “Expenditure” means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal, directly or indirectly, for the purpose of lobbying. A contribution to a political party regulated under Chapter 103, F.S., or a contribution or an expenditure reported pursuant to Chapter 106, F.S., or its federal law counterpart, is not an expenditure for purposes of Section 112.3215, F.S. and this Rule Chapter.

(5)(3) “Governmental entity” includes water management districts, regional planning councils, community college districts, counties, municipalities, special districts, and other political subdivisions of the State.

(6)(4) “Lobbies” or “lobbying” means seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee.

(7) “Lobbying firm” means a business entity, including an individual contract lobbyist, that receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business entity is a lobbyist. An association, a governmental entity, a

corporation, or other business entity that does not derive compensation from principals for lobbying is not a “lobbying firm,” and neither are its employee lobbyists.

(8)(5) “Person” means individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(9)(6) “Policy” means a plan or course of action which is applicable to a class of persons, proceedings, or other matters, and which is designed to influence or determine the subsequent decisions and actions of an agency, such as any plan or course of action which would constitute a “rule” as defined in Section 120.52, F.S. The term does not include the adjudication or determination of any rights, duties, or obligations of a person made on a case-by-case basis, such as would be involved in the issuance or denial of a license, permit, or certification or in a disciplinary action or investigation involving a person.

(10)(7) “Principal” means the person, firm, corporation, governmental entity, or other entity which has employed or retained a lobbyist. When an association has employed or retained a lobbyist, the association is the principal. The members of the association are not principals of the lobbyist merely because of their membership in the association.

(11)(8) “Procurement” means the purchase or acquisition of any property, interest in property, or services by an agency.

Specific Authority 112.3215, 112.322(9)(40) FS., Section 5, Chapter 2005-359, LOE. Law Implemented 112.3215 FS., Section 5, Chapter 2005-359, LOE. History—New 10-12-89, Amended 1-4-94, 7-2-00, _____.

34-12.100 “Lobbyist” Defined.

As used in this Chapter and except as excluded in this Chapter, “lobbyist” means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby an agency on behalf of that other person or governmental entity.

(1) through (5) No change.

(6) ~~The term “designated lobbyist” means a lobbyist who is appointed by the principal to file expenditure reports that include lobbying expenditures made directly by the principal.~~

Specific Authority 112.3215, 112.322(9)(40) FS., Section 5, Chapter 2005-359, LOE. Law Implemented 112.3215 FS., Section 5, Chapter 2005-359, LOE. History—New 10-12-89, Amended 1-4-94, 1-1-97, _____.

34-12.190 Indirect Expenditures.

(1) Where an expenditure is made to a person other than the agency official or employee by a lobbyist or principal, where the expenditure or the benefit of the expenditure ultimately is received by the agency official or employee, and where the expenditure is provided with the intent to benefit the agency official or employee, such expenditure will be considered a prohibited indirect expenditure to the agency official or employee.

(2) Where an expenditure or the benefit of an expenditure is made to an agency official or employee by someone other than a lobbyist or principal, but the expenditure has been provided by or paid for by a lobbyist or principal who intends thereby to benefit the agency official or employee, such expenditure will be considered a prohibited indirect expenditure to the agency official or employee.

(3) Factors which the Commission will consider in determining whether a prohibited indirect expenditure has been made include but are not limited to:

(a) The existence or nonexistence of communications by the lobbyist or principal, or by the intervening third person, indicating the lobbyist’s or principal’s intent to make or convey the expenditure to the agency official or employee rather than to the intervening third person;

(b) The existence or nonexistence of any relationship between the lobbyist or principal and the third person, independent of the relationship between the lobbyist or principal and the agency official or employee, that would motivate an expenditure to the third person;

(c) The existence or nonexistence of any relationship between the third person and the agency official or employee that would motivate the expenditure;

(d) Whether the same or similar expenditures have been or are being provided to other persons having the same relationship to the lobbyist or principal as the third person;

(e) Whether, under the circumstances, the third person had full and independent decision-making authority to determine whether the agency official or employee, or another, would receive the benefit of the expenditure;

(f) Whether the third person was acting with the knowledge or consent of, or under the direction of, the lobbyist or principal;

(g) Whether there were or were intended any payments or bookkeeping transactions between the third person and the lobbyist or principal reimbursing the third person for the expenditure; and

(h) The degree of ownership or control the lobbyist or principal has over the third person.

(4) The provisions of this rule may be illustrated by the following examples:

EXAMPLE 1: A law firm which lobbies the agency of Agency Employee A (“A”) invites all of its attorneys to attend a weekend retreat. The attorneys are encouraged to bring their spouses or significant others at the firm’s expense. A is married to an attorney in the firm and has been asked by her spouse to attend the retreat. The lodging, meals, and entertainment provided to A for the weekend retreat would not be considered a prohibited indirect expenditure to A because the firm’s invitation was to A’s spouse through his employment with the firm.

EXAMPLE 2: Agency Official B (“B”) hosts a turkey shoot attended by other agency officials and employees. Lobbyists who lobby the agency of B give money to a third person, who is not an agency official or employee, to pay for the food and beverages which will be served at the turkey shoot. B orders and prepares the food and beverages. The money provided to the third person by the lobbyists would be a prohibited indirect expenditure to B, because it was given with the intent of benefiting B and his guests at the turkey shoot.

EXAMPLE 3: Agency Official C (“C”) and C’s spouse have arranged to take a trip to New York City. A lobbyist who lobbies C’s agency meets with the spouse and offers her theater tickets. The lobbyist and C’s spouse know each other only through the lobbyist’s involvement with C. The theater tickets would be a prohibited indirect expenditure to C.

Specific Authority 112.3215(14), 112.322(9) FS., Section 5, Chapter 2005-359, LOF. Law Implemented Section 5, Chapter 2005-359, LOF. History–New _____.

(Substantial rewording of Rule 34-12.200 follows. See Florida Administrative Code for present text.)

34-12.200 Lobbyist Registration Requirements.

(1) A person who is a “lobbyist” as defined in Section 112.3215(1)(h), F.S., and this Rule Chapter may not lobby an agency until he or she has registered as a lobbyist with the Commission. Registration shall be made on CE Form 20, Executive Branch Lobbyist Registration, which requires the registrant to disclose, under oath, the following:

- (a) Name, business address, and telephone number;
- (b) Name and business address of each principal represented by the registrant;
- (c) Name, business address, and telephone number of the lobbying firm on behalf of which the registrant is representing the principal, if any;
- (d) His or her area of interest;
- (e) The agencies before which he or she will appear; and
- (f) The existence of any direct or indirect business association, partnership, or financial relationship with any employee of an agency which he or she lobbies, or intends to lobby.

(2) The registrant shall pay an annual registration fee of \$25.00 for each principal represented, which will be deposited into the Executive Branch Lobbyist Registration Trust Fund. The fee is payable only once on a calendar year basis and there will be no charge if the lobbyist amends his or her registration to lobby additional agencies on behalf of the same principal.

(3) The registrant shall include a separate statement signed by the principal or the principal’s representative that the registrant is authorized to represent the principal. On this statement, the principal will also identify and designate its main business using the 6-digit NAICS code published in the *North American Industry Classification System – United States, 2002*, which is hereby incorporated by reference.

Classification system information can be obtained by contacting the NAICS Association, 129 Lakeshore Drive, Rockaway, NJ 07866, or by visiting its website: www.naics.com.

(4) Any changes to the information provided on the registration form must be reported to the Commission in writing within 15 days.

(5) A person convicted of a felony after January 1, 2006 may not register as a lobbyist until:

- (a) The person has been released from incarceration and any post-conviction supervision;
- (b) The person has paid all court costs and court-ordered restitution; and
- (c) The person has had his or her civil rights restored.

(6) In the event that a lobbyist who has registered with the Commission undertakes to represent a new principal, or to represent a principal for whom he or she previously has registered before an agency for which he or she had not registered, a new registration shall be made before lobbying the agency in behalf of that principal.

Specific Authority 112.3215, 112.322(9)(40) FS., Section 5, Chapter 2005-359, LOF. Law Implemented 112.3215 FS., Section 5, Chapter 2005-359, LOF. History–New 10-12-89, Amended 12-6-92, _____.

34-12.300 Registration Forms.

Specific Authority 112.3215, 112.322(10) FS. Law Implemented 112.3215 FS. History–New 10-12-89, Amended 10-6-91, 1-1-97, Repealed _____.

34-12.310 Registration Fees.

Specific Authority 112.3215, 112.322(10) FS. Law Implemented 112.3215 FS. History–New 10-12-89, Amended 10-6-91, 1-1-97, 11-24-97, 1-1-02, Repealed _____.

34-12.320 Filing Registration Forms and Fees.

Specific Authority 112.3215, 112.322(10) FS. Law Implemented 112.3215 FS. History–New 10-12-89, Amended 7-5-92, 1-4-94, 1-1-97, Repealed _____.

34-12.330 Annual Renewals.

Each lobbyist must renew his or her registration to lobby an agency on behalf of a principal on a calendar year basis by filing a CE Form 20-R, Lobbyist Renewal Form, ~~20-R~~ and the annual registration fee of \$25.00 for each principal represented. Prior to January 1 of each year, the Commission ~~or other office established to administer lobbyist registration~~ will mail to each currently registered lobbyist CE Commission Form 20-R, together with a notice which states that the lobbyist must renew his or her registration of those principals the lobbyist continues to represent before agencies of the executive branch by filing the form and paying the annual registration fee.

Specific Authority 112.3215, 112.322(9)(40) FS., Section 5, Chapter 2005-359, LOF. Law Implemented 112.3215 FS., Section 5, Chapter 2005-359, LOF. History–New 10-12-89, Amended 10-6-91, 7-5-92, 12-6-92, 1-1-97, 11-24-97, 1-1-02, _____.

34-12.340 Cancellation of Registration.

The principal of a lobbyist may cancel the lobbyist's registration by providing written notice to the Commission ~~or other office established to administer lobbyist registration~~ that the lobbyist is no longer authorized to represent that principal. A lobbyist must cancel his or her registration with the Commission ~~or other office established to administer lobbyist registration~~ upon termination of his or her contract or other such employment relationship with his or her principal. Such cancellation must be provided promptly by written notice to the Commission ~~or other office established to administer lobbyist registration~~, and until received, the lobbying firm lobbyist will continue to be responsible for filing all required compensation expenditure reports. In the event of a cancellation before the end of the year for which the lobbyist has paid the annual registration fee, no portion of the fee will be refunded to the lobbyist.

Specific Authority 112.3215, 112.322(9)(10) FS., Section 5, Chapter 2005-359, LOF. Law Implemented 112.3215 FS., Section 5, Chapter 2005-359, LOF. History—New 10-12-89, Amended 12-6-92, 8-7-94, 1-1-97, _____.

(Substantial rewording of Rule 34-12.400 follows. See Florida Administrative Code for present text.)

34-12.400 Compensation Expenditure Reporting Requirements.

(1) Each lobbying firm shall file a CE Form 24, Executive Branch Quarterly Compensation Report, with the Commission on Ethics for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. The Quarterly Compensation Report shall include:

(a) Full name, business address, and telephone number of the lobbying firm;

(b) Name of each of the firm's lobbyists; and

(c) Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories:

1. - 0 -
2. \$1 to \$49,999
3. \$50,000 to \$99,999
4. \$100,000 to \$249,999
5. \$250,000 to \$499,999
6. \$500,000 to \$999,999
7. \$1 million or more

(2) For each principal represented by the lobbying firm's lobbyists, the Quarterly Compensation Report shall also include:

(a) Full name, business address, and telephone number of the principal;

(b) Total compensation provided or owed to the lobbying firm for the reporting period, reported in one of the following categories:

1. - 0 -

2. \$1 to \$9,999
3. \$10,000 to \$19,999
4. \$20,000 to \$29,999
5. \$30,000 to \$39,999
6. \$40,000 to \$49,999
7. \$50,000 or more. When this category is selected, the specific dollar amount of the compensation must be reported, rounded up or down to the nearest \$1,000.

(c) For lobbying work subcontracted from another lobbying firm and not directly from the principal originating the work, the employing lobbying firm shall be treated as the reporting lobbying firm's principal, but the name and address of the principal originating the work shall also be provided.

(3) Compensation "provided or owed" shall be reported using the accrual basis of accounting.

(4) The senior partner, officer, or owner of the lobbying firm filing the Quarterly Compensation Report shall certify:

(a) To the veracity and completeness of the information submitted on the Quarterly Compensation Report;

(b) That no compensation has been omitted from the Quarterly Compensation Report by deeming such compensation as "consulting services," "media services," "professional services," or anything other than compensation; and

(c) That no officer or employee of the lobbying firm has made an expenditure in violation of Section 112.3215, F.S., as amended by Chapter 2005-359, L.O.F.

(5) For each principal represented by two or more lobbying firms, the Commission shall aggregate quarterly and annually the compensation reported as provided or owed to lobbying firms by the principal by aggregating the reported ranges and specific dollar amounts.

(6) A Quarterly Compensation Report must be filed no later than 5:00 p.m. of the report due date. However, any report that is postmarked by the United States Postal Service no later than midnight of the due date shall be deemed to have been filed in a timely manner. A certificate of mailing obtained from and dated by the United States Postal Service at the time of mailing, or a receipt from an established courier company which bears a date on or before the due date, shall also be proof of mailing in a timely manner.

(7) When it becomes feasible for the Commission, Quarterly Compensation Reports may be filed by electronic means.

Specific Authority 112.3215, 112.322(9)(10) FS., Section 5, Chapter 2005-359, LOF. Law Implemented 112.3215 FS., Section 5, Chapter 2005-359 2000-232, LOF. History—New 10-12-89, Amended 7-5-92, 12-6-92, 1-4-94, 1-1-97, 12-21-00, _____.

34-12.405 Penalties for Late Filing.

(1) Upon determining that a Quarterly Compensation Report ~~report~~ is late, the person designated to review the timeliness of reports shall notify the lobbying firm lobbyist of its ~~the lobbyist's~~ failure to timely file the report and that a fine

is being assessed for each late day. The fine shall be \$50 per day per report for each late day up to a maximum of \$5,000 per late report.

(2) Upon receipt of the late-filed report, the person designated to review the timeliness of reports shall determine the amount of the fine due based upon the earliest of the following:

- (a) When a report is actually received by the lobbyist registration and reporting office;
- (b) When the report is postmarked;
- (c) When the certificate of mailing is dated; or
- (d) When the receipt from an established courier company is dated.

(3) After the person designated to review the timeliness of reports has calculated the amount of the fine that has been assessed against a lobbying firm lobbyist, the lobbying firm lobbyist will be notified of the amount of the payment due.

(4) Such fine shall be paid within 30 days after the notice of payment due is transmitted by the lobbyist registration office, unless appeal is made to the Commission. The moneys shall be deposited into the Executive Branch Lobby Registration Trust Fund.

(5) A fine shall not be assessed against a lobbying firm lobbyist the first time any reports for which the lobbying firm lobbyist is responsible are not timely filed. However, to receive the one-time fine waiver, all reports for which the lobbying firm lobbyist is responsible must be filed within 30 days after the notice that any reports have not been timely filed is transmitted by the lobbyist registration office. A fine shall be assessed for any subsequent late-filed reports.

(6) The person designated to review the timeliness of reports shall notify the Commission of the failure of a lobbying firm lobbyist to file a report after notice or of the failure of a lobbying firm lobbyist to pay the fine imposed.

(7) Fines imposed by the Commission that remain unpaid 60 days after the notice of payment due is transmitted or 60 days after the Commission renders its final order shall be transmitted to the Department of Financial Services Banking and Finance for collection.

Specific Authority 112.3215, 112.322(9)(40) FS., Section 5, Chapter 2005-359, LOF. Law Implemented 112.3215, FS., Section 5, Chapter 2005-359, LOF. History—New 1-1-97, Amended 11-24-97, 12-21-00, _____.

34-12.407 Appeal of Statutory Fines: Hearings, Unusual Circumstances.

(1) A lobbying firm lobbyist wishing to appeal or dispute a fine imposed in accordance with Section 112.3215(5)(f), Florida Statutes, shall file with the Commission on Ethics a notice of appeal within 30 days of the date the notice of payment due is transmitted by the lobbyist registration office, setting out with specificity the unusual circumstances

surrounding the failure to file on the designated due date. The notice of appeal may be accompanied by any documentation or evidence supporting the claim.

(2) No change.

(3) A lobbying firm lobbyist desiring a hearing before the Commission shall include in the notice of appeal a separate request for hearing. If no request for hearing is included in the notice of appeal, the Commission's determination shall be based on the notice and any supporting information and shall be final agency action. If a separate request for hearing is included in the notice, notice of hearing shall be provided and the Commission's determination after hearing shall be final agency action. Failure to appear in accordance with the notice of hearing shall constitute a waiver of such entitlement, and the Commission shall dispose of the case on the written record before it.

(4) No change.

Specific Authority 112.3215, 112.322(9)(40) FS., Section 5, Chapter 2005-359, LOF. Law Implemented 112.3215 FS., Section 5, Chapter 2005-359, LOF. History—New 1-1-97, Amended 12-21-00, _____.

34-12.420 Notification of Compensation Expenditure Reporting Deadlines.

Following each quarterly semiannual reporting period, the Commission ~~or other office established to administer lobbyist registration~~ will send to each lobbying firm that has one or more currently registered lobbyists a copy of CE Commission Form 24 22 together with a notice stating that the form must be filed on or before the specified date.

Specific Authority 112.3215, 112.322(9)(40) FS., Section 5, Chapter 2005-359, LOF. Law Implemented 112.3215 FS., Section 5, Chapter 2005-359 2000-232, LOF. History—New 10-12-89, Amended 7-5-92, 12-6-92, 1-4-94, 8-7-94, 1-1-97, 12-21-00, _____.

34-12.430 Lobbyist's Expenditure Reports.

Specific Authority 112.3215, 112.322(10) FS. Law Implemented 112.3215 FS., Chapter 2000-232, LOF. History—New 1-4-94, Amended 1-1-97, 11-24-97, 12-21-00, Repealed _____.

34-12.450 Expenditure Categories.

Specific Authority 112.3215, 112.322(10) FS. Law Implemented 112.3215 FS. History—New 1-4-94, Amended 12-21-00, Repealed _____.

34-12.460 Calculating Amounts of Expenditures.

Specific Authority 112.3215, 112.322(10) FS. Law Implemented 112.3215 FS. History—New 1-4-94, Repealed _____.

34-12.660 Records Retention and Inspection.

(1) Each lobbyist, each lobbying firm, and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate lobbying compensation expenditures.

~~(2) Upon receipt of a sworn complaint received pursuant to Rule 34-12.700 and a determination by the Executive Director finding that the complaint is sufficient to invoke the jurisdiction of the Commission, records retained pursuant to~~

~~Section 112.3215, F.S., and this Rule Chapter may be inspected under reasonable circumstances by any authorized representative of the Commission.~~

~~(2)(3) Any documents and records retained pursuant to Section 112.3215, F.S., may be subpoenaed for audit by the Legislative Auditing Committee pursuant to Section 11.40, F.S., and such subpoena The right of inspection may be enforced in circuit court by appropriate writ issued by any court of competent jurisdiction.~~

~~Specific Authority 112.3215, 112.322(9)(10) FS., Section 5, Chapter 2005-359, LOE. Law Implemented 112.3215 FS., Section 5, Chapter 2005-359, LOE. History--New 1-4-94, Amended _____.~~

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Julia Cobb Costas, Senior Attorney
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Commission on Ethics
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 3, 2006
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 17, 2006

WATER MANAGEMENT DISTRICTS

St. Johns River Water Management District

RULE NO.: 40C-3.035
 RULE TITLE: Agreements

PURPOSE AND EFFECT: The purpose of the proposed rule amendment is to incorporate by reference the water well permitting delegation agreement between St. Johns River Water Management District and the Florida Department of Health-Marion County Health Department.

SUMMARY: The proposed rule amendment would incorporate by reference the District's water well permitting delegation agreement with the Florida Department of Health-Marion County Health Department allowing for regulation of the construction, repair, and abandonment of water wells unless these wells are in Chapter 62-524, F.A.C., delineated area.

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

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

SPECIFIC AUTHORITY: 373.044, 373.113, 373.171 FS.

LAW IMPLEMENTED: 373.046, 373.083, 373.309 FS.

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

DATE AND TIME: May 9, 2006, Following the regularly scheduled Governing Board Meeting which begins at 1:00 p.m.

PLACE: St. Johns River Water Management District, 4049 Reid Street, Palatka, Florida 32177

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Norma Messer, Rules Coordinator, Office of General Counsel, St. Johns River Water Management District, 4049 Reid Street, Palatka, Florida 32177-2529, (386)329-4459, Suncom 860-4459 or email address nmesser@sjrwmd.com

THE FULL TEXT OF THE PROPOSED RULE IS:

40C-3.035 Agreements.

The Governing Board hereby incorporates by reference the following documents:

(1) through (15) No change.

(16) An agreement between Florida Department of Health-Marion County Health Department and St. Johns River Water Management District entitled Water Well Permitting Delegation Agreement dated (effective date).

~~Specific Authority 373.044, 373.113, 373.171, FS. Law Implemented 373.046, 373.083, 373.309, FS. History--New 10-14-84, Amended 12- 5-85, Formerly 40C-3.035, 40C-3.0035, Amended 1-8-96, 4-21-96, 7-21-96, 12-22-96, 3-10-97, 1-3-00, 9-6-01, 6-25-02, 7-25-02, 1-11-06, _____.~~

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Kathryn Mennella, General Counsel, St. Johns River Water Management District, 4049 Reid Street, Florida 32177-2529, (386)329-4215

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Governing Board of the St. Johns River Water Management District

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 7, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 17, 2006

If any person decides to appeal any decision with respect to any matter considered at the above listed public hearing, such person may need to ensure that a verbatim record of the proceeding is made to include testimony and evidence upon which the appeal is to be based.

Anyone requiring special accommodation to participate in this meeting is requested to advised the District at least 5 work days before the meeting by contacting Norma Messer at (386)329-4459, or (386)329-4450 (TDD).

AGENCY FOR HEALTH CARE ADMINISTRATION

Health Facility and Agency Licensing

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
59A-7	Clinical Laboratories
RULE NOS.:	RULE TITLES:
59A-7.020	Definitions
59A-7.029	General Quality Control Requirements for Non-waived Testing
59A-7.030	Special Requirements for Licensure – Specialties and Subspecialties.

PURPOSE AND EFFECT: Chapter 59A-7, Florida Administrative Code, is being amended to update and clarify clinical laboratory licensure requirements to reflect recent advances in clinical laboratory technology, delete requirements that are duplicative of the federal Clinical Laboratory Improvement Amendments (CLIA) and require licensed laboratories to be in compliance with CLIA.

SUMMARY: The amendments to this rule update the existing clinical laboratory requirements to reflect recent advancements in clinical laboratory technology, deletes language duplicative of the existing federal Clinical Laboratory Improvement Amendments (CLIA), and requires licensed laboratories to be in compliance with CLIA.

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

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

SPECIFIC AUTHORITY: 483.051 FS.

LAW IMPLEMENTED: Chapter 483, Part I, FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW. (IF NO HEARING IS REQUESTED, NO HEARING WILL BE HELD.)

DATE AND TIME: April 18, 2006, 1:00 p.m.

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building #3, Conference Room B, Tallahassee, FL 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Patricia L. James, Health Services and Facilities Consultant Supervisor, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308, (850)487-3109

THE FULL TEXT OF THE PROPOSED RULES IS:

59A-7.020 Definitions.

In addition to definitions set forth in Section 483.041, F.S., as used in this chapter the following terms shall mean:

(1) through (5) No change.

(6) Clinical and Laboratory Standards Institute or CLSI – the voluntary consensus organization that develops and disseminates standards, guidelines and best practices for clinical laboratories and the healthcare community. This organization was formerly known as the National Committee for Clinical Laboratory Standards (NCCLS).

(7)(6) Clinical Laboratory Improvement Amendments of 1988 and Federal Rules Adopted Thereunder – shall mean Section 353 of the Public Health Service Act known as the Clinical Laboratory Improvement Amendments of 1988 and

Part 493, 42 Code of Federal Regulations, 1993, as amended in the Federal Register, Volume 68, Number 16, Friday, January 24, 2003 ~~Volume 60, Number 78, 1995~~, each incorporated by reference and referred to as CLIA, herein.

(7) through (11) renumbered (8) through (12) No change.

(13) Free-standing Histology and Cytology Center – any location outside a clinical laboratory licensed under Chapter 483, Part I, F.S., which is engaged in and limits its activities to the preparation of human cellular material for microscopic interpretation by laboratories licensed in the specialty and subspecialties of pathology and cytology.

(12) through (15) renumbered (14) through (17) No change.

(18)(16) Licensure Certificate – evidence of current licensure issued to a clinical laboratory upon application and qualification as required in this Rule and Chapter 483, Part I, F.S. Such license shall be issued for testing for one or more of the following specialties or subspecialties:

(a) Histocompatibility.

(b) Microbiology composed of the subspecialties of Bacteriology, Mycobacteriology, Mycology, Parasitology, Virology, or Microbiology (Other).

(c) Diagnostic Immunology composed of the subspecialties of Syphilis Serology or General Immunology.

(d) Chemistry composed of the subspecialties of Routine Chemistry, Urinalysis, Endocrinology, Toxicology or Chemistry (Other).

(e) Hematology.

(f) Immunohematology composed of the subspecialties of ABO Group & Rh Group, Antibody Detection (Transfusion), Antibody Detection (Non-Transfusion), Antibody Identification, Compatibility Testing or Immunohematology (Other).

(g) Pathology composed of the subspecialties of Histopathology, Oral Pathology or Cytology.

(h) Clinical Cytogenetics.

(i) Radiobioassay.

(j) Free-standing histology center limited to those activities described in subsection 59A-7.020(12), F.A.C.

(k) Provider-performed microscopy tests limited to the CLIA category of Provider-Performed Microscopy tests found in 42 CFR 493.19(c)(1-9).

(17) through (32) renumbered (19) through (34) No change.

Specific Authority 483.051 FS. Law Implemented 483.035, 483.041, 483.051, 483.106, 483.191 FS. History–New 11-20-94, Amended 8-13-95, 12-27-95, Amended _____.

(Substantial rewording of Rule 59A-7.029 follows. See Florida Administrative Code for present text.)

59A-7.029 General Quality Control Requirements for Non-waived Testing.

(1) The laboratory shall establish and follow written quality control procedures for monitoring and evaluating the quality of the testing process of each method to assure the accuracy and reliability of patient test results and reports in accordance with CLIA requirements. The laboratory shall follow the manufacturers' instructions and recommendations for instrument or test system operation and test performance if such instructions exceed requirements specified in this rule. In the event of a conflict between these rules and CLIA requirements, the more stringent requirement(s) shall prevail.

(2) The laboratory must utilize test methods, equipment, instrumentation, reagents, materials, and supplies that provide accurate and reliable test results and test reports as required by CLIA.

(a) Methodologies and equipment must be selected and testing must be performed in a manner that provides test results within the laboratory's stated performance specifications for each test method and reflect procedures that are generally accepted by leading authorities such as the Centers for Disease Control and Prevention (CDC), CLIA recognized accreditation organizations, the American Association of Blood Banks (AABB) or other nationally recognized organizations. Documentation that the test methodologies and equipment meet the requirements of this rule must be maintained by the laboratory and available for review by the agency.

(b) The laboratory must have equipment, instruments, reagents, materials, and supplies for the type and volume of services provided during the preanalytic, analytic, and postanalytic phases of testing.

(c) All equipment and supplies shall be in good working order, checked and calibrated for the proper performance of tests and services offered in accordance with this rule and CLIA requirements. The laboratory must, at a minimum, follow the manufacturers' recommendations and instructions for equipment operation and document all such activities required for maintenance and operation of such equipment.

(d) The manufacturers' instructions and documentation of maintenance and operation of equipment must be maintained by the laboratory and available for review by the agency.

(e) Out-of-service equipment and supplies shall be clearly labeled to indicate their status.

(f) Expired, substandard or unusable supplies shall be promptly removed from use and clearly labeled to indicate their status. Such supplies shall be isolated from usable supplies until they are removed from the premises.

(g) Procedures must be approved, signed, and dated by the current laboratory director both initially and biennially thereafter.

(3) Quality Control Procedures. In accordance with CLIA requirements and any additional provisions of this Rule, the laboratory shall perform control procedures to monitor the ability of the method or test system to give accurate, precise and reliable patient test results.

(a) Quantitative controls shall be of different concentrations that approximate the analytical range of that analyte, e.g. normal and abnormal patient values.

(b) No daily quality control testing is required for those tests listed as Provider-Performed Microscopy tests in 42 CFR 493.19(c)(1-9), provided the laboratory has instituted a quality assessment program containing the elements found in Rule 59A-7.031, F.A.C., Quality Assessment, to verify the accuracy of those tests at least every 6 months.

(c) All control procedures required above shall be documented and available to the agency upon request.

(d) Use of Equivalent Quality Control (EQC).

1. A laboratory is permitted to use equivalent quality control testing pursuant to 42 CFR 493.1256(d) provided that those electronic, procedural or internal controls or combinations thereof are met; and the following requirements are met:

a. The process evaluates each step in the testing process;

b. The process evaluates the potential sources of error;

c. The process evaluation includes specific assessment and documentation of how each step of the testing process is evaluated by the EQC process; and evaluates potential sources of error.

d. The implications of reducing the frequency of the use of external controls and the possibility of providing inaccurate and unreliable test results are evaluated and found acceptable by the clinical consultant and approved in writing by the laboratory director;

e. The choice of EQC options described in 42 CFR 493.1256(d) is consistent with the extent to which the electronic, procedural or internal controls or combinations thereof ensure that the provisions of this rule are met;

f. All EQC studies shall be composed of no less than 20 consecutive different test samples;

g. All EQC evaluations, reevaluations, assessments, actions or other such EQC studies shall be documented and available for review by the agency.

2. After an acceptable EQC evaluation has been completed in accordance with these Rules, the laboratory is permitted to institute EQC in lieu of external quality control requirements of 42 CFR 493.1256(d). However, if any of the following conditions occur, the laboratory shall reinstitute the external quality control provisions of 42 CFR 493.1256(d):

a. A proficiency testing score of less than 80% is obtained for any of the last three proficiency testing events;

b. Personnel competency problems are identified;

c. Major preventive maintenance or replacement of critical parts occurs;

d. Any EOC result that was repeatedly outside acceptable limits as specified in 42 CFR 493.1256(d);

e. When there is any indicator that inaccurate, imprecise or unreliable patient testing is being reported.

3. Before EOC can be resumed, the laboratory must repeat the EOC evaluation in accordance with the requirements of this Rule. External quality control procedures in accordance with 42 CFR 493.1256(d) shall be performed until the subsequent EOC evaluation meets the requirements of this rule.

4. When an EOC failure occurs, the laboratory's clinical consultant must examine all patient test results reported during the time that the EOC evaluation was used to determine if there was any clinical impact on the patients tested during that time. Appropriate action shall be taken if such patient impact is found.

Specific Authority 483.051 FS. Law Implemented 483.051 FS. History--New 11-20-94, Amended _____.

(Substantial rewording of Rule 59A-7.030 follows. See Florida Administrative Code for present text.)

59A-7.030 Special Requirements for Licensure – Specialties and Subspecialties.

The laboratory must establish and follow written quality control procedures for monitoring and evaluating the quality of the analytical testing process of each specialty and subspecialty in which it performs tests to assure the accuracy and reliability of patient test results and reports. The laboratory must meet the applicable quality systems requirements specified in CLIA in addition to Rule 59A-7.029, F.A.C., and the applicable requirements of Rule 59A-7.030, F.A.C., indicated below:

(1) Microbiology. The laboratory must maintain records that reflect the systems used and the reactions, measurements and observations for the specialty of microbiology and the subspecialties, analytes and tests included thereunder.

(a) Bacteriology.

1. Each shipment, batch or lot of bacitracin, catalase, cefinase, coagulase plasma, OPNG, Optochin, oxidase, spot indole, X,V, and XV reagents shall be checked with a positive control before being put into use and each week of use thereafter.

2. Each batch of media(prepared in-house), lot number (commercially prepared media that is not listed on NCCLS M22-A3 as exempt), and shipment of antisera shall be checked with a positive and negative control before being put into use and each month of use thereafter.

3. Antibiotic sensitivity tests shall be performed in accordance with CLIA requirements.

(b) Mycobacteriology.

1. General requirements for mycobacteriology testing. Each laboratory accepting specimens for the staining, isolation, identification or susceptibility testing of mycobacteria is required to:

a. Ensure that all specimens for mycobacteria are handled in a manner that minimizes the potential for cross contamination.

b. Ensure that any specimen, isolate or other material requiring transportation to other laboratories for testing or storage is transported in an appropriate and timely manner in accordance with these rules.

c. Use a biological safety cabinet for all manipulations of mycobacterial isolates. The cabinet shall be tested, certified, and used according to the recommendations of the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention and National Institutes of Health set forth in the publication, "Primary Containment for Biohazards: Selection, Installation and Use of Biological Safety Cabinets", U.S. Government Printing Office, Washington: 2000. This publication is incorporated by reference. This publication is available from the United States Government Printing Office, 732 North Capitol Street, N.W., Washington, D.C. or www.gpo.gov. Certification shall be conducted after the initial installation in the laboratory and any time the cabinet is moved, and at least annually thereafter. The laboratory must follow the manufacturer's instructions for the operation of the cabinet if they exceed the requirements of these rules. The manufacturer's instructions must be maintained by the laboratory and be available for review by the agency.

d. Aerosol-free centrifuge cups are required if the laboratory uses a centrifuge for mycobacteriology testing.

e. Each laboratory shall notify its respective county health department of all specimens positive for mycobacteria pursuant to Sections 381.003(2), 392.53(2) and Rule 64D-3.023, F.A.C.

f. Examination of smears, isolation, identification and susceptibility testing shall be done by methods that are generally accepted by leading authorities such as the Centers for Disease Control and Prevention (CDC).

g. Testing of all mycobacteriology specimens shall begin no later than 24 hours after receipt in the laboratory.

h. The laboratory shall report the receipt of unsatisfactory specimens to the authorized person ordering the test within 36 hours of receipt of that specimen in the laboratory.

2. Smears; performance and reporting.

a. An appropriately stained smear shall be examined microscopically for all sputum mycobacteriology specimens.

b. The reactivity of all stains for mycobacteria shall be tested with at least one organism that produces the expected staining reaction (positive) and one organism that shows the expected staining reaction does not occur (negative).

c. The laboratory must check fluorochrome stains for positive and negative reactivity each day of use.

d. The laboratory must check all other mycobacteria stains for positive and negative reactivity each week of use.

e. Reports of smears for mycobacteria shall indicate:

I. An estimate of the number of mycobacteria seen per microscopic field.

II. That smear results should be used as an adjunct in evaluating a patient's tuberculosis status; and

III. That examination by culture is recommended for the primary diagnosis of *M. tuberculosis*.

IV. If the laboratory has referred the specimen to another laboratory for further testing, the name and location of the laboratory to which the specimen was sent, and the date the specimen was sent to that laboratory.

f. If the smear results indicate the presence of mycobacteria, the report results shall be communicated by telephone or electronic transmission to the person authorized to use the test results within 48 hours of receipt of the specimen.

g. Stained slides that are positive for mycobacteria shall be retained for at least one year from the date that the specimen is received in the laboratory.

h. Stained slides that are negative for mycobacteria must be retained for no less than 90 days.

i. If the laboratory performs only smears for mycobacteria, any specimen whose smear results indicate the presence of mycobacteria or that requires additional testing for *M. tuberculosis* complex must be shipped by courier or overnight mail to a laboratory capable of performing additional isolation, identification and susceptibility testing.

3. Isolation of mycobacteria; performance and reporting.

a. All digested, decontaminated, or concentrated specimens for the primary isolation of mycobacteria shall be inoculated to a suitable liquid medium. In addition to the inoculation of a liquid media, at least one suitable selective solid medium shall be inoculated at the same time. Solid media inoculation is not required for blood specimens processed with a radiometric broth or other rapid growth systems.

b. The laboratory that identifies *M. tuberculosis* complex is responsible for assuring that susceptibility testing is performed on all initial patient isolates. If the laboratory cannot determine if the specimen is an initial isolate, the laboratory is responsible for assuring that susceptibility testing is performed on that specimen. If such testing cannot be done in the laboratory that isolates the *M. tuberculosis* complex, the specimen shall be shipped by courier or overnight mail to a Florida licensed laboratory capable of such testing. The laboratory shall retain a subculture of the isolate for newly diagnosed or relapsed patients on a suitable medium for at least one year after receipt of the specimen in the laboratory. In lieu of retaining this subculture, the laboratory is permitted to send the subculture to the State of Florida Department of Health

Central Laboratory. The laboratory shall retain a record indicating the date that the subculture was transported to the Department of Health Central laboratory:

c. If the laboratory presumptively isolates but does not identify *M. tuberculosis* complex:

I. The specimen must be shipped by courier or overnight mail to a laboratory capable of performing identification and susceptibility testing:

II. The laboratory must issue a report indicating the presumptive isolation of *M. tuberculosis* complex that includes the name and location of the laboratory to which the specimen was sent.

4. Identification of mycobacteria; performance and reporting.

a. The laboratory must use a rapid method, such as but not limited to, nucleic acid probes or high pressure liquid chromatography (HPLC) to presumptively or specifically identify *M. tuberculosis* complex. If such testing cannot be done in the laboratory, the culture shall be shipped by overnight courier or overnight mail in a timely and appropriate manner to a Florida licensed laboratory capable of such testing.

b. Each shipment or each new lot number of commercial test system or test reagent(s) must be tested with at least one organism that produces the expected reaction (positive) and one organism that shows the expected reaction does not occur (negative).

5. Susceptibility testing of mycobacteria.

a. Antimycobacterial sensitivity tests shall be performed in accordance with CLSI specifications contained in NCCLS M24-A (ISBN 1-56238-536-4), Volume 24, Number 19 "Susceptibility Testing of Mycobacteria, Nocardiae, and Other Aerobic Actinomycetes; Approved Standard", incorporated by reference herein. This document is available from Clinical and Laboratory Standards Institute, 940 West Valley Road, Suite 1400, Wayne, PA, 19087-1898 or www.clsi.org.

b. Laboratories performing susceptibility testing must identify *M. tuberculosis*. If an isolate received is identified as *Mycobacterium tuberculosis* or *Mycobacterium tuberculosis* complex, the laboratory performing susceptibility testing must ensure that the identification is confirmed before susceptibility testing is reported.

c. For susceptibility tests performed on *M. tuberculosis* complex isolates, the laboratory must check the procedure each week of use with a strain of *M. tuberculosis* susceptible to all antimycobacterial agents tested.

d. All initial isolates of *M. tuberculosis* complex must be tested using a rapid method against the following first-line tuberculosis drugs:

I. Rifampin

II. Isoniazid

III. Ethambutol

IV. Streptomycin

e. If a laboratory does not have the capability to perform any of the susceptibility testing for these first-line drugs, the isolate must be sent by overnight courier or overnight mail to a laboratory capable of performing such testing.

f. Susceptibility tests of all initial isolates of *M. tuberculosis* complex that show resistance to one or more first-line drugs are required to be confirmed either by a different susceptibility method or by another laboratory capable of performing such testing.

g. For all initial isolates of *M. tuberculosis* complex, if resistance is found to one or more first-line drugs, additional susceptibility testing must be performed using second-line drugs. If this additional susceptibility testing is not performed in-house, isolates must be shipped via overnight courier or overnight mail to a laboratory capable of performing such testing.

h. For susceptibility tests performed on *Mycobacterium tuberculosis* isolates, the laboratory must check the procedure each week of use with a strain of *Mycobacterium tuberculosis* susceptible to all antimycobacterial agents tested.

i. Reports confirming the identification of initial isolates of *M. tuberculosis* complex shall be communicated to the person authorized to use the test results as soon as they are available to the laboratory.

(2) General immunology and syphilis serology. In addition to the CLIA requirements for General immunology, and syphilis serology, the laboratory shall ensure that confirmatory testing of all HIV positive test results is conducted before any positive test result is reported as required in Section 381.004, F.S., Section 381.004(5),(6), F.S., and rules promulgated thereunder. The confirmatory test must use a methodology different from the original positive test and have sensitivity and specificity equal to or greater than the original test used.

(4) Hematology. In addition to the CLIA requirements for Hematology, the laboratory shall meet the following requirements:

(a) Prothrombin time. Prothrombin time shall be reported in seconds and incorporate the use of International Normalized Ratio (INR) calculations for patient reporting.

(b) Blood Smears for Manual Differential. Smears of blood, bone marrow or their components shall be prepared for examination and examined in accordance with recognized practice in the specialty of hematology. The uniformity and staining of smears shall be of diagnostic quality. Morphologic abnormalities of red blood cells, white blood cells, or platelets shall be recorded and reported. Whenever possible, manual differential cell counts are to be performed on no less than 100 individual cells. When fewer than 100 cells are examined, the report shall indicate the actual number of cells counted. The laboratory shall maintain for a minimum of two years documentation that initial smears that are interpreted as

suspicious for malignant cells are reviewed and confirmed by a laboratory director qualified under Chapter 483, Part III, F.S., according to the limitations described in Section 483.111, F.S.

(5) Cytology. In addition to the CLIA requirements for Cytology, the laboratory shall:

(a) Review no less than 10% of all gynecological smears reported as negative; and

(b) This review shall be performed by a cytology director or supervisor licensed in cytology under Chapter 483, Part III, F.S. The same individual who originally screened the slide shall not conduct this review.

(6) Pathology, cytology, histopathology, and free-standing histology and cytology centers. In addition to the CLIA requirements for Pathology, Cytology and Histopathology, the laboratory or center shall meet the following requirements:

(a) Each facility performing histology and cytology preparation must employ and maintain a system that provides for proper preparation, identification, preservation, transportation, and processing of all specimens, slides, blocks, and associated materials. This system must assure patient specimen integrity and positive identification throughout the entire preparation process.

(b) Procedures for specimen submission and handling. The laboratory must have available and follow written policies and procedures for methods used for specimen acceptance, specimen labeling, specimen preservation, conditions for specimen transportation and specimen processing. Such policies and procedures must assure positive identification and integrity of patient specimens from the time the facility takes possession of the specimen(s) until processing has been completed and the product received by the interpreting laboratory.

(c) A positive control slide of known reactivity must be included with each slide or group of slides stained together for differential and special stains. Fluorescent and immunohistochemical stains must be checked for positive and negative reactivity each time of use. Each facility shall develop a mechanism whereby interpreters of the slide have access to a visual representation of the stained control slide for its respective slides.

(d) All patient and control stained slides or their visual representation shall be maintained by the entity that interpreted the specimen for at least ten years from the date of examination. All specimen blocks shall be maintained by the entity that interpreted the specimen for at least two years from the date of examination.

(e) Tissue remnants shall be maintained in a manner that assures proper preservation until the portions submitted for microscopic examination have been examined and a diagnosis reported by the individual qualified to interpret such materials provided under the applicable portions of rule subsection 59A-7.035(1), F.A.C.

(f) Provisions shall be made for the handling and storage of tissues, blocks, slides and records in accordance with CLIA requirements. The laboratory is permitted to store these items off the immediate laboratory premises so long as they are available to the laboratory within twenty-four hours.

(g) All stains and solutions shall be changed at intervals to assure quality staining, but no less than that recommended by the manufacturer.

(h) Paraffin baths temperature shall be documented each day of use.

(i) All automated and semi-automated slide reading devices are subject to the provisions of these rules.

(j) Additional requirements for free-standing histology centers:

1. A free-standing histology center is permitted to prepare slides only for entities that are licensed pursuant to Chapter 483, Part I, F.S., and certified by CLIA to perform histopathology or oral pathology.

2. A free-standing histology center shall comply with all the provisions of this Rule as they apply to the activities performed.

3. A free-standing histology center is not required to meet the proficiency testing provisions of Rules 59A-7.025 and 59A-7.027, F.A.C.

4. A free-standing center shall participate at least twice annually in an external program, such as proficiency testing, to evaluate the quality of its special stains.

5. Each free-standing histology center shall have a valid contract or agreement with each entity for which it prepares slides. At a minimum this document shall contain the following:

a. Services to be provided;

b. Provisions for the transport of unprocessed tissue and other specimens from the laboratory or healthcare provider;

c. Provisions for the transport of slides, embedded material and any non-embedded material from the slide preparation facility to the clinical laboratory where the slides will be read; and

d. Contact information for personnel in the free-standing histology center and the clinical laboratory interpreting the slide who are responsible for transportation of materials.

6. Any tissue, portion of tissue or other specimen not embedded shall not be stored in the slide preparation facility and shall be returned to the clinical laboratory interpreting the slides as soon as practical, but no more than 14 days after the specimen has been reported by the interpreting laboratory.

7. The free standing histology center shall establish, implement and maintain a tracking system that is capable of identifying each specimen received the status of that specimen within the facility and its transportation system; and the disposition of slides, blocks, and tissue remnants. At a minimum, the tracking system must include:

a. Patient name;

b. Unique identification number;

c. Date the specimen was received by common carrier or date the specimen was accepted by facility transportation personnel;

d. Condition received (acceptable, unacceptable, etc.);

e. Date processing began;

f. Date slides were completed and released for transportation to the interpreting clinical laboratory;

g. Date transported to the interpreting laboratory; and

h. Any applicable notations regarding the receipt, processing, or transportation of the specimen.

(7) Immunohematology/Blood Banking.

(a) In addition to the CLIA requirements for Immunohematology/Blood Banking, the laboratory shall meet the following requirements:

1. Employ a control system capable of detecting false positive D(Rho) test results.

2. Establish and follow a policy specifying when testing for weak D(Du) must be performed.

3. Employ a control system using red blood cells sensitized with IgG which must be applied to each antiglobulin test interpreted as negative.

4. Ensure that the ABO group of any uncrossmatched unit to be used for emergency transfusion has been confirmed and matches the ABO group indicated on the unit label prior to its administration.

(b) Laboratories that provide blood and blood products storage facilities shall develop and implement policies and procedures for:

1. The issue and re-issue of blood and blood products;

2. The return of blood after it has been issued;

3. Positive identification for patients;

4. The isolation of untested or potentially infectious blood or blood products;

5. Power failure protection for temperature controlled areas containing blood or blood products, including audible alarms; and

6. Response to alarms.

(8) Clinical Cytogenetics and Fluorescence *in situ* Hybridization (FISH) Testing for Medical Genetics. In addition to the CLIA requirements for cytogenetics, the laboratory shall meet the following requirements:

(a) Laboratories shall ensure that the type of banding and banding resolution shall be applicable to the case when an appropriate clinical diagnosis is provided, and to the type of tissue studied. A minimum of two adequately banded karyotypes must be prepared. Certain tissue types having abnormalities may require additional karyotypes. A sufficient number of metaphases must be counted and analyzed to ensure that a band-by-band comparison of all homologous chromosomes has been accomplished and has been

documented. Clinical diagnoses and/or initial laboratory findings shall be assessed by the laboratory to indicate the need to count or analyze additional metaphases, create additional karyotypes, perform special banding techniques, or perform special hybridization techniques. It is the responsibility of the testing laboratory to identify and perform these additional analyses when needed, as current standards of medical care might dictate.

(b) The sole use of interphase nuclear observations for the purposes of determining the chromosomal status of a patient both for constitutional and acquired chromosome abnormalities shall be limited to those circumstances where these technologies have demonstrated a clear superiority to full chromosome analysis for clinical diagnostic purposes. Only full chromosome analysis shall be permitted, other than under those circumstances where limitations might be imposed by specimen quality and quantity. All other techniques shall be adjunctive only and the patient report shall so indicate.

(c) For lymphocyte and constitutional fibroblast cultures, a total of 20 metaphase spreads from two different cultures should be counted, and a minimum of five metaphases analyzed. When high resolution analysis is requested on constitutional peripheral blood samples, only focused high resolution analysis shall be performed. If non-focused, full high resolution analysis is requested and an attempt made to perform such testing, a statement regarding the limitations of this type of testing must be provided on the final report. Requests for non-focused full high resolution analysis shall be discouraged by the laboratory.

(d) For amniotic fluid and chorionic villus cultures, a minimum of two culture vessels should be employed. A minimum total of 15 colonies and 15 metaphase spreads, or a total of 20 metaphase spreads should be counted. For chorionic villus specimens, a total of 20 metaphase spreads should be counted. For both types of specimens, a minimum of five metaphase spreads must be analyzed.

(e) For oncology specimens (e.g., bone marrow, leukemic blood, lymph node, solid tumor), a total of 20 metaphase spreads from two different cultures should be counted and analyzed.

(f) Laboratory records shall include media utilized, cell culture handling steps, dates of processing, number of cells examined (counted and analyzed), and number of karyotypes produced.

(g) Laboratory testing records and reports shall document and clearly distinguish any communication with the authorized person requesting the test when specimens are so inadequate that the uniform application of these rules cannot be applied. The reason(s) for the specimen inadequacy, when known, are to be included in the testing records and final patient report. In those cases where some aspect of specimen inadequacy leads to the inability to apply uniform or complete application of

standards, specimens should still be processed whenever there is a reasonable possibility of achieving some success from a partial analysis.

(h) The laboratory must compare clinical information, when available, with the cytogenetic report and if discrepancies are found, attempt to determine the causes of those discrepancies.

(i) Accurate and correct nomenclature endorsed by the International System for Human Cytogenetic Nomenclature, 1995, Report of the Standing Committee on Human Cytogenetic Nomenclature, incorporated by reference, shall be used in the final report. The final report shall also include clinical recommendations for follow-up or further studies, the number of metaphases counted and analyzed, the number of karyotypes prepared, the date of specimen reception, and date of reporting.

(j) Fluorescence *in situ* Hybridization (FISH) Testing.

1. Manufacturing source and specific identification of probe(s) employed, as well as number of cells evaluated and hybridization results obtained, shall be reported.

2. The following specific disclaimer must be included in the report: "This test was developed and its performance characteristics determined by (laboratory name). This test may not be cleared or approved for specific uses by the U.S. Food and Drug Administration."

3. The reporting of preliminary normal results is prohibited; normal results will be reported only after a complete analysis has been performed.

(k) Final reports, photographic negatives, and computer image storage media shall be retained for a minimum of five years. Microscope slides employed for counting and analyzing, and other laboratory and accessioning documents shall be retained for two years. For FISH studies, photographic or digitized images must be retained for a minimum of five years. At least one cell image for normal findings, two cell images for abnormal results, and one cell image for each target where more than 2 chromosomal loci are targets in a single test must be retained.

(l) Both commercially available and in-house developed FISH probes must be validated in two ways, both including sensitivity and specificity: probe validation/chromosome localization, and assay validation. Comparable analytic sensitivity and specificity must be established for each new lot of FISH probe.

(m) Reference ranges for all FISH probes must be monitored either through biannual review or continuous quality monitoring of test results.

(n) Internal or external controls must be run for each FISH assay.

(9) Chemistry, and Histocompatibility.

The quality control requirements for the specialties of chemistry, cytogenetics and histocompatibility shall meet the CLIA requirements and the requirements of Rule 59A-7.029, F.A.C.

Specific Authority 483.051 FS. Law Implemented 483.051 FS. History--New 11-20-94, Amended 12-27-95,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Patricia L. James

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Alan Levine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 9, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 3, 2005

AGENCY FOR HEALTH CARE ADMINISTRATION

Health Facilities and Agency Licensing

RULE NOS.:	RULE TITLES:
59A-8.002	Definitions
59A-8.003	Licensure Requirements
59A-8.004	Licensure Procedure
59A-8.0086	Denial, Suspension, Revocation of License and Imposition of Fines
59A-8.0095	Personnel
59A-8.0185	Personnel Policies
59A-8.020	Acceptance of Patients or Clients
59A-8.0215	Plan of Care
59A-8.022	Clinical Records
59A-8.027	Emergency Management Plans

PURPOSE AND EFFECT: The purpose of the rule revisions is to conform the rules to changes made to Chapter 400, Part IV, Florida Statutes, by the 2005 Florida Legislature in Chapter 2005-243, Laws of Florida; to make improvements to criteria for emergency management plans; to add a retention period for personnel records; to remove the requirement for training homemakers and companions for consistency among programs; to replace the schedule for the frequency of periodic licensure surveys due to budget constraints; and to clarify the financial schedules needed for applications for changes of ownership and for applications for renewal of licenses when there is evidence of financial instability. The effect will be updated rules that conform to state law; an updated licensure fee for the two-year license based on the same amount per year; a revised renewal licensure application that collects annual patient admissions; one less financial schedule to be completed for change of ownership applications and an additional financial schedule for renewal applicants with evidence of financial instability; a uniform emergency management plan format for home health agencies that includes planning for patients in residential facilities; no requirements for training homemakers and companions

consistent with the registered homemaker companion services; and the addition of a one-year retention period for personnel records.

SUMMARY: The rules are being updated due to the changes to Chapter 400, Part IV, Florida Statutes, made by the 2005 Florida Legislature in Chapter 2005-243, Laws of Florida. These changes are: adding that advanced registered nurse practitioners and physician assistants may also sign treatment orders and eliminating the 30 day requirement for signature; revising the amount of the licensure fee since the licensure period was increased from one to two years; changing the due date for renewal applications from 90 days to 60 days prior to expiration of the license; deleting the late application fine in rule since it was placed in law; updating the renewal application form to include an item to collect volume data and clarify existing items; updating the date for screening staff that have been continuously employed; updating the rule on exempting accredited home health agencies from licensure surveys; and removing the requirement for an alternate director of nursing. In addition, the following changes were made: the periodic licensure survey cycle was replaced with the requirement to survey no later than 36 months; one of the financial schedules was removed from the change of ownership application requirements and a financial schedule was added for renewal applicants that have evidence of financial instability; the requirement for training homemakers and companions was removed to be consistent with the homemaker companion registration program; a one-year retention period was added for personnel records; and the emergency management plan criteria form was replaced with a standard plan format and the emergency management plan rule includes patients residing in assisted living facilities and adult family care homes. Addresses and legal references are also updated and the newer version of the Agency's background screening form is referenced.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Cost is not being prepared. It is anticipated that there will be no additional costs to home health agencies as a result of these amendments.

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

SPECIFIC AUTHORITY: 400.497, 400.471, 400.492, 400.487 FS.

LAW IMPLEMENTED: 400.497, 400.462, 400.464, 400.471, 400.487, 400.492, 400.512 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Anne Menard, Licensed Home Health Programs Unit, Bureau of Health Facility Regulation, Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 34, Tallahassee, Florida 32308, menarda@ahca.myflorida.com.

THE FULL TEXT OF THE PROPOSED RULES IS:

59A-8.002 Definitions

(1) through (38) No change.

(39) "Treatment orders" means written orders signed by a physician, physician assistant, or advanced registered nurse practitioner, acting within his or her respective scope of practice, which authorizes the provision of care or treatment to a patient in his place of residence by licensed Nurses, Physical Therapists, Occupational Therapists, Speech Therapists, or Dietitians/ Nutritionists.

Specific Authority 400.497 FS. Law Implemented 400.462, 400.487 FS. History—New 4-19-76, Formerly 10D-68.02, Amended 4-30-86, 8-10-88, 5-30-90, 5-27-92, Formerly 10D-68.002, Amended 4-27-93, 10-27-94, 1-17-00, 7-18-01, 9-22-05.

59A-8.003 Licensure Requirements.

(1) No change

(2) An application for renewal of license must be submitted to AHCA at least 60 ~~90~~ days prior to the date of expiration of the license, pursuant to Section 400.471(7)(6), F.S. It is the responsibility of the home health agency to submit an application within the specified time frames whether or not they receive separate notification from AHCA of the impending expiration of the license. Home health agencies that apply for renewal of their licenses will be surveyed ~~on a variable survey cycle~~, pursuant to Section 400.484, F.S., based on the extent of compliance on previous surveys and complaint investigations with these rules and state laws. Home health agencies ~~After two consecutive full surveys, home health agencies that had no class I, class II, or class III deficiencies, as defined in Sections 400.484(2)(a)-(c), F.S., as a result of the surveys or a complaint survey,~~ will be surveyed on an unannounced basis at least no later than every 36 months. ~~Home health agencies that had no class I or class II deficiencies as defined in Sections 400.484(2)(a) and (b), F.S., as a result of the previous survey or a complaint survey will be surveyed on an unannounced basis no later than a range of 12 to 36 months. Home health agencies that had a change of ownership since the previous survey, a complaint survey or other survey with a class I or class II deficiency citation, as defined in Sections 400.484(2)(a)-(b), F.S., will be surveyed no later than every 9 to 15 months.~~ Area offices may do follow up surveys to check on correction of deficiencies at any time on an unannounced basis; ~~prior to the next full survey cycle~~. An exit conference will be conducted to report the findings and to receive additional information or clarification concerning the survey.

(3) Surveys of Accredited Home Health Agencies:

~~(a) AHCA may accept the survey report of an accrediting organization in lieu of its own periodic licensure inspection, provided that the standards included in the survey report of the accrediting organization are determined by the Agency to document that the home health agency is in compliance with state licensure requirements.~~

~~(a)(b)~~ It is the responsibility of the home health agency to request exemption from state licensure surveys pursuant to Section 400.471(9), F.S., by writing to the AHCA Home Care Unit, submitting documentation of accreditation by an approved accrediting organization and the most recent survey from the accrediting organization to the AHCA Licensed Home Health Programs Unit.

~~(c) The AHCA Home Care Unit will review the request and approve or deny the request, notifying the appropriate AHCA field office.~~

~~(b)(d)~~ Home health agencies that complete (a) receive an exemption will not be subject to licensure surveys an inspection by AHCA except under the following circumstances:

1. The HHA has been denied accreditation or has received a provisional ~~or conditional~~ accreditation report from the accrediting organization on its most recent survey, ~~and has not submitted an acceptable plan of correction to the organization and to the agency;~~ or

2. The HHA has received full accreditation but has not authorized the release of the report to the AHCA, or has not ensured that AHCA has received the accrediting organization's report.

(4) No change.

(5) In addition to any other penalties imposed pursuant to this rule, the agency may assess costs related to an investigation that results in a successful prosecution, pursuant to Section 400.484(3), F.S. The prosecution can be resolved by stipulation settlement or final hearing. The following costs may apply: travel costs related to the investigation; investigative time by AHCA's surveyor or surveyors including travel time; processing time by AHCA's professional staff and administrative support staff of Field Operations, and processing time for administrative support staff and professional staff of the AHCA Licensed Home Health Programs Home Care Unit in Tallahassee. The costs related to AHCA's professional staff and support staff will be determined according to the hourly rate of pay for those positions.

(6) An application package for a change of ownership shall be made on a form prescribed by AHCA, as referenced in subsection 59A-8.004(1), F.A.C.

(a) through (b) No change.

(c) Failure to apply for a change of ownership of a licensed home health agency as required by Section 400.471, F.S., shall result in a fine set and levied by AHCA pursuant to

Section 400.471(8), F.S. ~~subsection 59A-8.0086(3), F.A.C.~~ This is also applicable to owners who incorporate and do not report this change of ownership to the agency.

(7) through (8) No change.

(9) If a change of address is to occur, or if an agency intends to open a satellite office, the home health agency must provide 14 days advance notice in writing to the AHCA Licensed Home Health Programs Home-Care Unit in Tallahassee and the AHCA area office. The home health agency must submit to the AHCA Licensed Home Health Programs Home-Care Unit a certificate of occupancy, certificate of use, or evidence that the location is zoned for a home health agency business for the new address. Failure to notify AHCA within the time frame will result in a \$500 fine, pursuant to Section 400.474(1), F.S. Emergency relocations must be reported within seven days, with the reason for the relocation documented, to avoid a penalty assessment. An emergency relocation can be due to any of the following situations: 1) an eviction notice; 2) environmental conditions on or near the site which are not conducive to the health and well being of staff and clients, including a fire or flooding; 3) an element near the site which would make the premises harmful or dangerous; 4) circumstances arising from or caused by weather conditions and/or a natural disaster; or 5) a change in property zoning that requires the home health agency to move.

(10) No change.

(11) The initial, change of ownership and renewal fee for home health licensure is ~~\$1,660~~ \$830.

(12) If licensure application fee checks are returned by the financial institution due to insufficient funds, the issuance of a license may be delayed, denied or revoked ~~license is not valid and shall be returned to the AHCA Home-Care Unit by the home health agency.~~

(13) Upon revocation, suspension, voluntary or involuntary termination of a license, the home health agency shall return its license to AHCA. If the provider voluntarily chooses to terminate the license, the provider must notify AHCA by submitting a letter, to the address: AHCA Licensed Home Health Programs Home-Care Unit, 2727 Mahan Drive – Mail Stop 34, Tallahassee, FL 32308, officially declaring the closure date of the home health agency.

Specific Authority 400.497 FS. Law Implemented: 400.464, 400.471, 400.474, 400.484, 400.497 FS. History—New 4-19-76, Formerly 10D-68.03, Amended 4-30-86, 8-10-88, 5-30-90, 6-12-91, Formerly 10D-68.003, Amended 4-27-93, 10-27-94, 1-30-97, 1-17-00, 7-18-01, 9-22-05, _____.

59A-8.004 Licensure Procedure.

(1) An application for licensure, initial, change of ownership, or renewal, shall be made on a form prescribed by the AHCA: Home Health Agency Application for Initial Licensure, form number, AHCA 3110-1001, Revised July 2005; Application for Renewal of Licensure, form number, AHCA 3110-1011, January 2006 ~~July 2005~~; and Application

for Change of Ownership, form number AHCA 3110-1012, July 2005, all incorporated by reference. These forms may be obtained at the AHCA web site, <http://ahca.myflorida.com> under Licensing, Home Health Agency ~~www.fche.state.fl.us, in the Home-Care Unit pages.~~ If the requestor is unable to obtain the documents from the web site, the forms may be obtained from the AHCA Licensed Home Health Programs Home-Care Unit by contacting (850)414-6010 and sending a check or money order to cover the Agency's costs for the copying and mailing.

(2) through (4) No change.

(5) For initial applications, including changes of ownership, the applicant must submit proof of financial ability to operate, pursuant to Section 400.471(3), F.S. The compliance is demonstrated by completion of AHCA Form 3110-1013, December 2004, ~~as referenced in subsection (1) above.~~ Applications for changes of ownership and applications for initial licensure from agencies that failed to renew their licenses before expiration are not required to submit Schedule 1 of AHCA Form 3110-1013, December 2004.

(6) An applicant for renewal of licenses shall not be required to provide proof of financial ability to operate, unless the applicant has demonstrated financial inability to operate, as defined in subsection 59A-8.002(16), F.A.C. If an agency has shown signs of financial instability AHCA shall require the applicant for renewal of license to provide proof of financial ability to operate, by submitting schedules ~~2 3~~ through 7 of AHCA Form 3110-1013, December 2004, described in subsection (5) above.

(7) The applicant shall submit a signed affidavit from the administrator affirming that the administrator, the financial officer, and all direct and contract personnel who enter the home in the capacity of their employment have been screened for good moral character. This affidavit also confirms that all remaining personnel, who enter the home in the capacity of their employment, have worked continuously for the home health agency since before October 1, ~~2000~~ 1994.

(8) No change.

(9) Screening for good moral character for the administrator and the financial officer shall be in accordance with level 2 standards for screening set forth in Section 400.471(4), F.S. The fingerprint card for level 2 screening for the administrator and the financial officer can be obtained from the Agency for Health Care Administration, Licensed Home Health Programs Home-Care Unit, by calling (850)414-6010 or sending a request by fax to (850)922-5374. The completed fingerprint card should be submitted with a check or money order to cover the cost of the screening to the Agency for Health Care Administration, Licensed Home Health Programs Home-Care Unit, 2727 Mahan Drive, Mail Stop 34, Tallahassee, Florida 32308.

(10) Level 1 Screening for good moral character for all personnel, including contractors, who enter the home shall consist of: Submission of the Request for Level 1 Criminal History Check, AHCA form 3110-0002, July 2005 ~~June 1998~~, incorporated by reference. The FDLE form can be submitted either through AHCA's Background Screening Unit, directly to FDLE, or through a third party vendor that obtains the statewide criminal history through the FDLE. The address for submission to AHCA's Background Screening Unit is AHCA Background Screening Unit, Mail Stop 40, 2727 Mahan Drive, Tallahassee, FL 32308. The address for submission through FDLE is FDLE, Crime Information Bureau, Post Office Box 1489, Tallahassee, Florida 32302. The form may be obtained at the Agency for Health Care Administration web site, <http://ahca.myflorida.com> ~~http://www.fdhc.state.fl.us~~, at the Background Screening page. The cost of processing the screening request must be paid by the home health agency or the employee being screened. The check must accompany the screening request and be made payable to AHCA if the request is submitted to AHCA, to the FDLE if the request is submitted to the FDLE, or to the home health agency's agent, if one is used for FDLE screening.

(11) through (12) No change.

Specific Authority 400.497 FS. Law Implemented 400.471, 400.512 FS. History--New 4-19-76, Formerly 10D-68.04, Amended 4-30-86, 8-10-88, 5-30-90, 6-12-91, 10-6-91, Formerly 10D-68.004, Amended 4-27-03, 10-27-94, 1-30-97, 1-17-00, 7-18-01, 9-22-05,_____.

59A-8.0086 Denial, Suspension, Revocation of License and Imposition of Fines.

(1) The AHCA shall deny, suspend or revoke an application for license, or impose a fine,

(a) If the applicant fails to submit all the information required in the application within 30 days of being notified by AHCA Licensed Home Health Programs Home-Care Unit of the omissions in the application, the application shall be denied.

(b) through (e) No change.

(2) No change.

(3) This provision does not restrict AHCA from imposing an administrative fine, revoking the license or issuing a moratorium in accordance with Section 400.484(2)(b), F.S. Failure to file an application within the time frames specified in this rule shall result in an administrative fine, pursuant to Section 400.474(1), F.S., in the amount of \$50 per day, each day constituting a separate violation. In no event shall such fines aggregate more than \$2,500.

(4) No change.

Specific Authority 400.497 FS. Law Implemented 120.59, 400.474, 400.484 FS. History--New 10-27-94, Amended 1-17-00, 7-18-01, 9-22-05,_____.

59A-8.0095 Personnel.

(1) Administrator.

(a) No change.

(b) If an agency changes administrator or alternate administrator the agency shall notify AHCA Licensed Home Health Programs Home-Care Unit office in Tallahassee prior to or on the date of the change. Notification shall consist of submission of the person's name, professional resume, professional license, if applicable, and a copy of the Affidavit of Good Moral Character. The administrator also must submit level 2 screening, pursuant to subsection 59A-8.004(9), F.A.C., or inform the Licensed Home Health Programs Home-Care Unit that level 2 screening was previously submitted.

(2) Director of Nursing.

(a) The director of nursing of the agency shall:

1. Meet the criteria as defined in Section 400.462(10)(7), F.S.;

2. Supervise or manage, directly or through qualified subordinates, all personnel who provide direct patient care;

3. Ensure that the professional standards of community nursing practice are maintained by all nurses providing care;

4. Maintain and adhere to agency procedure and patient care policy manuals; and

~~5. Designate in writing be a direct employee or an individual covered under a management company contract to manage the home health agency or an employee leasing contract, pursuant to Section 468.520, F.S., who meets the qualifications as defined in Section 400.462(7), F.S., to serve as on-site alternate director of nursing during absences of the director of nursing. This person will be available during designated business hours, when the director of nursing is not available. Available during designated business hours means being readily available on the premises or by telecommunications. During such absences, the on-site alternate director of nursing will have the responsibility and authority for the daily clinical operation of the agency.~~

(b) If the administrator is not a physician or registered nurse, the director of nursing shall:

1. Establish service policies and procedures in compliance with Chapter subsections 64E-16.001(4), (5), F.A.C., and state health statutes and administrative rules pursuant to Section 381.0011(4), F.S., which generally conform to recommended Centers for Disease Control (CDC) and Occupational Safety and Health Agency (OSHA) guidelines for safety, universal precautions and infection control procedures;

2. through 4. No change.

(c) through (d) No change.

(e) If an individual serves as the director of nursing of more than one licensed agency, pursuant to Section 400.462(7), F.S., a designated alternate director of nursing must be available during designated business hours, at each additional agency, who has the responsibility and authority for the clinical operation. Available during designated business hours means being readily available on the premises or by telecommunications.

(3) through (4) No change.

(5) Home Health Aide and Certified Nursing Assistant.

(a) through (b) No change.

(c) For every certified nursing assistant the home health agency shall have on file the person's State of Florida certification. A copy of the screen of the Florida Department of Health web site's Certified Nursing Assistant Information that shows the person's name, address, certificate number, original issue date, expire date and status will meet this requirement.

(d) For every home health aide, a home health agency shall have on file documentation of successful completion of at least forty hours of training, pursuant to Section 400.497(1), F.S., in the following subject areas:

1. through 14. No change.

15. Assistance with self-administered medication. Home health aides and CNAs assisting with self-administered medication, pursuant to Section 400.488, F.S., must receive a minimum of 2 hours of training (which can be part of the 40 hour home health training) prior to assuming this responsibility. Training must cover state law and rule requirements with respect to the assistance with self-administration of medications in the home, procedures for assisting the ~~patient resident~~ with self-administration of medication, common medications, recognition of side effects and adverse reactions and procedures to follow when ~~patients residents~~ appear to be experiencing side effects and adverse reactions. Training must include verification that each CNA and home health aide can read the prescription label and any instructions. Individuals who cannot read must not be permitted to assist with prescription medications. Other courses taken in fulfillment of this requirement must be documented and maintained in the home health aide's and the CNA's personnel file.

16. No change.

(e) through (r) No change.

(s) Home health aides who are trained in another state must provide documentation of course completion to the employing home health agency. Individuals who have graduated from an accredited school of nursing and are ~~waiting awaiting~~ to take their boards for licensure in Florida, can work as a home health aide. Registered nurses and licensed practical nurses who can show proof they are licensed in another state or in Florida, can work as a home health aide in Florida.

(6) Physical Therapist and Physical Therapist Assistant.

(a) No change.

(b) The responsibilities of the physical therapist are:

1. To provide physical therapy services as prescribed by a physician, physician assistant, or advanced registered nurse practitioner, acting within their scope of practice, which can be safely provided in the home and assisting the physician, physician assistant, or advanced registered nurse practitioner in evaluating patients by applying diagnostic and prognostic muscle, nerve, joint and functional abilities test;

2. To observe and record activities and findings in the clinical record and report to the physician, physician assistant, or advanced registered nurse practitioner the patient's reaction to treatment and any changes in patient's condition, or when there are deviations from the plan of care;

3. through 5. No change.

(7) Speech Pathologist. The speech pathologist shall be currently licensed in the state, pursuant to Chapter 468, F.S., and shall:

(a) Assist the physician, physician assistant, or advanced registered nurse practitioner in evaluating the patient to determine the type of speech or language disorder and the appropriate corrective therapy;

(b) No change.

(c) Record activities and findings in the clinical record and to report to the physician, physician assistant, or advanced registered nurse practitioner the patient's reaction to treatment and any changes in the patient's condition, or when there are deviations from the plan of care; and

(d) No change.

(8) Occupational Therapist and Occupational Therapist Assistant.

(a) No change.

(b) The duties of the occupational therapist are:

1. To provide occupational therapy services as prescribed by a physician, physician assistant, or advanced registered nurse practitioner, acting within their scope of practice, which can be safely provided in the home and to assist the physician, physician assistant, or advanced registered nurse practitioner in evaluating the patient's level of function by applying diagnostic and therapeutic procedures;

2. No change.

3. To observe and record activities and findings in the clinical record and to report to the physician, physician assistant, or advanced registered nurse practitioner the patient's reaction to treatment and any changes in the patient's condition, or when there are deviations from the plan of care; and

4. No change.

(9) Respiratory Therapist.

(a) No change.

(b) The responsibilities of the respiratory therapist are:

1. To provide respiratory therapy services, prescribed by a physician, physician assistant, or advanced registered nurse practitioner, acting within their scope of practice, which can be safely provided in the home and to assist the physician, physician assistant, or advanced registered nurse practitioner in evaluating patients through the use of diagnostic testing related to the cardiopulmonary system;

2. To observe and record activities and findings in the clinical record and report to the physician, physician assistant, or advanced registered nurse practitioner the patient's reaction to treatment and any changes in the patient's condition, or when there are deviations from the plan of care;

3. through 5. No change.

(10) Social Worker.

(a) The social worker shall be a graduate of an accredited school of social work with one year of experience in social services and shall:

1. Assist the physician, physician assistant, or advanced registered nurse practitioner and other members of the health team in understanding significant social and emotional factors related to the patient's health problems;

2. through 5. No change.

(b) No change.

(11) Dietitian/Nutritionist.

(a) No change.

(b) The responsibilities of the dietitian/nutritionist are:

1. No change.

2. To provide dietetics and nutrition counseling in the home, as prescribed by a physician, physician assistant, or advanced registered nurse practitioner, acting within their scope of practice;

3. To observe and record activities and findings in the clinical record and report to the physician, physician assistant, or advanced registered nurse practitioner, the patient's reaction to treatment and any changes in a patient's condition;

4. No change.

(12) Homemakers and Companions.

~~(a) The homemaker or companion utilized by a home health agency shall receive, or have documentation on file of having received, training in topics related to human development and interpersonal relationships, nutrition, marketing, food storage, use of equipment and supplies, planning and organizing of household tasks and principles of cleanliness and safety;~~

~~(a)~~(b) No change.

~~(b)~~(c) No change.

Specific Authority 400.497 FS. Law Implemented 400.462, 400.471, 400.487, 400.488, 400.497 FS. History—New 1-20-97, Amended 1-17-00, 7-18-01, 9-22-05,_____.

59A-8.0185 Personnel Policies.

(1) through (2) No change.

(3) The agency shall maintain a file for all employees which shall include name and address of employee, name and address of next of kin or guardian, evidence of qualifications, licensure or registration if applicable, a signed and notarized Affidavit of Good Moral Character, AHCA Form 3110-0001, December 2004, for any newly hired employee working in a probationary status pending the results of the background screening, results of background screening, and dates of

employment and separation from the agency. Evidence of continuing education, in-service training, and the training required in subsection (2), shall be on file and this information shall be kept in the personnel files or in a separate filing system maintained for this purpose and shall be available for inspection within three hours of request. Each employee file shall be retained by the agency for at least one year after the employee has separated from the agency.

(4) No change.

Specific Authority 400.497 FS. Law Implemented 400.471, 400.497 FS. History—New 10-27-94, Amended 1-17-00, 7-18-01, 9-22-05,_____.

59A-8.020 Acceptance of Patients or Clients.

(1) When a home health agency accepts a patient or client for service, there shall be a reasonable expectation that the services can be provided safely to the patient or client in his place of residence. This includes being able to communicate with the patient, or with another person designated by the patient, either through a staff person or interpreter that speaks the same language, or through technology that translates so that the services can be provided. The responsibility of the agency is also to assure that the patient or client receives services as defined in a specific plan of care, for those patients receiving care under a physician's, physician assistant, or advanced registered nurse practitioner's treatment orders, or in a written agreement, as described in subsection (3) below, for clients receiving care without a physician's, physician assistant, or advanced registered nurse practitioner's orders. This responsibility includes assuring the patient receives all assigned visits.

(2) No change.

(3) The written agreement, as specified in subsection (2) above, shall serve as the home health agency's service provision plan, pursuant to Section 400.491(2), F.S., for clients who receive homemaker and companion services or home health aide services which do not require a physician's, physician assistant, or advanced registered nurse practitioner's treatment order. The written agreement for these clients shall be maintained for one year after termination of services.

(4) When the agency terminates services for a patient or client needing continuing home health care, as determined by the patient's physician, physician assistant, or advanced registered nurse practitioner, for patients receiving care under a physician's, physician assistant, or advanced registered nurse practitioner's treatment order, or as determined by the client or caregiver, for clients receiving care without a physician's, physician assistant, or advanced registered nurse practitioner's treatment order, a plan must be developed and a referral made by home health agency staff to another home health agency or service provider prior to termination. The patient or client must be notified in writing of the date of termination, the reason for termination, pursuant to Section 400.491, F.S., and the plan for continued services by the agency or service provider to which the patient or client has been referred, pursuant to Section

400.497(6), F.S. This requirement does not apply to patients paying through personal funds or private insurance who default on their contract through non-payment. The home health agency should provide social work assistance to patients to help them determine their eligibility for assistance from government funded programs if their private funds have been depleted or will be depleted.

Specific Authority 400.497 FS. Law Implemented 400.487 FS. History—New 4-19-76, Formerly 10D-68.20, Amended 4-30-86, 8-10-88, Formerly 10D-68.020, Amended 10-27-94, 1-17-00, 7-18-01, 9-22-05,_____.

59A-8.0215 Plan of Care.

(1) A plan of care shall be established in consultation with the physician, physician assistant, or advanced registered nurse practitioner, pursuant to Section 400.487, F.S., and the home health agency staff who are involved in providing the care and services required to carry out the physician's, physician assistant, or advanced registered nurse practitioner's treatment orders. The plan must be included in the clinical record and available for review by all staff involved in providing care to the patient. The plan of care shall contain a list of individualized specific goals for each skilled discipline that provides patient care, with implementation plans addressing the level of staff who will provide care, the frequency of home visits to provide direct care and case management.

(2) Home health agency staff must follow the physician's, physician assistant, or advanced registered nurse practitioner's treatment orders that are contained in the plan of care. If the orders cannot be followed and must be altered in some way, the patient's physician, physician assistant, or advanced registered nurse practitioner must be notified and must approve of the change. Any verbal changes are put in writing and signed and dated with the date of receipt by the nurse or therapist who talked with the physician's, physician assistant, or advanced registered nurse practitioner's office.

(3) No change.

Specific Authority 400.497 FS. Law Implemented 400.487 FS. History—New 10-27-94, Amended 1-17-00, 7-18-01,_____.

59A-8.022 Clinical Records.

(1) through (4) No change.

(5) Clinical records must contain the following:

(a) No change.

(b) Physician's, physician assistant, or advanced registered nurse practitioner's verbal orders initiated by the physician, physician assistant, or advanced registered nurse practitioner prior to start of care and signed by the physician, physician assistant, or advanced registered nurse practitioner as required in Section 400.487(2), F.S., within 30 days after the start of care;

(c) through (j) No change.

(k) Reports to physicians, physician assistants, or advanced registered nurse practitioners;

(l) No change.

(6) No change.

Specific Authority 400.497 FS. Law Implemented 400.491, 400.494, 400.497 FS. History—New 4-19-76, Amended 2-2-77, Formerly 10D-68.22, Amended 4-30-86, 8-10-88, Formerly 10D-68.022, Amended 10-27-94, 1-17-00, 7-18-01, 9-22-05,_____.

59A-8.027 Emergency Management Plans.

(1) Pursuant to Section 400.492, F.S., each home health agency shall prepare and maintain a written comprehensive emergency management plan, in accordance with criteria shown in the "Emergency Management Planning Format Criteria for Home Health Agencies," AHCA Form 3110-1006, Revised December 2005 February, 2001, incorporated by reference. This document is available from the Agency for Health Care Administration at <http://ahca.myflorida.com> and shall be used as the format for ~~included as part of~~ the home health agency's emergency management plan. The plan shall describe how the home health agency establishes and maintains an effective response to emergencies and disasters.

(2) The plan, once completed, will be forwarded electronically for approval to the Office of Public Health Nursing, Department of Health by multi-county agencies or to the contact designated by the Department of Health for single county agencies. Emergency management plans will be reviewed by the local County Health Department or by the Department of Health, pursuant to Section 400.497(8)(e), (d), F.S., in those counties where the Department of Health receives funding for such reviews, pursuant to Section 381.0303(7), F.S. The Agency for Health Care Administration will notify those agencies who will be required to submit their emergency management plans for review.

(3) through (4) No change.

(5) When an agency goes through a change of ownership the new owner shall review its emergency management plan and make any substantive changes, including changes noted in subsection (4) above. Those agencies which previously have had their plans reviewed ~~by the local County Health Department or by the Department of Health~~, as defined in subsection (2) above, will need to report any substantive changes to the reviewing entity.

(6) through (7) No change.

(8) On admission, each home health agency shall, pursuant to Section 252.355, F.S., inform patients and patient caregivers of the agency's procedures during and immediately following an emergency and inform patients of the special needs registry maintained by their county Emergency Management office. The agency must document in the patient's file if the patient plans to evacuate or remain at home; if during the emergency the patient's caregiver can take responsibility for services normally provided by the agency; or if the agency needs to continue services to the patient. If the patient is a resident of an assisted living facility or an adult family care home, the home health agency must contact the assisted living facility or adult family care home administrator or designated emergency

management personnel and find out the plan for evacuation of the resident in order to document the resident's plans in the agency's file for the patient. If it is determined the agency needs to provide continued services, it will be the responsibility of the home health agency to provide care for the patient in the special needs shelter during and after the emergency, equal to the care received prior to the shelter assignment, except in certain situations as specified in Section 400.492(3), F.S.

(9) Upon eminent threat of an emergency or disaster the home health agency must contact those patients needing ongoing services and confirm each patient's plan during and immediately following an emergency. The home health agency must also contact every assisted living facility and adult family care home where patients are served to confirm the plans during and immediately following the emergency.

(10) During emergency situations, when there is not a mandatory evacuation order issued by the local Emergency Management agency, some patients may decide not to evacuate and will stay in their homes. The home health agency must establish procedures, prior to the time of an emergency, which will delineate to what extent the agency will continue care during and immediately following an emergency. The agency shall also ascertain which patients remaining at home will need care from the home health agency and which patients have plans to receive care from their family or caregivers. The agency shall designate staff to continue the services specified in the treatment orders to residents in the assisted living facility or adult family care home during and following the emergency. If the assisted living facility or adult family care home does relocate the residents to another assisted living facility or adult family care home within the geographic area the home health agency is licensed to serve, the agency will continue to provide services to the residents, except in certain situations as specified in Section 400.492(3), F.S. If the residents should go to a special needs shelter outside the licensed area of the home health agency, the home health agency may provide services to the residents at the shelter pursuant to Section 400.492(4), F.S.

(11) If the agency at some point ceases operation, as defined in Section 400.492(3), F.S., the agency must inform those patients whose services will be discontinued during the emergency. The agency must also notify assisted living facilities and adult family care homes where residents are served and make arrangements for nursing personnel to continue essential services, such as insulin and other injections, as ordered in treatment orders to residents. If the agency has assisted living facility, adult family care home or other patients in special needs shelters, then the agency will call the local emergency operation center as soon as possible after the disaster and report on the status of the agency's damage, if any, and the post-disaster availability to continue serving their patients in the special needs shelters and during discharge from the special needs shelters.

(12) through (13) No change.

(14) The prioritized list of ~~registered special needs~~ patients maintained by the home health agency shall be kept current and shall include information as defined in Section 400.492(2), F.S. The prioritized list shall also include residents in assisted living facilities and adult family care homes who require nursing services. This list will assist home health agency staff during and immediately following an emergency which requires implementation of the emergency management plan. This list also shall be furnished to local County Health Departments and to the county Emergency Management office, upon request.

(15) through (16) No change.

Specific Authority 400.492, 400.497 FS. Law Implemented 400.492, 400.497 FS. History--New 7-18-01, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Anne Menard
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jeffrey N. Gregg
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 9, 2006
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 7, 2005

AGENCY FOR HEALTH CARE ADMINISTRATION

Division of Health Quality Assurance

RULE NOS.:	RULE TITLES:
59A-26.001	Purpose and Intent
59A-26.002	Definitions
59A-26.003	License Required
59A-26.004	Classification of Deficiencies
59A-26.005	Licensure Procedure, Fees and Exemptions
59A-26.006	Responsibilities for Operation
59A-26.007	Fiscal Standards
59A-26.0075	Fiscal Prohibitions, Kickbacks and Referrals
59A-26.008	Admission Policies and Requirements
59A-26.009	Personnel Standards
59A-26.010	Training, Habilitation, Active Treatment Professional, and Special Programs and Services
59A-26.011	Dietary Services
59A-26.012	Dental Services
59A-26.013	Psychological Services
59A-26.014	Drugs and Pharmaceutical Services
59A-26.015	Administration of Medications to ICF/DD Residents by Unlicensed Medication Assistants

- 59A-26.016 Requirements for Administration of Medication to Residents by Unlicensed Medication
- 59A-26.017 Training and Validation Required for Unlicensed Medication Assistants
- 59A-26.018 Plant Maintenance and Housekeeping
- 59A-26.019 Fire Protection, Life Safety, Systems Failure and External Emergency Communications
- 59A-26.020 Plans Submission and Fees Requirements
- 59A-26.021 Physical Plant Codes and Standards for ICF/DD
- 59A-26.022 Construction and Physical Environment Standards
- 59A-26.023 Disaster Preparedness

PURPOSE AND EFFECT: The Agency proposes to adopt licensing rules and minimum standards of program quality and adequacy of care for Intermediate Care Facilities for the Developmentally Disabled, referred to as ICF/DD in accordance with Sections 400.960 and 400.969, F.S. The intent of this rule is to ensure services are provided that meet the specific needs of individual residents, overcome barriers to increase independence and productive living, and result in an improved quality of life. In addition, the rule defines and limits the size and design characteristics of an ICF/DD facility to establish optimum environments in which service delivery occurs. This rule reflects the ability of the State of Florida to specify program requirements and residential requirements including facility and living unit size and design. The Agency intends to adopt Rules 59A-26.001 through 59A-26.023, F.A.C.

SUMMARY: Adopt rules pertaining to Intermediate Care Facilities for the Developmentally Disabled.

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

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

SPECIFIC AUTHORITY: 400.967 FS.

LAW IMPLEMENTED: 400.967(2) F.S.

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

DATE AND TIME: April 18, 2006, 1:30 p.m. – 3:30 p.m.

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building #3, Conference Room D, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Kimberly Smoak, Long Term Care Unit, 2727 Mahan Drive, Tallahassee, Florida, or call (850)488-5861

THE FULL TEXT OF THE PROPOSED RULES IS:

MINIMUM STANDARDS FOR INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED

59A-26.001 Purpose and Intent.

The Agency adopts the following licensing rules and minimum standards of program quality and adequacy of care for Intermediate Care Facilities for the Developmentally Disabled, hereafter referred to as ICF/DD in accordance with Sections 400.962 and 400.967, F.S. The intent of this rule is to ensure services are provided that meet the specific needs of individual residents, overcome barriers to increase independence and productive living, and result in an improved quality of life. In addition, the rule defines and limits the size and design characteristics of an ICF/DD to establish optimum environments in which service delivery occurs. This rule reflects the ability of the State of Florida to specify program requirements and residential requirements including facility and living unit size and design.

Specific Authority 400.967(2)(c) FS. Law Implemented 400.967(2) FS. History–New

59A-26.002 Definitions.

Definitions as they appear in Chapter 400, Part XI, Florida Statutes and those contained herein must apply.

(1) Active Treatment – As defined in 42 CFR 483.440 (a)(1) and (2), which states, “Active treatments refers to aggressive, consistent implementation of a program of specialized and generic training, treatment and health services. Active treatment does not include services to maintain generally independent residents who are able to function with little supervision or in the absence of a continuous active treatment program.”

(2) Administrator – The person who is responsible for the overall management of an ICF/DD licensed under this part and certified under 42 CFR 483 Subpart I. The Administrator must be a Qualified Mental Retardation Professional (QMRP); be a licensed nursing home administrator; have a Bachelor’s degree in a human services field and at least one year of experience working with persons with developmental disabilities or related conditions; or have 5 years’ experience working with persons with developmental disabilities or related conditions.

(3) Advanced Registered Nurse Practitioner (ARNP) – A person duly licensed to practice as an advanced registered nurse practitioner in accordance with Chapter 464, F.S.

(4) Age Appropriate – Services, programming, equipment and supplies that are appropriate for persons who do not have a developmental disability and who are of approximately the same chronological age as the individual.

(5) Certified Behavior Analyst – A person who is certified under the Florida Behavior Certification Program.

(6) Day Program – A program that provides day services for individuals in a non-residential setting. The array of services may include pre-school, pre-vocational and vocational training, behavior management, adult education, recreation, semi-independent and independent skills development training, and individual therapies.

(7) Dental Hygienist – A person duly licensed to practice as a dental hygienist in accordance with Chapter 466, F.S.

(8) Dentist – A person duly licensed to practice dentistry in accordance with Chapter 466, F.S.

(9) Facility – The total administrative unit officially licensed and certified as an ICF/DD, which may consist of a number of living units.

(10) General Supervision – Means the responsible supervision of supportive personnel by a licensed practitioner who need not be present when such procedures are performed, but who assumes legal liability therefor. Except in cases of emergency, “general supervision” must require the easy availability or physical presence of the licensed practitioner for consultation with and direction of the supportive personnel.

(11) Habilitation or Support Plan – A document that identifies the needs of an individual resident; the programs and services to meet those needs; is derived through a joint interdisciplinary, professional diagnosis and evaluation process; and meets the requirements in 42 Code of Federal Regulations (CFR) 483 for an Individual Program Plan (IPP).

(12) Health Care Professional – A physician, physician assistant or advanced registered nurse practitioner.

(13) Interdisciplinary Team (IDT) – The resident or resident’s representative, QMRP, social worker, a licensed nurse responsible for the resident, the resident’s physician and other appropriate staff in disciplines determined by the individual resident’s needs.

(14) Level of Care 7 – A level of care code for individuals who have a developmental disability and are in need of ICF/DD placement and are ambulatory or self-mobile using mechanical devices such as canes, walkers, or wheelchairs. These individuals are able to transfer themselves without human assistance.

(15) Level of Care 8 – A level of care code for individuals who have a developmental disability, are in need of ICF/DD placement and who are capable of mobility only with human assistance or need human assistance in order to transfer to or from a mobility device.

(16) Level of Care 9 – A level of care code for individuals who have a developmental disability, are in need of ICF/DD placement, are non-ambulatory and capable of mobility only with human assistance, and require continuous medical/nursing supervision for chronic health problems. Continuous medical supervision means at least monthly observation by a physician or physician's assistant or an advanced registered nurse

practitioner (ARNP). That observation must be documented by a progress note entry of the findings, as well as 24 hours per day, seven days per week availability of routine or emergency physician's services. In addition there must be licensed nursing staff on site 24 hours per day, seven days per week.

(17) Licensed Nurse – A person duly licensed to practice nursing as a licensed practical nurse, registered nurse or ARNP in accordance with Chapter 464, F.S.

(18) Licensed Practical Nurse – A person duly licensed to practice as a practical nurse in accordance with Chapter 464, F.S.

(19) Over-the-Counter Medication (OTC) – Medication that is authorized, pursuant to federal or state law, for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries.

(20) Ophthalmic Medication – Eye solution (eye drops) or ointment to be instilled in the eye or applied around the eyelid.

(21) Oral Medication – Any medication, tablet, capsule, or liquid introduced into the gastrointestinal tract by mouth.

(22) Otic Medication – Solutions or ointments to be applied in the outer ear canal or around the outer ear.

(23) Pharmacist – A person duly licensed to practice pharmacy in accordance with Chapter 465, F.S.

(24) Physician – A person duly licensed to practice medicine in accordance with Chapter 458 or 459, F.S.

(25) Physician’s Assistant – A person duly licensed to practice medicine in accordance with Chapter 458 or 459, F.S.

(26) Prescribed Medication – A drug or medication obtained pursuant to a prescription, as defined in Section 465.003, F.S.

(27) Psychologist – A person duly licensed to practice as a psychologist in accordance with Chapter 490, F.S.

(28) Qualified Mental Retardation Professional (QMRP) – A person who meets the requirements for a qualified mental retardation professional as stated in 42 CFR., Subpart I, Section 483.430.

(29) Registered Dietitian – A person registered by the Commission on Dietetic Registration of the American Dietetic Association.

(30) Registered Nurse (RN) – A person duly licensed to practice as a registered nurse in accordance with Chapter 464, F.S.

(31) Resident – Any person who requires and is receiving active treatment services and residing in an ICF/DD.

(32) Resident Representative – The person authorized or designated to act on behalf of a resident, which includes a guardian, guardian advocate, or other legally appointed representative. May also include a parent or if unavailable another family member.

(33) Restraint – Any device, instrument, manual or chemical method, including an enclosed crib or barred enclosure, used to limit or restrict an individual's movement or

normal function of a portion of an individual's body. This definition excludes physical guidance or prompting techniques; response blocking to interrupt an undesired behavior in which physical contact is less than five seconds in duration; devices used to provide support for the achievement of functional body positions and equilibrium that have been prescribed by an appropriate health care professional; devices used as a part of a specific medical, dental or surgical procedure; and standard safety belts used to prevent an individual from falling from a stretcher, wheelchair or vehicle.

(34) Seclusion – When a person is involuntarily confined in a room or a restricted space and is prevented from leaving, or reasonably believes that he or she will be prevented from leaving, by means that include, but are not limited to:

a) Manually, mechanically, or electronically locked doors;

b) One-way doors, that, when closed or unlocked, cannot be opened from the inside;

(c) Physical intervention of staff; or

(d) Coercive measures, such as the threat of restraint or sanctions, or the loss of privileges that the resident would otherwise have.

(35) Self-Mobile – The ability to use a walker, cane, wheelchair or other mobility device independently without human assistance, including the ability to transfer into and out of the mobility device without human assistance.

(36) Severe Maladaptive Behavior – Actions of an individual that, without environmental, behavioral, physical, or chemical intervention, result in or have the potential to damage the individual or others. Such actions require medical attention or occur with sufficient frequency, magnitude, or duration that a life-threatening situation might result.

(37) Shared Facilities and Services – Those central services or facilities such as food preparation, maintenance, laundry and management that are shared by living units within a facility or with other facilities. This also includes day treatment programs.

(38) Supervision – Directing, overseeing, instructing, monitoring, guiding or evaluating individuals.

(39) Unlicensed Medication Assistant (UMA) – A staff member employed in an ICF/DD who has completed the required medication administration training and has met skills validation requirements for the administration of medications to an ICF/DD resident.

Specific Authority 400.967(2), (c) FS. Law Implemented 400.967(2) FS. History—New _____.

59A-26.003 License Required.

(1) Before any person or entity may operate an ICF/DD in Florida an application must be made and a license received from the Agency. Successful completion of a licensure survey by the Agency to determine compliance with the requirements of Chapter 400 Part XI, F.S., and this rule must occur prior to issuing a license.

(2) In the case of a facility applying for licensure after purchase of an ICF/DD previously licensed under other ownership, a signed agreement to correct identified licensure and certification deficiencies must accompany the new license application required by Section 400.962(6), F.S.

(3) When a facility is leased by the real property owner to a second party for operation, the second party must apply to the Agency for a license. A copy of the lease agreement must be filed with the application for a license.

(4) A license shall be valid for a maximum of one calendar year, unless otherwise authorized by statute.

(5) Each licensee must post its license in a prominent place in the facility in clear and unobstructed public view and visible to individuals who are being admitted to the facility.

(6) A license may be suspended, revoked or denied in any case where the Agency finds that there has been substantial failure to comply with:

(a) The provisions of the initial application requirements, certificate of need, the licensure renewal requirements, or the change of ownership requirements;

(b) The certification or re-certification requirements as a Medicaid provider;

(c) Survey standards for ICF/DD licensure; or

(d) Licensure fee requirements.

Specific Authority 400.967(1), (2) FS. Law Implemented 400.967(1), (2) FS. History—New _____.

59A-26.004 Classification of Deficiencies.

Determination by the Agency that conditions or care and treatment at a licensed ICF/DD do not comply with Chapter 400, Part XI or this rule shall be presumed to constitute a deficiency and be classified in accordance with subsection 400.967(3), F.S., unless there is shown clear and convincing evidence to the contrary.

(1) Class I deficiencies are those the Agency determines present an imminent danger to the residents of the facility or a substantial probability that death or serious physical harm would result therefrom. The condition or practice constituting a Class I violation must be abated or eliminated immediately, unless a fixed period of time, as determined by the Agency, is required for correction. A Class I deficiency, is subject to a civil penalty in an amount not less than \$5,000 and not exceeding \$10,000 for each deficiency. A fine may be levied notwithstanding the correction of the deficiency.

(2) Class II deficiencies are those the Agency determines have a direct or immediate relationship to the health, safety, or security of residents, other than Class I deficiencies. A Class II deficiency, is subject to a civil penalty in an amount not less than \$1,000 and not exceeding \$5,000 for each deficiency. A citation for a Class II deficiency shall specify the time within which the deficiency must be corrected. If a Class II deficiency is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

(3) Class III deficiencies are those the Agency determines to have an indirect or potential relationship to the health, safety, or security of the facility residents, other than Class I or Class II deficiencies. A Class III deficiency, is subject to a civil penalty of not less than \$500 and not exceeding \$1,000 for each deficiency. A citation for a Class III deficiency shall specify the time within which the deficiency must be corrected. If a Class III deficiency is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

(4) As used in this section, repeated offense means a citation for non-compliance with the same regulatory requirement that was previously cited as a Class I, II or III deficiency on or since the last licensure survey, or during the previous 365 days, whichever period is longer.

Specific Authority 400.967(3), (4) FS. Law Implemented 400.967(3), (4) FS. History—New _____.

59A-26.005 Licensure Procedure, Fees and Exemptions.

(1) Applicants for initial license must submit to the Agency:

(a) An approved plans review and on-site construction survey showing compliance with Chapter 400 Part XI, F.S. and this rule conducted by the Agency and a certificate of occupancy from the local building authority;

(b) A completed licensure application to operate an Intermediate Care Facility for the Developmentally Disabled (ICF/DD), on AHCA Form 3110-5003, November 2004. This form is available from the Agency for Health Care Administration, Long Term Care Unit, 2727 Mahan Drive, MS-33, Tallahassee, Florida 32308, or from the Agency Web Site at <http://ahca.myflorida.com>.

(c) The applicant must also submit to the Agency the following items:

1. Licensure fees at the rate of \$117.00 per bed by check or money order payable to Agency for Health Care Administration. The licensure fee is not refundable. A license for an initial application will not be issued until the application fee has been received by the Agency and all associated checks have cleared.

2. If the facility is to be managed by an entity other than the licensee, a copy of any and all letters of intent, agreements, memoranda of understanding, or contracts between licensee and management company.

3. An approved fire inspection report from the local fire authority completed no more than three months prior to the date of the initial licensure application received by the Agency.

4. Documentation of compliance with the community residential home requirements specified in Chapter 419, F.S., if applicable.

5. Satisfactory current proof that the applicant possesses the financial ability to operate the facility as demonstrated by bank statements, net worth statements, and audited or reviewed financial statements, all in accordance with Generally Accepted Accounting Principles.

6. A copy of the Certificate of Need issued by the Agency for the facility to be licensed.

7. Proof of the licensee's current right to occupy the ICF/DD building, such as, a copy of a lease, sublease agreement or deed.

(2) Applicants applying for renewal of a license must submit:

(a) A completed application on AHCA Form 3110-5003, November 2004. Form available from the Agency for Health Care Administration, Long Term Care Unit, 2727 Mahan Drive, MS-33, Tallahassee, Florida 32308, or from the Agency Web Site at <http://ahca.myflorida.com>. The application must be postmarked no later than 90 days prior to expiration of the license. If no postmark is available, the application must be received by the Agency 90 days prior to expiration. Failure to timely file a renewal application is punishable by a late fine equal to one half the licensure fee in effect at the time of application.

(b) Licensure fees at the rate of \$117.00 per bed by check or money order payable to the Agency for Health Care Administration. The licensure fee is not refundable. If a check for the renewal licensure fee is dishonored and returned to the Agency, the license holder will have 10 calendar days to pay the full amount plus any applicable fees as provided by law. Such payment must be made by cash, cashiers check, or money order. Failure to pay the licensure and processing fee will result in suspension of the license until all fees are paid in full.

(c) If changes have occurred in the management of the licensee between licensure periods the facility must report those changes to the Agency at the time of its renewal application, and provide a copy of any and all letters of intent, agreements, memoranda of understanding, or contracts between licensee and management company.

(3) Applicants applying for a change of ownership must submit:

(a) An application for licensure on AHCA Form 3110-5003, November 2004. Form available from the Agency for Health Care Administration, Long Term Care Unit, 2727 Mahan Drive, MS-33, Tallahassee, Florida 32308, or from the Agency Web Site at <http://ahca.myflorida.com>. The application must also include the licensure fees postmarked no later than 90 days prior to the date the change of ownership becomes effective. If no postmark is available, the application must be received by the Agency 90 days prior to the date the change of ownership becomes effective. Failure to timely file a change of ownership application is punishable by a late fine equal to one half the licensure fee in effect at the time of application. A

license for a change of ownership application will not be issued until the application fee has been received by the Agency and all associated checks have cleared.

(b) All documents and fees required for initial licensure in (1) of this section, with the exception of (1)(a), (1)(c) 3, 4, and 6.

(c) A signed agreement to correct all outstanding licensure and certification deficiencies incurred by the previous licensee in accordance with the previously approved plan of correction.

(4) After determination of compliance with this rule and Chapter 400, Part IX, F.S., a license to operate an ICF/DD may be issued by the Agency.

Specific Authority 400.967(1), (2) FS. Law Implemented 400.967(1), (2) FS. History—New _____.

59A-26.006 Responsibilities for Operation.

(1) The licensee must be in compliance with all conditions and standards in Title 42, Code of Federal Regulations 483 Subpart I sections, 483.410 through 483.480, Requirements for Intermediate Care Facilities for Persons with Developmental Disabilities. The licensee must ensure compliance with state regulations in Chapter 409, F.S., and applicable rules as a provider of Medicaid services to persons who are mentally retarded or who have related conditions as stated in Title 42, Code of Federal Regulations.

(2) Within 60 days of initial licensure the licensee must be certified in accordance with federal regulations as stated in Title 42, Code of Federal Regulations, 483 Subpart I sections, 483.410 through 483.480.

Specific Authority 400.967(1), (2) FS. Law Implemented 400.967(1), (2) FS. History—New _____.

59A-26.007 Fiscal Standards.

The licensee must maintain fiscal records in accordance with Generally Accepted Accounting Principles, Chapter 400 Part XI, F.S., Chapter 409 and applicable rules. There must be a recognized system of accounting used to accurately reflect details of the ICF/DD operation, including residents' funds held in trust and other resident property. The fiscal and resident fund records must be supported by adequate documentation of all transactions. Documentation of quarterly reconciliation for resident fund records must be kept on file for five years, and must be provided to the Agency for review when requested. The licensee must:

(1) Operate the facility on a sound financial basis consistent with good business practices. Evidence of issuance of bad checks or accumulation of delinquent bills for such items as personnel salaries, contracted services, food, drugs or utilities shall constitute prima facie evidence that the ownership lacks satisfactory financial management skills or resources to operate the ICF/DD in accordance with the requirements of Section 400.962, F.S., and this rule. The issuance by the licensee of 6 or more worthless checks during a 90 day period, whether or not there has been a prosecution

under Section 831.09, F.S., or the accumulation of delinquent bills in an amount in excess of \$2,500 for which the licensee is primarily obligated, shall create a rebuttable presumption that the facility is not being operated on a sound financial basis. Within 10 calendar days of the receipt of notification for this presumed fiscal deficiency, the licensee may rebut to the Agency by clear and convincing evidence that the facility has the requisite financial basis necessary to avoid revocation, and denial of licensure.

(2) Refund any amount or portion of prepayment in excess of the amount or portion obligated for services already furnished if a resident leaves the facility prior to the end of any prepayment period.

(3) Maintain financial and statistical records in accordance with Title 42 CFR, Sections 413.24 (a), (b), (c) and (e). The licensee is required to detail all of their costs for their entire reporting period making appropriate adjustments for determination of allowable costs as required by the Florida Title XIX Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled Reimbursement Plan for Not Publicly Owned and Operated or Publicly Owned and Operated Facilities. The cost report must be prepared using accrual basis of accounting in accordance with Generally Accepted Accounting Principles, as incorporated by reference in Rule 61H1-20.007, F.A.C., the methods of reimbursement in accordance with Medicare (Title XVIII) Principles of Reimbursement, the Provider Reimbursement Manual CMS PUB. 15-1, incorporated by reference in Rule 59G-6.010, F.A.C, except as modified by the Florida Title XIX Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled Reimbursement Plan for Not Publicly Owned and Operated or Publicly Owned and Publicly Operated facilities, and State of Florida Administrative Rules.

(4) Submit to any audit when deemed necessary by the Agency to ensure the facility is in full compliance with Chapter 400, Part XI, F.S., and this rule. The licensee must maintain copies of facility billings and payment records on the premises or must have these records available for inspection and copying within seven calendar days of notice by the Agency if not maintained on the premises.

(5) Keep complete and accurate records of all residents' funds, other effects, and property.

(6) Deposit and maintain in an interest bearing account with a financial institution on behalf of each resident, all money and interest on money held for that resident. A copy of the resident's bank account statements and expenditure detail must be provided to the resident or resident's representative within seven calendar days of written request.

(7) Protect residents' funds from theft, negligence or abuse. Should loss of a resident's funds occur, the licensee will be responsible for reimbursing the resident for the full amount

of funds to which he or she is entitled within 30 calendar days of confirmation of the theft, negligence or abuse of resident funds.

(8) Make a final accounting of all personal effects and money belonging to the resident held by the licensee upon the discharge or death of a resident within 30 calendar days after the resident's discharge or death.

Specific Authority 400.967(2)(e) FS. Law Implemented 400.967(2)(e) FS. History—New _____.

59A-26.0075 Fiscal Prohibitions, Kickbacks, and Referrals

The licensee, administrators, consultants, and employees are prohibited from:

(1) Paying any commission, bonus, rebate or gratuity to any organization, agency, health care provider or other person for referral of any resident to the facility;

(2) Requesting or accepting any remuneration, rebate, gift, benefit, referral of other business, or advantage of any form from any vendor or other supplier because of the purchase, rental or loan of equipment, supplies or services for the facility or resident, not consistent with normal business practice.

Specific Authority 400.967(2)(e) FS. Law Implemented 400.967(2)(e) FS. History—New _____.

59A-26.008 Admission Policies and Requirements

(1) The admission of an individual to an ICF/DD must be under the supervision of the administrator of the facility.

(2) Individuals shall only be admitted after completion of a written admission agreement, which shall constitute a contract between the licensee and resident. The agreement must be in effect at all times while the individual is a resident of the facility. The agreement must be reviewed annually for revisions by the licensee and the resident, or resident's representative. Either party may initiate revision to the agreement at any time or when substantial changes in the resident's condition occur. No agreement or any provision thereof shall be construed to relieve any licensee of any requirement or obligation imposed upon it by Chapter 400 Part XI, F.S. and this rule. Such agreements must be maintained by the licensee for at least five (5) years after each resident's expiration or discharge from the facility, whichever is sooner, and assess no additional charges, expenses or other financial liabilities in excess of the provisions included in the admission contract. All charges for services not covered by Title XIX of the Social Security Act or not covered by the basic per diem rates of the licensee, for which the resident or the resident's representative may be responsible for payment must be specified in the admission contract.

(3) The licensee must comply with the admission agreement. The admission agreement must include a description of the program and services to be provided, including at a minimum:

(a) The daily, weekly, or monthly rate, and refund provisions for unused portions thereof;

(b) Board;

(c) Lodging;

(d) Residential and nursing services;

(e) Linen and furnishings as required;

(f) Sufficient seasonal clothing as required by the resident, and applicable to the resident's needs, when the resident, or resident's representative does not provide sufficient clothing. Sufficient seasonal clothing must be provided and include a basic wardrobe as required by the individual, including a five-day supply of sleepwear, socks, shoes, undergarments, outer clothing such as shirts, pants, or dresses, a winter coat, raingear, and personal grooming and hygiene items. The licensee must maintain an inventory of the resident's clothing, and provide a copy of the inventory to the resident or resident's representative within seven calendar days of a written request;

(g) Training and assistance as required with activities of daily living;

(h) The provision and maintenance of walkers, wheelchairs, dentures, eyeglasses, hearing aides and other orthotic, prosthetic or adaptive equipment as prescribed;

(i) Therapies prescribed by the resident's individual habilitation or support plan including medical and nutritional therapies;

(j) Transportation services including vehicles with lifts or other adaptive equipment when needed;

(k) Other services prescribed in the resident's individual habilitation or support plan; and

(l) Provisions for providing a duplicate of the agreement to the resident or resident's representative.

(4) The following conditions apply to admission and retention of all residents:

(a) Individuals must not be admitted to or retained in a facility if the licensee cannot provide, or arrange for the provision of all services prescribed in the individual habilitation or support plan.

(b) Residents who have been voluntarily admitted must not be held in a facility against their will.

(c) The licensee must develop procedures to be implemented in the event that a voluntarily admitted resident should decide to leave the facility against the recommendations of the interdisciplinary team. Procedures must include:

1. Counseling by the facility social worker or QMRP with referrals made to the Agency for Persons with Disabilities and other professionals or advocates, as appropriate.

2. If a resident persists in leaving, the licensee will assist the resident in locating an appropriate alternative placement.

(5) Individuals who have a communicable disease must be evaluated by a physician prior to admission. If the physician's evaluation finds the disease would endanger other residents of

the facility, the admission should be postponed until the communicable period has passed or appropriate precautions have been implemented by the facility staff.

(6) A registered nurse must assess each newly admitted resident within four (4) hours after admission.

(7) If a pre-existing medical condition exists, if medical problems are identified by the nursing admissions assessment, or if a resident is admitted who does not have a complete medical record including medical history, positive physical findings, diagnosis, and signed physician's orders for treatment, nursing care or diets, the resident must be examined by the admitting physician within 96 hours of admission unless the registered nurse determines that the physician should examine the resident sooner.

Specific Authority 400.967(2)(f) FS. Law Implemented 400.967(2)(f) FS. History--New

59A-26.009 Personnel Standards.

(1) Each new staff employed by the facility to provide direct services to residents must have a medical examination at the time of employment and prior to contact with residents. Annually thereafter, staff must submit a physician's statement that based on test results, the employee does not constitute a threat of communicating diseases to residents. If any staff is found to have or is suspected of having a communicable disease, he or she must be removed from all duties that require contact with residents until certification is received from a physician that such risk no longer exists.

(2) All staff or prospective staff of the facility that are expected to be or whose responsibilities are such that they would be considered to be a direct service provider will have a Level 2 background screening as provided in Chapter 435, F.S. Facilities must have in their possession evidence of compliance with Level 2 background screening requirements before allowing an employee to begin working with residents.

(3) Licensees must comply with the requirements of Chapter 435, Employment Screening and Section 400.964, Florida Statutes.

(4) Regardless of the organization or design of resident living units, the minimum overall direct care staff-resident ratios must comply with those specified in 42, Code of Federal Regulations 483.430(d)(3).

(5) The licensee must have an administrator, sufficient licensed nurses to care for each resident's health care needs, and a sufficient number of Qualified Mental Retarded Professionals to ensure each resident's active treatment program is integrated, coordinated and monitored.

(6) All staff must complete and pass an educational course biennially on human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) as described in Section 381.0035, F.S.

(a) This course will have no less than two contact hours of training.

(b) Confirmation of completion of such course must be maintained in facility records for the duration of employment and for 1 year after separation of employment.

(c) All new staff must complete and pass an education course on HIV and AIDS within 90 days of employment as described in Section 381.0035, F.S.

(7) All staff must receive training within 30 days of employment and annually thereafter on the licensee's emergency disaster procedures that include the staff's role before, during, and after the emergency.

(8) The licensee must ensure 50% of their staff on duty at all times are certified in cardio-pulmonary resuscitation (CPR) and have received basic first aid training.

(9) All staff must receive training and demonstrate competency in the prevention and minimal use of restraint and seclusion within 30 days of employment. Competency in these methods must be demonstrated and documented annually thereafter.

(a) Training must include at a minimum:

1. The emotional and physical effects of restraint and seclusion on residents and staff.

2. History of trauma, impact on residents and the potential for retraumatization.

3. Crisis prevention and intervention approaches including de-escalation strategies.

4. Applicable legal and clinical requirements governing behavioral services, restraint and seclusion.

5. Safe and appropriate initiation of physical contact and application and monitoring of restraint and seclusion.

6. Approaches to facilitate the earliest possible release from restraint or seclusion.

Specific Authority 400.967(2) FS. Law Implemented 400.967(2)(b) FS. History--New

59A-26.010 Training, Habilitation, Active Treatment, Professional, Special Programs and Services.

(1) Programs, services, functions and the pattern of staff organization within the facility must be focused upon serving the individual needs of each resident and must provide for:

(a) Comprehensive diagnosis and evaluation of each resident as a basis for planning, programming and managing such that the assessment of each resident's abilities, preferences, needs, behavior assessment, behavior intervention plan and level of functioning is comprehensive in scope and adequately addressed in the habilitation plan or support plan.

1. The QMRP is responsible for the integration, coordination, monitoring and review of each resident's active treatment program, which may require the involvement of other personnel, including other agencies serving the resident.

2. For school age residents when services are provided by the local school district, the licensee must make regular and consistent efforts to include the school system, the resident, and resident's representative, when practicable in the

habilitation planning process. The licensee's individual program plan shall be in addition to any individual education plan prepared by the school district.

(b) Freedom of movement consistent with the protection of the health, safety, and welfare of individual residents within and outside of the facility.

(c) Routine and ongoing monitoring of each resident's conditions for early detection of health or nutrition risks which, when found, must be analyzed by the interdisciplinary team to identify probable causes and to implement appropriate intervention strategies.

(d) Recognition and resolution of resident care problems through appropriate participation of professional staff and consulting personnel.

(e) Consideration of every reasonable alternative, least restrictive and most effective procedures, prior to the use of invasive treatment.

(f) Proper, routine positioning of residents who cannot position themselves in appropriate body alignment.

(g) Documented and observable evidence of progress that each resident demonstrates in attaining goals and objectives specified in the habilitation plan, support plan or individual program plans.

(h) Each resident's active treatment program plan must be reviewed and revised by the interdisciplinary team as necessary:

1. At least annually.

2. When there is a substantial reduction of active treatment or routine physical care in response to health care needs as indicated by a loss of acquired skills or significant worsening of undesirable behavior.

(i) All residents shall have the opportunity to eat orally and receive therapeutic services necessary to maintain or improve eating skills and abilities, unless this is not possible as assessed by the interdisciplinary team. For residents who receive enteral and/or parenteral feedings, the interdisciplinary team must evaluate and review these residents' potential to return to oral eating at least quarterly.

(j) Resident rights as provided in the Bill of Rights of Persons Who Are Developmentally Disabled, Section 393.13(3)(a)-(j), F.S.

(k) Equipment essential to ensure the health, safety and welfare of each resident.

(2) Staff responsible for providing resident care must be proficient in the physical and nutritional management skills appropriate to the residents served.

(3) The licensee must provide instruction, information, assistance and equipment to help ensure that the essential physical and nutritional management of each resident is continued in educational, day treatment and acute care facilities.

(4) For facilities licensed for six beds or less, active treatment in the form of day treatment program activities must be provided in an off-site community setting unless medically contraindicated due to a resident's acute health problem or contraindicated for the resident as determined by the interdisciplinary team including the resident's physician. For facilities licensed for more than 6 beds, active treatment in the form of day program activities will be provided off-site or at a physical location other than the living unit unless medically contraindicated due to a resident's acute health problem or contraindicated for the resident as determined by the interdisciplinary team including the resident's physician. Examples of active treatment include training in personal skills essential for privacy and independence, toileting, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming and communication of basic needs.

(5) Licensed practical nurses working in an ICF/DD must be supervised by a registered nurse, ARNP or physician. Nursing physical assessments must be conducted by a registered nurse, ARNP or physician.

(6) Nursing service documentation in resident records must include a comprehensive nursing assessment and, as appropriate, medications, treatments, dietary information, and other significant nursing observations of resident conditions and responses to resident programs. For those residents with stable conditions, nursing progress summaries are adequate in lieu of shift documentation, as long as significant events are also recorded.

(7) Standing orders for medications, and pro re nata (p.r.n. or "as needed") orders are prohibited for the use of psychotropic medication including hypnotics, antipsychotics, antidepressants, antianxiety agents, sedatives, lithium, and psychomotor stimulants. The resident's physician must review medication orders at least every 60 calendar days except for residents having a Level of Care 9, in which case medication orders must be reviewed by the physician at least every 30 calendar days.

(8) For residents using medication to manage behavior, their individual program plan must specify observable and measurable symptoms to be alleviated by the medication, intervals for re-evaluating the continued use of the medications by the interdisciplinary team and consideration of the reduction and elimination of the medication.

(9) When a psychotropic medication is initiated, based upon a recommendation by the interdisciplinary team, a physician, ARNP, registered nurse or pharmacist must assure or make provisions for the instruction of the facility staff regarding side effects and adverse effects of the prescribed medication including when to notify the physician if undesirable side effects or adverse effects are observed. The staff must document in the progress notes that these instructions have been given. Any time a psychotropic medication is initiated, changed, increased or decreased, the

physician must write a progress note. At a minimum the physician must make a progress note every 30 calendar days. The effect of the medication on targeted symptoms must be reviewed and monitored at least quarterly by the IDT.

(10) Psychologists or certified behavior analysts must provide regular and ongoing consultation and in-service training to staff concerning:

(a) Principles and methods of understanding and changing behavior in order to devise the most optimal and effective program for each resident.

(b) Principles and methods of individual and program evaluation, for the purposes of assessing resident response and measuring program effectiveness.

(c) Design, implementation and monitoring of behavioral services.

(11) If a physical or mechanical restraint is used on a resident, the resident must be placed in a position that allows airway access and does not compromise respiration. Airway access and respiration must not be blocked or impeded by any material placed in or over the resident's mouth or nose. A resident must be placed in a face-up position while in restraints. Hand cuffs or shackles must not be used for the purposes of restraints.

(12) The licensee must develop and implement policies and procedures to reduce, and whenever possible, eliminate the use of restraints and seclusion. Policies must include:

(a) Debriefing activities as follow up to use of restraints and seclusion.

(b) A process for addressing resident concerns and complaints about the use of restraint and seclusion.

(c) A process for analyzing and identifying trends in the use of restraint and seclusion.

(13) Recreation required by each resident's habilitation plan or support plan must be provided as a purposeful intervention, through activities that modify, ameliorate, or reinforce specific physical or social behaviors.

(14) Leisure activities for residents for whom recreation services are not a priority in the resident individual program plan, must be provided in accordance with individual preferences, abilities, and needs, and with the maximum use of community resources.

Specific Authority 400.967(2) FS. Law Implemented 400.967(2)(d), (f) FS. History—New _____.

59A-26.011 Dietary Services.

(1) All dietary services must have oversight by and medical nutritional therapy must be provided by a registered dietician, employed full time, part time or on a consultant basis.

(2) There must be sufficient, competent staff responsible for food preparation and service.

(3) Menus must be prepared in advance, followed and made accessible to residents and staff.

(4) Menus must be approved by the registered dietitian.

(5) Each resident must receive food prepared by methods that conserve nutritive value, flavor and appearance.

(6) Each resident must receive food that is palatable, attractive and at the proper temperature.

(7) Substitutes offered must be of similar nutritive value.

(8) All matters pertaining to food service must comply with the following regulations based on the number of beds to be licensed:

(a) For facilities with 25 or more beds the provisions of Chapter 64E-11, F.A.C., Florida Hygiene Code, shall apply.

(b) For facilities with 24 beds or fewer the provisions of Chapter 64E-12, F.A.C., Community Based Residential Facilities, as enforced by the Department of Health, shall apply. The Agency will refer suspected food safety issues to the Department of Health.

Specific Authority 400.967(2) FS. Law Implemented 400.967(2)(f) FS. History—New _____.

59A-26.012 Dental Services.

(1) Comprehensive dental diagnostic services must be provided to all residents and must include:

(a) Periodic, at least annual, oral prophylaxis, by a dentist or dental hygienist; and

(b) At least annually, a complete extra and intra oral examination utilizing diagnostic aides necessary to properly evaluate each resident's oral condition.

(2) Comprehensive dental treatment services must be provided to all residents and must include:

(a) Daily oral care, as prescribed by a dentist or dental hygienist; and

(b) Emergency treatment on a 24-hour, seven days-a-week basis, by a dentist and;

(c) Treatment as prescribed by a dentist.

Specific Authority 400.967(2) FS. Law Implemented 400.967(2)(f) FS. History—New _____.

59A-26.013 Psychological Services.

Psychologists providing services to the residents of the facility must be licensed pursuant to Section 490.005, F.S. and have experience or training in the field of mental retardation.

Specific Authority 400.967(2) FS. Law Implemented 400.967(2)(f) FS. History—New _____.

59A-26.014 Drugs and Pharmaceutical Services.

(1) An ICF/DD must have a Class I Institutional Pharmacy Permit as defined in Section 465.019, F.S. All prescription medications must be compounded and dispensed by a pharmacy registered in Florida.

A consultant pharmacist must be responsible for implementation of the pharmacy program as defined by each licensee even when the consultant pharmacist is not the vendoring pharmacist.

(2) Labeling of prescription medications must be in accordance with Chapters 465 and 499, F.S., and Chapter 64B-16, F.A.C. Stock bottles of nonprescription drugs which are properly labeled according to the regulations related to the Drug and Cosmetic Act, Chapter 499, F.S., are permitted.

(3) All drugs including nonprescription stock drugs must be stored in a locked room or cabinet, or in a locked drug cart. External medications must be stored separately from internal and ophthalmic preparations. Poisons must be separated from all other drugs.

(4) Biologicals and other drugs must be stored in accordance with the current U.S. Pharmacopoeia. If refrigeration is required these drugs must be in a locked container.

(5) All drugs listed in Schedules II through V must be handled, used, administered and dispensed in accordance with the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C., related regulations, and Chapter 893, F.S. The Drug Abuse Prevention and Control Act can be located at the following web address: www.usdoj.gov/dea/agency/csa.htm or by mail at Drug Enforcement Administration Office of Diversion Control (ODLP) Washington, D.C. 20537.

(6) A count of controlled drugs listed in Schedules II-V of the Drug Abuse Prevention and Control Act, and Chapter 893, F.S., must be made jointly between shifts by the licensed nurse beginning duty and the licensed nurse leaving duty. For facilities licensed for six beds or less, the count must be done by the supervising registered nurse on a weekly basis. For facilities licensed for more than six beds, a medication count of controlled substances must be made at every change of shift by the licensed nurse or an unlicensed medication assistant as defined in this rule. The count at shift change must be witnessed by another licensed nurse or another staff member trained in medication administration.

(7) A registry must be maintained for all drugs listed in Chapter 893, F.S. as Schedules II, III, IV, and V for continuous reconciliation.

(8) Medicinal substances classified as controlled substances by the Drug Enforcement Administration (DEA), as provided in the Drug Abuse Prevention and Control Act of 1970 and related regulations, and the Drug Abuse Prevention and Control Act in Chapter 893, F.S. and related regulations must be disposed of in accordance with Chapter 64B-16, F.A.C.

(9) Disposal of other drugs not covered above must be made in accordance with an organized system of drug administration.

(10) All prescribed drugs dispensed for the resident while in the facility may be given to the resident or resident's representative upon discharge with the physician's written orders.

(11) An inventory of drugs released must be prepared and signed by the licensed nurse releasing the drugs and the person receiving the drugs. This inventory must be filed in the resident's medical record.

(a) All medications of deceased residents must be accounted for on an inventory list prepared by a licensed nurse and filed in the resident's record. These medications must be returned for credit or destroyed in accordance with this section.

(b) All controlled drugs not administered to a resident due to wastage, loss, or returned to the pharmacy must be documented in each resident's medical record and accounted for by two licensed nurses, and in accordance with the DEA Compliance Policy Guidelines for Disposal of Controlled Substances, CFR 21, Title 21, Section 1307.21, Disposal of Controlled Substances.

(12) All verbal orders must be written on the physician's order sheet by the licensed nurse receiving the order and countersigned by the physician within 72 hours. Verbal orders for Schedule II drugs are permitted only in emergency situations. In an emergency situation, the physician must directly contact the pharmacist and the pharmacist must receive a copy of the original or direct copy of the physician's order within 72 hours.

(13) Telephoned physician orders for medication may only be accepted by a licensed nurse, a physician's assistant or a licensed pharmacist. Telephoned orders will be immediately recorded in the resident's medical record. Faxed physician orders are acceptable with a physician's signature. A physician's signature on the original physician's order must occur within 72 hours of receipt of the faxed order.

(14) Emergency medication kits used by facilities must adhere to the following:

(a) The physician, pharmacist, and registered nurse must select drugs and ancillary equipment to be included in the emergency medication kit.

(b) The kit must be maintained and safeguarded in accordance with federal and state laws and regulations pertaining to the specific drug items included.

(c) The kit must be secured at all times.

(d) The consultant pharmacist must be responsible to assure that all drug items have not expired and are properly labeled, controlled, and stored in a sealed container.

(e) When the seal is broken for any reason, the pharmacy must be notified immediately and must provide the facility with a new emergency medication kit, or the necessary medications to replenish the kit by the next business day. Following removal of an item from the kit, the kit must be resealed. Only the pharmacist or the licensed nurse will check the contents, replace necessary items and resealed the kit if a new kit is not provided.

Specific Authority 400.967, 400.9685 FS. Law Implemented 400.967(2)(f) FS. History—New _____.

59A-26.015 Administration of Medications to ICF/DD Residents by Unlicensed Medication Assistants.

(1) It is the responsibility of the licensee to ensure that individual unlicensed medication assistants (UMA) who will be administering medication to residents meet all requirements of this rule.

(2) Unlicensed medication assistants may administer only prescribed, prepackaged, premeasured oral, topical nasal and ophthalmic medications.

(3) Unlicensed medication assistants may administer Over The Counter (OTC) medications including: acetaminophen, cough medicine, antihistamines or decongestants, as currently prescribed by the resident's health care professional.

(4) Unlicensed medication assistants may not administer medications by injection including intra-muscular, intravenous or subcutaneous, nor any medication administered vaginally or rectally.

(5) Unlicensed medication assistants may administer medications to a resident after the following requirements are met for that resident:

(a) A current informed consent has been signed by the resident, or resident's representative. The consent must acknowledge and permit unlicensed medication assistants to administer specifically listed medications currently prescribed by a licensed health care professional to the resident. The informed consent must be updated and signed at least annually.

(b) A written report for each resident assisted that indicates the resident's behavior and any past medication reactions must be documented on the Medication Administration Record (MAR), and updated if the resident's behavior or medication reactions change. Information regarding this report can be provided by the resident or resident's representative, or another unlicensed medication assistant or direct care staff person who is familiar with the resident. The person administering medications must be aware of this information prior to administering medications to residents.

(c) A determination is made that the resident to whom medication will be administered has not been deemed to be capable of the safe handling of his or her own medications by his or her primary care doctor.

(6) Administration of medication by unlicensed medication assistants must be under the supervision of a registered nurse or ARNP.

(a) Supervision includes weekly monitoring of medication and 24-hour availability via telephone or paging device by a registered nurse or ARNP.

(b) Prior to assigning tasks to an unlicensed medication assistant, the supervisory nurse must verify the training and validation of the unlicensed medication assistant as required by this rule.

(c) The supervisory nurse must communicate the assignment to the unlicensed medication assistant and verify the unlicensed medication assistant's understanding of the assignment.

(d) Monitoring and supervision of the completion of the assignment must be documented by the supervising nurse.

(e) The supervising nurse must participate in performance evaluations of the unlicensed medication assistant relative to performance of medication administration.

Specific Authority 400.967, 400.9685 FS. Law Implemented 400.9685 FS. History--New

59A-26.016 Requirements for Administration of Medication to Residents by Unlicensed Medication Assistants.

(1) General considerations governing administration of medication:

(a) Outdated medication must be properly destroyed by the supervising nurse. The disposal will be witnessed by one other staff of the facility and a record of the medication disposal must be maintained by the facility and signed by the supervising nurse and witness.

(b) Torn, damaged, illegible or mislabeled prescription labels should be reported immediately to the dispensing pharmacy or pharmacist.

(c) Residents must not miss medications due to delays in refilling a prescription. It shall be the responsibility of the supervising nurse to ensure that refills are ordered and obtained in a timely manner.

(d) No resident shall be administered a prescription or Over the Counter (OTC) medication or treatment, except upon the written order of the resident's prescribing health care professional.

(2) The following duties must be performed by the unlicensed medication assistant when administering medications to residents. The unlicensed medication assistant must:

(a) Wash his or her hands with soap and water prior to administration of medication, or supervising the self-administration of medication to residents. Unlicensed assistive staff will also wash their hands between the administration of medication to each resident and when there is a change in route of administration.

(b) Prepare medications for one individual resident at a time, in a quiet location that is free from distraction.

(c) Administer medications to one resident at a time. To complete a resident's medication process, the medication of one resident must be returned to the portable or permanent medication storage unit before administering medications to, or supervising the self-administration of medication for another resident.

(d) Administer medications to each resident, at the time, with the dosage, and by the route prescribed by the resident's health care professional. Each time medication is administered:

1. Conduct a triple-check of the dosage and time of administration against the original medication container label and the MAR before administering or supervising the self-administration of the medication;

2. Confirm the resident to whom the medication is to be administered is the same resident for whom the medication has been prescribed or ordered;

3. Administer as prescribed and via the route instructed by the resident's prescribing health care professional;

4. Do not crush, dilute or mix medications without written directions or instructions from the resident's prescribing health care professional.

5. Check the expiration date before administering each medication. Medications with an expiration date preceding the current date will not be administered.

6. If the resident requires specific positioning or the use of special techniques to facilitate ingestion, including swallowing, all unlicensed medication assistants responsible for administering medication or supervising the administration of medication for that individual must facilitate the correct positioning and use any adaptive equipment required for the proper administration of medications.

(e) Ensure the oral medication administered or supervised during self-administration has been completely ingested before leaving the resident. Directly observe the resident for a period of at least twenty minutes following the administration of a new medication ordered by the resident's prescribing health care professional. This observation period is to immediately detect and react to possible side-effects of the medication or to document the effectiveness of the medication. Unlicensed medication assistants must review the MAR for special instructions regarding required observation of medications and the unlicensed medication assistant must continually monitor for side-effects and effectiveness of all administered drugs.

(f) The documentation of each medication administered to a resident must be recorded immediately in the MAR by the unlicensed medication assistant administering the medication.

Specific Authority 400.967, 400.9685 FS. Law Implemented 400.9685(3) FS. History—New _____.

59A-26.017 Training and Validation Required for Unlicensed Medication Assistants.

(1) Required medication administration training must provide instruction and training, including criteria to ensure that competency is demonstrated through validation of the unlicensed medication assistant after completing the medication administration training. Training and instruction must include all requirements of unlicensed medication assistants listed in this rule.

(2) Medication administration training will be conducted by a registered nurse, ARNP or physician for unlicensed medication assistants and will be provided by the ICF/DD licensee. Trainer orientation sessions will include current

requirements of this rule and information to be covered during medication administration training sessions. Any person providing medication administration training sessions or conducting skills validation tests must first complete a trainer orientation session. Documentation of the trainer's completed orientation will be provided to each unlicensed medication assistant that he or she trains or validates.

(3) The required medication administration training must include the following topics:

(a) Basic knowledge and skills necessary for medication administration charting on the Medication Administration Record (MAR).

(b) Roles of the physician, nurse, pharmacist and direct care staff in medication supervision.

(c) Procedures for recording/charting medications.

(d) Interpretation of common abbreviations used in administration and charting of medications.

(e) Knowledge of facility medication system.

(f) Safety precautions used in medication administration.

(g) Methods and techniques of medication administration.

(h) Problems and interventions in administration of medications.

(i) Observation and reporting of anticipated side effects, adverse effects and desired positive outcome.

(j) Each duty of unlicensed medication assistants as required in this rule.

(4) Validation of competency of the training is required for each unlicensed medication assistant. To become validated, the unlicensed medication assistant must be able to successfully demonstrate, in a practical setting, his or her ability to correctly administer or supervise the self-administration of medications to a resident in a safe and sanitary manner and to correctly and accurately document actions related to the administration of medications, in accordance with the requirements of this rule. At completion of the training an unlicensed medication assistant must attain an overall score of 100% on knowledge tests that cover the training and facility specific questions. The unlicensed medication assistant will have 3 attempts to achieve a 100% score, if after the 3rd attempt a score of 100% is not achieved the unlicensed medication assistant must repeat the training, and may not administer medication to residents until such time as a score of 100% is achieved. Additionally, an unlicensed medication assistant must be able to state the purpose, common side effects, and signs and symptoms of adverse reactions for a list of commonly used medications included in information provided at the medication administration training from memory or demonstrate how they obtain that information and maintain it for easy access.

(5) Validation testing for the administration training curriculum will be conducted by a RN, physician, or ARNP. The ICF/DD licensee will maintain documentation containing the following information:

- (a) The name and address of the validator.
- (b) Validation date, with expiration date of 365 days from the validation.
- (c) Printed name and signature of the validating health care professional, as it appears on his or her license; and
- (d) Validating health care professional's license number, with license expiration date.
- (6) All training curricula, handouts, testing materials, and documents used to comply with the medication administration training and skills requirements of this rule will be kept on file in the ICF/DD facility.
- (7) The following must be validated for each unlicensed medication assistant:
 - (a) Demonstration of the ability to read and follow medication instructions on a prescription label, physician's order or MAR.
 - (b) Demonstration of the ability to write legibly, complete required documentation, and convey accurate and discernable information.
 - (c) Demonstration of the ability to perform as required in this rule.
 - (8) Unlicensed medication assistants and the ICF/DD licensee must maintain a copy of the unlicensed medication assistant's current skills validation document, and documentation of orientation for their medication administration trainer and validator. Unlicensed medication assistants are responsible for maintaining a copy of these documents and providing copies to the ICF/DD licensee if requested.
 - (9) Unlicensed medication assistants will have available a copy of their signed skills validation documentation to provide to the resident or resident's representative if requested. Unlicensed medication assistants will also have available if requested a copy of their annual skills revalidation documentation, within five working days of the revalidation date.
 - (10) Unlicensed medication assistants who have not successfully renewed their validation prior to the expiration date will not be eligible to administer medications to residents until medication administration retraining and revalidation of skills have been successfully completed.

Specific Authority 400.967, 400.9685 FS. Law Implemented 400.9685 FS. History—New _____.

59A-26.018 Plant Maintenance and Housekeeping.

- (1) The facility must maintain the interior and exterior of buildings accessible to residents and all equipment, furniture, and furnishings in a clean and good working condition such that resident safety and well-being are not jeopardized.
- (2) Each licensee must establish written policies designed to maintain the physical plant and overall ICF/DD environment in such a manner that the safety and well-being of residents are ensured. The building and mechanical maintenance program

must be under the supervision of a qualified person, as determined by the facility. All mechanical and electrical equipment must be maintained in working order, and must be accessible for cleaning and inspecting. All mechanical systems must be tested, balanced and operated prior to being placed into service and maintained in good working order. The facility must have an effective written plan for maintenance, including record keeping, sufficient staff, appropriate equipment and adequate supplies. The facility must:

(a) Maintain the building in good repair, safe and free of the following: cracks in the floors, walls, or ceilings; peeling wallpaper or paint; warped or loose boards; warped, broken, loose, or cracked floor covering, such as tile, linoleum or vinyl; loose handrails or railings; loose or broken window panes and screens; and other similar hazards.

(b) Maintain all electrical, lighting (interior and exterior), signal, mechanical, potable water supply, hot water heaters, heating, air conditioning, fire protection and sewage disposal systems in safe, clean and functioning condition.

(c) Maintain all electrical cords and appliances in a safe and functioning condition.

(d) Maintain the interior and exterior finishes of the buildings as needed to keep them attractive, clean, and safe, to include painting, washing, and other types of maintenance.

(e) Maintain all furniture and furnishings in a clean, attractive and safe condition.

(f) Maintain the grounds free from refuse, litter, insect and vermin breeding areas.

(g) Maintain screens on windows and doors in good repair, free of breaks in construction.

(3) The facility must have an effective plan for housekeeping including sufficient staff, appropriate equipment and adequate supplies. The facility must:

(a) Keep the buildings in a clean, safe and orderly condition. This includes all rooms, corridors, attics, basements and storage areas.

(b) Keep floors clean and as non-slip as practicable to ensure resident safety.

(c) Control odors within the housekeeping staff's areas of responsibility by effective cleaning procedures and by the proper use of ventilation. Deodorants must not be used to cover up odors caused by unsanitary conditions or poor housekeeping practices.

(d) Keep attics, basements, stairways and similar areas free of accumulations of refuse, discarded furniture, discarded equipment, newspapers, magazines, boxes and other similar items.

(e) Not use bathrooms, shower stalls and lavatories for laundering, janitorial or storage purposes.

(f) Store all cleaning compounds, insecticides and all other potentially hazardous compounds or agents in locked cabinets or rooms.

(4) The facility must have an effective written plan and must supply an adequate amount of clean linen based on the weather and climate for each resident. Linens must be in good condition to provide proper care and comfort to each resident, either through on-site laundry service or a contract with an outside service.

(a) The onsite laundry room must be maintained and operated in a clean, safe and sanitary manner.

(b) Written operating procedures must be developed, and implemented to provide for the handling and storage of clean and soiled linens. These operating procedures must be available upon request by facility staff or Agency representatives.

(c) Laundry personnel must be in good health and practice good personal hygiene and grooming. Employees must thoroughly wash their hands and exposed portions of their arms with soap and water before starting work, after smoking, eating, using the toilet or handling soiled linens.

(d) Clean linen must be protected from contamination during handling and storage.

(e) Soiled linen must be handled and stored in a manner that protects facility residents and personnel.

(f) If an outside laundry service is used, it must be in compliance with state and local health and environmental laws and must provide for protection of clean linens during transport back to the facility.

(g) Laundry services for residents' personal clothing, must be handled and clothing stored in a manner that will not allow contamination of clean linen by soiled linen. The licensee must ensure that the personal clothing of each resident is returned to that individual resident after laundering.

Specific Authority 400.967 FS. Law Implemented 400.967(2)(c) FS. History--New _____.

59A-26.019 Fire Protection, Life Safety, Systems Failure, and External Emergency Communications.

(1) Standards for fire prevention for the facility are those set forth in Chapter 69A-38, F.A.C., Uniform Fire Safety Standards for Residential Facilities for Individuals with Developmental Disabilities, as applicable to the classifications of occupancy therein.

(2) The Agency must conduct an annual fire safety survey. Based upon the survey, a report of deficiencies will be provided to the facility with a specified time frame for correction.

(3) ICF/DDs providing personal care, as defined in the Life Safety Code NFPA 101 2003 edition, but not nursing care will be reviewed as Residential Board and Care occupancy status under chapter 32 or 33 of the Life Safety Code NFPA 101, 2003 edition. ICF/DDs providing nursing care will be reviewed as Health Care Facility occupancy status under chapters 18 or 19 of the Life Safety Code NFPA 101, 2003 edition. To assure the life safety code requirements are

appropriate for all residents served in an ICF/DD, each licensure survey conducted after April 1, 2006 shall establish or confirm the occupancy status. Beginning July 1, 2006, upon renewal of each ICF/DD license, the license shall display the occupancy status. The ICF/DD licensee must receive approval from the Agency, including the Office of Plans and Construction, prior to a change in the occupancy status. A resident requiring nursing care may not reside in an ICF/DD with a Residential Board and Care occupancy status.

(4) Each licensee must provide fire protection through the elimination of fire hazards. All portions of the facility must comply with the requirements of the National Fire Protection Association (NFPA) Life Safety Code 101, as adopted by the State Fire Marshal and described in Chapter 69A-38 F.A.C., and incorporated by reference and obtainable from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101.

(5) All fires or explosions must be reported by the licensee within 24 hours by phone to the Agency for Health Care Administration's field office, and the Office of Plans and Construction. Upon notification and in accordance with NFPA 1, Fire Prevention Code, the Office of Plans and Construction must investigate the cause, origin, and circumstances of the fire or explosion. To facilitate this investigation, the licensee must complete the form "Fire Incident Report, AHCA #3500-0031, May 1998", revised 2000, incorporated herein by reference and available from the Office of Plans and Construction, Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 24 Tallahassee, Florida 32308 or from the web site at www.ahca.myflorida.com. The form must be completed by the licensee and submitted to the Agency's Office of Plans and Construction within 10 calendar days of the incident.

(6) In accordance with NFPA 101, Life Safety Code, in the event of a system failure of the fire alarm system, smoke detection system, or sprinkler system, the following actions must be taken immediately by the licensee:

(a) Notify the local fire authority and document instructions.

(b) Notify the Agency for Health Care Administration Office of Plans and Construction, and the Agency's local field office:

(c) Assess the extent of the condition and effect corrective action, with a documented period for compliance. If the corrective action will take more than four (4) hours, the following items must be completed:

1. Implement a contingency plan containing a description of the problem, a specific description of the system failure, and the projected correction period. All staff on shifts involved must have documented in-service training for the emergency contingency.

2. Begin a documented fire watch, until the system is restored. Persons used for fire watch must be trained in what to look for, what to do, and be able to expeditiously contact the

fire department. To maintain a fire watch, the facility must utilize only certified public fire safety personnel, a guard service, or facility staff. If facility staff are utilized for this function, they must meet the following requirements:

a. Be off duty from their regular facility position or assigned only to fire watch duty and be excluded from counting toward the required staffing pattern.

b. Be trained and competent as determined by the licensee in the duties and responsibilities of a fire watch and;

c. Have immediate access to electronic communication.

3. If the projected correction period changes or when the system is restored to normal operation, the licensee must notify the Agency for Health Care Administration Office of Plans and Construction, the Agency's local field office, and local fire authorities.

(7) External emergency communication. Each new facility must provide for external electronic communication not dependent on terrestrial telephone lines, cellular, radio or microwave towers, such as an on-site radio transmitter, satellite communication systems or a written agreement with an amateur radio operator volunteer group(s). If the latter, this agreement must provide for a volunteer operator and communication equipment to be relocated into the facility in the event of a disaster until communications are restored. Other methods, which can be shown to maintain uninterrupted electronic communications not dependent on land-based transmission, must be pre-approved by the Agency's Office of Plans and Construction.

Specific Authority 400.967 FS. Law Implemented 400.967(2)(a) FS. History—New _____.

59A-26.020 Plans Submission and Fee Requirements.

(1) All construction work, including demolition, must receive prior written approval from the Agency for Health Care Administration Office of Plans and Construction before any work can begin. This includes all construction of new facilities and any and all additions, modifications, alternations, renovations, and refurbishing to the site, facility, equipment or systems of any facility.

(2) Approval to start construction only for demolition, site work, foundation, and building structural frame may be obtained prior to construction document approval when the following is submitted for review and has been approved by the Agency's Office of Plans and Construction:

(a) Preliminary Stage II approval letter from the Office of Plans and Construction.

(b) Construction documents, specifications and construction details for all work to be undertaken.

(c) A letter from the facility holding the Agency harmless for any changes that may occur to the project as a result of the final construction document review.

(d) A life safety plan indicating temporary egress and detailed phasing plans indicating how the area(s) to be demolished or constructed is to be separated from all occupied areas must be submitted for review and approval when demolition or construction in and around occupied buildings is to be undertaken.

(3) Projects that have been submitted for Agency Office of Plans and Construction review will be considered abandoned and will be disapproved after any of the following has occurred:

(a) Construction has not begun within one year after written approval of the construction documents from the Agency's Office of Plans and Construction;

(b) No further plans have been submitted for Agency review within one year after a project has been initiated with the Office of Plans and Construction or;

(c) Construction has been halted for more than one year. After this termination, resubmission as a new project will be required.

(4) All plans and specifications provided to the Agency as required in this section must be prepared and submitted by a Florida-registered architect and a Florida-registered professional engineer. An architectural or engineering firm not practicing as a sole proprietor may prepare and submit plans and specifications to the Agency if they are registered as an architectural or engineering firm with the Florida Department of Business and Professional Regulation.

(5) The initial submission of plans to the Agency's Office of Plans and Construction for any new project must include a completed Plan Review Application Form, ACHA Form 3500-0011 Nov. 96 revised March 02, incorporated by reference and obtainable from the Agency for Health Care Administration, 2727 Mahan Drive Mail Stop 24, Tallahassee, Florida 32308 and a valid certificate of need, pursuant to Chapter 408 F.S., if required by the Agency. This information must accompany the initial submission. Approval will not be granted for any project without a certificate of need, pursuant to Chapter 408, F.S., if required by the Agency.

(6) Plans and specifications submitted for review shall be subject to a plan review fee. This fee is prescribed by Section 400.967(6), F.S. All fees must be paid by check made payable to the Agency for Health Care Administration, with the check noted with the Office of Plans and Construction facility log number and identified that it is for the Agency's Health Care Trust Fund. Fees will be accepted only from the ICF/DD licensee or prospective licensee.

(7) Plans and specifications must be submitted in three stages. Exceptions to the submission of all three stages shall be subject to prior approval by the Agency's Office of Plans and Construction.

(a) Stage I, schematic plans.

(b) Stage II, preliminary plans or design development drawings.

(c) Stage III, construction documents, including specifications, addenda and change orders.

(8) For each stage of submission, a program or scope of work must be submitted. It must consist of a detailed word description of all contemplated work and any required phasing to be provided in the proposed construction.

(9) For projects involving only equipment changes or system renovations, only Stage III, construction documents need be submitted. These documents must include the following:

(a) Life safety plans showing the fire/smoke compartments in the area of renovation.

(b) Detailed phasing plans indicating how the new work will be separated from all occupied areas.

(c) Engineering plans and specifications for all of the required work.

(10) Stage I, schematic plans.

(a) At a minimum, the following must be incorporated into the schematic plans:

1. Single-line drawings of each floor showing the relationship of the various activities or services to each other and the room arrangement in each.

a. The function of each room or space must be noted in or near the room or space.

b. The proposed roads and walkways, service and entrance courts, parking, and orientation must be shown on either a small plot plan or on the first floor plan.

c. Provide a simple cross-section diagram showing the anticipated construction.

d. Provide a schematic life safety plan showing smoke and fire compartments, exits, and gross areas of smoke and fire compartments.

e. Provide information as to which areas are sprinkled, both proposed and existing.

2. If the proposed construction is an addition or is otherwise related to existing buildings on the site, the schematic plans must show the facility and general arrangement of those other buildings.

3. Provide a schedule showing the total number of beds, types of bedrooms and types of ancillary spaces.

(11) Stage II, preliminary plans.

(a) At a minimum, to gain a Stage II approval, the following must be incorporated into the preliminary plans:

1. Vicinity map. For new facility construction, provide a vicinity map showing the major local highway intersections.

2. Site development plans including:

a. Existing grades and proposed improvements as required by the schematic submission.

b. Building locating dimensions.

c. Site elevations for both the 100-year flood elevations and hurricane category 3 surge inundation elevations if the project involves the construction of a new facility or is a new addition of a wing or floor to a facility.

d. The location of the fire protection services water source to the building.

3. Architectural plans including:

a. Floor plans, 1/8-inch scale minimum, showing door swings, windows, casework and millwork, fixed equipment and plumbing fixtures. Indicate the function of each space.

b. A large-scale plan of typical new bedrooms with a tabulation of gross and net square footage of each bedroom. Tabulate the size of the bedroom window glass.

c. Typical large-scale interior and exterior wall sections to include typical rated fire and fire/smoke partitions and a typical corridor partition.

d. All exterior building elevations.

e. Identification of equipment, which is not included in the construction contract but which requires mechanical or electrical service connections or construction modifications, to assure its coordination with the architectural, mechanical and electrical phases of construction.

f. Preliminary phasing plans indicating how the project is to be separated from all occupied areas must be provided if the project is located in an occupied facility.

4. Life safety plans including:

a. Single-sheet floor plans showing fire and smoke compartmentation, all means of egress and all exit signs. The dimension of the longest path of travel in each smoke compartment to the door(s) to the adjoining compartment, the total area of the smoke compartment in square feet, and tabulated exit in inches must also be provided.

b. All sprinkled areas, fire extinguishers, fire alarm devices and pull station locations.

c. Fully developed life safety plans must be submitted if the project is an addition or conversion of an existing building.

d. Life safety plans of the floor being renovated and the required exit egress floor(s) if the project is a renovation in an existing building.

e. A life safety plan indicating temporary egress and detailed phasing plans indicating how the area(s) to be demolished or constructed are to be separated from all occupied areas when demolition or construction in and around occupied buildings is to be undertaken.

5. Mechanical engineering plans including:

a. Single-sheet floor plans with a one-line diagram of the ventilating system with relative pressures of each space.

b. A written description and drawings of the anticipated smoke control system, passive or active, and a sequence of operation correlated with the life safety plans.

c. The general location of all fire and smoke dampers, all duct smoke detectors and firestats.

d. The location of the sprinkler system risers and the point of connection for the fire sprinkler system if the building is equipped with fire sprinklers, including the method of design for the existing and new fire sprinkler systems.

e. Locations of all plumbing fixtures and other items of equipment requiring plumbing services and/or gas services.

f. Locations of all medical gas outlets, piping distribution risers, terminals, alarm panel(s), low pressure emergency oxygen connection, isolation/zone valve(s), and gas source location(s).

g. Locations and relative sizes of major items of mechanical equipment such as chillers, air handling units, fire pumps, medical gas storage, boilers, vacuum pumps, air compressors, large storage batteries, and fuel storage vessels.

h. Locations of hazardous areas and the volume of products to be contained therein.

i. Location of fire pump, stand pipes, and sprinkler riser(s).

6. Electrical engineering drawings including:

a. A one-line diagram of normal and essential electrical power systems showing service transformers and entrances, switchboards, transfer switches, distribution feeders and over-current devices, panel boards and step-down transformers. The diagram must include a preliminary listing and description of new and existing, normal and emergency loads, preliminary estimates of available short-circuit current at all new equipment and existing equipment serving any new equipment, short-circuit and withstand ratings of existing equipment serving new loads and any new or revised grounding requirements.

b. Fire alarm zones correlated with the life safety plan.

7. Outline specifications. Outline specifications are to include a general description of the construction, including construction classification and ratings of components, interior finishes, general types and locations of acoustical material, floor coverings, electrical equipment, ventilating equipment and plumbing fixtures, fire protection equipment, and medical gas equipment.

8. Whenever an existing structure is to be converted to an ICF/DD facility, the general layout of spaces of the existing structure must be submitted with the preliminary plans for the proposed facility.

9. Whenever additions, modifications, alterations, renovations, and refurbishing to a facility are proposed, the general layout of spaces of the facility must be submitted with the preliminary plans.

(12) Stage III, construction documents.

(a) The Stage III, construction documents must be an extension of the Stage II, preliminary plan submission and must provide a complete description of the contemplated construction. Construction documents must be signed, sealed, dated and submitted for written approval to the Agency's Office of Plans and Construction by a Florida-registered architect and Florida-registered professional engineer. These

documents must consist of work related to civil, structural, mechanical, and electrical engineering, fire protection, lightning protection, landscape architecture and all architectural work. At a minimum, and in addition to the requirements for Stage II submission, the following must be incorporated into the construction documents:

1. Provide site and civil engineering plans that must indicate building and site elevations, site utilities, paving plans, grading and drainage plans and details, locations of the two fire hydrants utilized to perform the water supply flow test, and landscaping plans.

2. Provide life safety plans for the entire project.

3. Provide architectural plans, including:

a. Typical large-scale details of all typical interior and exterior walls and smoke walls, horizontal exits and exit passageways.

b. Comprehensive ceiling plans that show all utilities, lighting fixtures, smoke detectors, ventilation devices, sprinkler head locations and fire-rated ceiling suspension member locations where applicable.

c. Floor/ceiling and roof/ceiling assembly descriptions for all conditions.

d. Details and other instructions to the contractor on the construction documents describing the techniques to be used to seal floor construction penetrations to the extent necessary to prevent smoke migration from floor to floor during a fire.

4. Structural engineering plans, schedules and details.

5. Mechanical engineering plans to include fire and smoke control plans, including:

a. All items of owner furnished equipment requiring mechanical services.

b. A clear and concise narrative control sequence of operations for each item of mechanical equipment including but not limited to air conditioning, heating, ventilation, medical gas, plumbing, and fire protection and any interconnection of the equipment of the systems.

c. Mechanical engineering drawings that depict completely the systems to be utilized, whether new or existing, from the point of system origination to its termination.

d. A tabular schedule giving the required air flow (as computed from the information contained on the ventilation rate table) in cubic feet per minute (cfm) for supply, return, exhaust, outdoor, and ventilation air for each space listed or referenced by note on the ventilation rate table as shown on the architectural documents. The schedule must also contain the Heating Ventilation and Air Conditioning (HVAC) system design air flow rates and the resulting space relative pressures.

e. The schedule or portion of the schedule, as applicable, which must be placed in the specifications or in the drawing set containing the spaces depicted.

6. Fire protection plans, where applicable, that must include the existing system as necessary to define the new work.

7. Electrical engineering plans that must describe complete power, lighting, alarm, communications and lightning protection systems and power system study.

8. A power study that must include a fault study complete with calculations to demonstrate that over-current devices, transfer switches, switchboards, panel boards, motor controls, transformers and feeders are adequately sized to safely withstand available phase-to-phase and phase-to-ground faults. The study must also include an analysis of generator performance under fault conditions and a coordination study resulting in the tabulation of settings for all over-current device adjustable trips, time delays, relays and ground fault coordination. This must be provided for all new equipment and existing equipment serving any new equipment. Power studies for renovations of existing distribution systems must include only new equipment and existing equipment upstream to the normal and emergency sources of the new equipment. Renovations involving only branch circuit panel boards without modifications to the feeder must not require a full power study; instead, the power study must be limited to the calculation of new and existing loads of the branch circuit panel.

9. A complete set of specifications for all work to be undertaken.

a. All project required contractor supplied testing and/or certification reports must be typed on standard forms, reviewed and accepted by the engineer of record prior to presenting to the Agency's Office of Plans and Construction for review.

b. The specifications must require a performance verification test and balance air quantity values report for a minimum of two operating conditions for each air handling unit system. One operating condition must be with the specified air filters installed in the minimum pressure drop or clean state. The second operating condition is to be at the maximum pressure drop and/or dirty state. The air quantities reported are acceptable if they are within 10 percent of the design value and the space relative pressures are maintained. This requirement must apply to any air-handling unit affected by the construction to be performed.

10. All construction documents must be well coordinated. It is specifically required that in the case of additions to facilities, the mechanical and electrical, especially existing essential electrical systems and all other pertinent conditions, must be a part of this submission.

11. All subsequent addenda, change orders, field orders and other documents altering the above must also be signed, sealed and dated and submitted in advance to the Agency's Office of Plans and Construction for written approval.

(13) The initial submission will be acted upon by the Agency Office of Plans and Construction within 60 days of the receipt of the initial payment of the plan review fee. The Agency will either approve or disapprove the submission and shall provide a listing of deficiencies in writing. Each subsequent resubmission of documents for review on the project will initiate another 60-day response period. If the Agency does not act within 60 days of receipt of a submission, the submission will be considered approved. However, all deficiencies noted by the Agency must still be satisfactorily corrected before final approval may be obtained for the project.

(14) Additions or revisions that substantially change the original scope of the project or are submitted by different design professionals, will be required to be submitted as a new project.

Specific Authority 400.967 FS, Law Implemented 400.967(2),(5),(6) FS, History--New _____.

59A-26.021 Physical Plant Codes and Standards for ICF/DD.

(1) After April 1, 2006 all construction of new facilities or conversions and all additions, modifications, alterations, renovations, and refurbishing to the site, facility, equipment or systems of a facility must be in compliance with the following codes and standards:

(a) The Florida Building Code, as adopted by the Florida Building Commission and incorporated by reference in Rule 9B-3.047, F.A.C., by the Department of Community Affairs and obtainable from the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206.

(b) The fire codes as adopted by the State Fire Marshal and incorporated by reference in Chapter 69A-38, F.A.C., by the Division of State Fire Marshal at the Department of Finance and obtainable from the National Fire Protection Association, 1 Batterymarch Park, P. O. Box 9101, Quincy, Massachusetts 02269-9101.

(c) When the level of care of the residents of the facility is classified as level 7, 8 or 9, or if a facility is providing skilled/acute nursing or medical care such as is provided in a hospital, nursing home or an inpatient hospice, NFPA 101, Chapter 18 or 19, (Health Care Occupancies) must be applied.

(2) The Fire Safety Evaluation System (FSSES) NFPA-101 A as adopted by the State Fire Marshal and described in Rule 69A-3.012, F.A.C., and herein incorporated by reference and obtainable from the National Fire Protection Association, 1 Batterymarch Park, P. O. Box 9101, Quincy, Massachusetts 02269-9101, must not be used to meet the required codes and standards for new construction, renovations, or for conversion of an existing building to a new licensed ICF/DD.

(3) Where additions, modifications, alterations, refurbishing, renovations or reconstruction are undertaken within a facility, all such additions, modifications, alterations, refurbishing, renovations or reconstruction must comply with

applicable sections of the codes for new facilities. Where major structural elements make total compliance impractical or impossible, the licensee or potential licensee must submit to the Agency's Office of Plans and Construction a request to utilize alternate materials and methods in accordance with the Florida Building Code.

(4) At a minimum all existing facilities not classified as Health Care Occupancy must be in compliance with the requirements of Chapter 33, Existing Residential Board and Care Occupancy, of the National Fire Protection Association (NFPA) Life Safety Code 101, as adopted by the State Fire Marshal and described in Chapter 69A-38 F.A.C., and with Chapter 34, Existing Buildings of the Florida Building Code, 2003 edition.

Specific Authority 400.967 FS. Law Implemented 400.967(2)(a) FS. History--New_____.

59A-26.022 Construction and Physical Environment Standards.

After April 1, 2006 all new facilities must be in compliance with the following minimum physical plant standards:

(1) Site requirements.

(a) Each facility must be located on a site in compliance with local zoning codes, Chapter 400 Part XI, this rule, and if applicable, Chapter 419, F.S. The terrain must be such that effective drainage can be accomplished. Utilities must be commensurate with the facility's regular operational needs and emergencies. The site must be remote from uncontrolled or uncontrollable sources of insect and rodent harborage and air and water pollution.

(b) A site may include structures other than the ICF/DD facility such as storage sheds and greenhouses. Ancillary spaces may be available within the living units or in a separate on-site structure to provide services that cannot be purchased in the community or when residents are physically unable to attend community or therapy services.

(c) All new facilities or an addition of a wing or floor to a facility must be in compliance with the site requirements of this rule.

(2) Living unit requirements:

(a) Each living unit must provide for all residential functions and environmental characteristics with a home-like atmosphere.

(b) Residents must have a choice of a variety of comfortable living spaces.

(c) There must be sufficient equipment and appliances to meet the programmatic needs of all residents.

(d) Each living unit must have a kitchen that is adequate for preparing all meals, cleaning and storing of food and equipment. The kitchen design, appliances, equipment, materials and finishes must convey the image of a home-like kitchen.

(e) Each living unit must have a dining area.

(f) Provisions must be made to ensure meals are eaten at the dining table with appropriate positioning devices, chairs or wheelchairs for each resident as needed.

(g) Sufficient space must be provided to accommodate resident needs for indoor gross motor, fine motor and special teaching activities within the facility.

(h) Each resident living unit must have 3 or more bedrooms.

1. Each resident must have accessible personal space within the bedroom to accommodate an individual bed and personal furnishings, and to decorate and arrange without disturbing others. This space must also be utilized to store personal possessions.

2. Each bedroom must have a minimum of 100 square feet (9.29 square meters) of clear floor area per bed in multiple-bed rooms and 120 square feet (11.15 square meters) of clear floor area in single-bed rooms, exclusive of the space consumed by toilet rooms, closets, lockers, wardrobes, lavatories, alcoves, entrance vestibules, and the area taken up by all door swings that open into the room. For the purpose of minimum clear floor area, the entrance vestibule is defined as that floor area located between the room entrance door and the room floor area containing any resident bed. The dimensions and arrangement of rooms must provide a minimum of 3 feet (0.91 meter) between the sides and foot of the bed and any wall or any other fixed obstruction or adjacent bed. In multiple-bed rooms, a clearance of 3 feet 8 inches (1.11 meters) to any fixed obstruction must be available at the foot of each bed to permit the passage of equipment and beds. Where renovation work is undertaken, every effort must be made to meet these minimum space standards. When this is not possible due to existing physical constraints, and with the prior approval of the Agency's Office of Plans and Construction, resident rooms must have no less than 80 square feet (7.43 square meters) of clear floor area per bed in multiple-bed rooms and 100 square feet (9.29 square meters) of clear floor area in single-bed rooms exclusive of toilet rooms, closets, lockers, wardrobes, lavatories, alcoves and entrance vestibules. This requirement does not limit the licensee's prerogative to exceed minimum standards in this respect, and the accessible area provided must accommodate the needs of the residents occupying the space. The maximum number of residents sharing a bedroom shall be 2.

(i) Corridors must be not less than 6 feet in clear and unobstructed width.

(j) Doors must not be less than 48 inches in clear width for means of egress from sleeping rooms.

(k) Each living unit must provide adequate space for all residents to carry out normal bathroom functions, or for assistance in carrying out these functions, including bathing, toileting, washing and grooming. Facilities must be as comparable to normal home-like standards as is appropriate to the functional level of residents. The standard range of

bathroom fixtures must be provided in adequate numbers and in standard residential arrangements providing privacy for residents in performing each function. Each resident must have access to a toilet room without having to enter the general corridor area. One toilet room shall serve no more than 4 beds and no more than 2 resident rooms. The toilet room door must be side-hinged, swing out from the toilet room, and unless otherwise required by the code, be at least 32 inches (81.28 centimeters) wide.

(l) Each living unit must provide a minimum of one multi-purpose staff workroom of not less than 120 square feet.

(m) Each living unit must be equipped to wash and dry the personal clothing of all residents residing in the living unit.

(n) Each living unit must provide outdoor activity spaces providing a variety of activities that are accessible to residents, and provide cover and protection from the elements.

(o) Each living unit must meet the requirements of Florida Building Code Chapter 11-6.1(2) for accessibility percentage of total accessible rooms.

(3) Details and finishes.

(a) Potential hazards such as sharp corners, or loose laid rugs or carpets, shall not be permitted.

(b) Doors to all rooms containing bathtubs, showers, and water closets for resident use must be equipped with privacy hardware that permits emergency access without keys. When such rooms have only one entrance or are small, the doors must open outward and, if on the corridor, must open into an alcove.

(c) All interior doors, except those that automatically close upon smoke detection, must be side-hinged swinging type. Interior corridor doors, except those to small closets not subject to occupancy, shall not swing into the corridor.

(d) Operable windows must be equipped with insect screens.

(e) Threshold covers must be designed to facilitate use of wheelchairs and carts and to prevent tripping and shall provide a smooth and level transition from surface to surface.

(f) Grab bars, 1-1/2 inches (3.8 centimeters) in diameter, must be installed in all resident showers, tubs, and baths and on both sides of all resident use toilets. Wall-mounted grab bars shall provide a 1-1/2 inch (3.8 centimeters) clearance from walls and shall sustain a concentrated load of 250 pounds (113.4 kilograms).

(g) Handrails with a maximum diameter of 1-1/2 inches (3.8 centimeters) must be provided on both sides of all corridors normally used by residents. Mounting height shall be between 36 inches (91.4 centimeters) and 42 inches (106.7 centimeters). A clearance of 1-1/2 inches (3.8 centimeters) must be provided between the handrail and the wall. Rail ends shall return to the wall.

(h) Each resident hand washing facility must have a mirror for the resident unless prohibited by the interdisciplinary team. Mirror placement must allow for convenient use by both wheelchair occupants and ambulatory persons. Tops and

bottoms may be at levels usable by residents either sitting or standing. Additional mirrors may be provided for wheelchair residents, or one separate full-length mirror located in the resident room may be provided to meet the needs of wheelchair residents. All mirrors must provide a distortion free image.

(i) Provisions for soap dispensing and hand drying must be included at all hand washing facilities. Hand drying provisions in resident use areas shall be paper or cloth towels enclosed to protect against dust or soil and shall be single-unit dispensing.

(j) The minimum ceiling height in occupiable rooms and habitable spaces throughout the facility must be 8 feet 0 inches (2.44 meters) above the finished floor. Ceilings in corridors, resident room entrance, vestibules and toilet rooms must be a minimum of 7 feet 6 inches (2.33 meters) above the finished floor.

(k) Only recessed soap dishes may be allowed in patient use tubs and showers. Towel bars must be provided at each bathing area.

(l) A minimum of one electric drinking fountain must be provided per facility living unit as required by the Florida Plumbing Code.

(m) Floor material must be readily cleanable and appropriate for the location. If composition floor tiles are used, the interstices must be tight. In residential care and sleeping areas, a base must be provided at the floor line. Floors in areas used for food preparation and assembly must be water-resistant. Floor surfaces, including tile joints, must be resistant to food acids. In all areas subject to frequent wet-cleaning methods, floor materials must not be physically affected by germicidal cleaning solutions. Floors subject to traffic while wet, such as shower and bath areas, kitchens, and similar work areas, must have a slip resistant surface and floor-to-base intersections must be watertight. Carpet and padding in resident areas must be stretched tight, in good repair and free of loose edges or wrinkles that might create hazards or interfere with the operation of wheelchairs, walkers, or wheeled carts.

(n) Wall finishes must be washable and, if near plumbing fixtures, must be smooth and have a moisture-resistant finish. Finish, trim, walls, and floor constructions in dietary and food storage areas must be free from rodent and insect harboring spaces.

(o) Basic wall construction in areas not subject to conditioned air must be constructed of masonry, cement, plaster or moisture resistant gypsum wallboard.

(p) The finishes of all exposed ceilings and ceiling structures in the dietary facilities area must be readily cleanable with routine housekeeping equipment.

(q) All smoke partitions must be constructed prior to the construction of intervening walls.

(r) Smoke partitions must be constructed so as to provide a continuous smoke-tight membrane from exterior wall to exterior wall and from the floor to the underside of the deck

above. This includes interstitial space and the area above solid fire-tested membranes. Where it is not possible to inspect smoke partitions because of the fire-tested membrane, fire-rated access panels must be installed adjacent to each side of the smoke partitions at intervals not exceeding 30 feet (9.00 meters) and in such locations as necessary to view all surfaces of the partition.

Where electrical conduits, cable trays, ducts and utility pipes pass through the smoke partition, the utilities must be located so that access is maintained to adjacent wall surfaces and to all damper access panels. The details must show the studs and reinforcing half studs so that proper support is provided for the wall surfacing material. There must be a minimum clearance of 6 inches (15.29 centimeters) between all conduits, piping, and ductwork at corridor walls to facilitate the inspection of these walls.

(4) Mechanical system requirements:

(a) Mechanical equipment shall be defined as equipment utilized in air conditioning, heating, ventilating systems and associated electrical, electronic and pneumatic components required for the mechanical equipment to provide the function intended by the application of the equipment. New and existing equipment replacements must comply with these requirements.

(b) Mechanical equipment must be installed in a designated equipment room(s), or in a space(s) located in an attic(s). If the unit serves only one room it may be located

above the ceiling and must be accessible through an access opening in accordance with the Florida Building Code. Access panels are not required for lay-in ceiling installations provided the service functions are not obstructed by other above-ceiling construction such as electrical conduits, piping, audio visual cabling and like equipment components or supports.

(c) Ventilation must be provided by mechanical means in all rooms in new facilities and in all renovated or remodeled rooms of a facility. The minimum air quantities and filtration efficiencies must be met as set forth in the Minimum Ventilation Rate Table for those spaces that are listed as required in the Florida Building Code, Chapter 4, Section 420.

(d) For spaces listed in the Minimum Ventilation Rate Table, central station type air handling equipment must be used. Package terminal air conditioning units or fan coils may be used to serve resident rooms and shall be provided with 20 percent filters minimum.

(e) System designs utilizing fan coil or package terminal air conditioning units must have the outdoor air ventilation damper permanently closed. The ventilation requirement must be satisfied by a central station type air handling unit provided with a 30 percent filter minimum or as required by the listed space served. Spaces designated for the exclusive use of physical plant personnel need not comply with this requirement.

MINIMUM VENTILATION RATE

ROOM NAME OR AREA FUNCTION	SPACE RELATIVE PRESSURE NOTE 1	TOTAL AIR QUANTITIES NOTE 2	OUTDOOR AIR QUANTITIES NOTE 2	EXHAUST 100 PERCENT	FILTRATION EFFICIENCY PERCENT NOTES 3&4
Clean Linen, Utility or Holding	OUT	4	2.00	No	30
Dining	--	4	2.00	No	30
Housekeeping/Janitor's Closet	IN	10	--	Yes	30
Medicine Preparation Room	OUT	4	2.00	No	80
Nourishment Station	--	4	2.00	No	30
Resident Corridor	--	2	1.00	No	30
Resident Room (Note 4)	--	2	2.00	No	80
Soiled Linen, Utility or Holding	IN	10	--	Yes	30
Storage	--	2	--	No	30
Toilets and Baths	IN	10	--	Yes	30

Notes to Minimum Ventilation Rate Table: (1-5)

1. Design of the ventilation system shall provide air movement that is generally from clean to less clean areas. Air movement is in relationship to the adjacent room or area and is designated as OUT (or positive), IN (or negative) and - (or neutral). If any form of variable-air-volume or load shedding

system is used for energy conservation, it must not compromise the room pressure balancing relationships or the minimum air changes required by the table.

2. Tabular numerical values are space volume (cubic feet or cubic meters) per hour.

3. Filtration efficiency ratings are based on average dust spot efficiency per ASHRAE Standard 52.1-92.

4. Filter values apply to central station type air handling units. Where package terminal or fan coil air conditioning units are utilized, filter efficiency value may be 20 percent minimum.

5. Rooms or areas where specific ventilation rates are not given in the table must be ventilated in accordance with the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Standard 62, Ventilation for Acceptable Indoor Air Quality and ASHRAE Handbook-HVAC Applications. OSHA standards and NIOSH criteria require special ventilation requirements for employee health and safety within nursing facilities. For multi-function room designations, the most stringent tabular requirement shall govern.

(f) Administrative and other staff-only areas must be provided with outside air at the minimum rate of 20 cubic feet per minute (9.43 liters/second) per person, and the central system must have a minimum of 30 percent American Society of Heating Refrigerating and Air Conditioning Engineers, Inc. (ASHRAE), 1995 Edition dust spot efficiency filter. Available from American Society of Heating Refrigerating and Air Conditioning Engineers, Inc. (ASHRAE), 1791 Tullie Circle NE, Atlanta, GA 30329.

(g) All filters in systems in excess of 1000 cubic feet per minute (28.32 cubic meters/minute) capacity must be installed with differential pressure gauges. The filter gauge must have the range of acceptable filter operation clearly and permanently indicated.

(h) Filter housings for 80 percent efficiency filters must be fully gasketed and sealed with mechanical latching devices capable of exerting and maintaining a continuous, uniform sealing pressure on the filter media when in the latched, closed position.

(i) The transfer of air quantities through one space to an adjacent space is not permitted except that the transfer of air to maintain space relative pressure by the under cutting of doors is permitted. The maximum allowable air quantity for door undercuts shall be 75 cubic feet per minute (35.38 liters per second) for single door widths up to 44 inches (111.7 centimeters).

(j) Space relative pressure requirements must be maintained throughout the entire system control range where variable volume systems are utilized.

(k) Spaces having exhaust hoods must have sufficient make-up supply air such that the required pressure relationship will not be affected by the operation of the hood.

(l) All supply, return and exhaust ventilation fans must operate continuously. Dietary hood, laundry area, administrative areas that are separated from all resident areas and support areas, and maintenance area supply and exhaust fans shall be exempted from continuous operation.

(m) Cooling coil condensate must be piped to a roof drain, floor drain or other approved location.

(n) Exhaust fans and other fans operating in conjunction with a negative duct system pressure must be located at the discharge end of the system. Fans located immediately within the building located at the end of all exhaust ducts shall be permitted. Existing, nonconforming systems need not be brought into compliance when equipment is replaced due to equipment failure.

(o) All new facility construction must have totally ducted supply, return, exhaust and outside air systems including areas of all occupancy classifications.

(p) During a fire alarm, fan systems and fan equipment serving more than one room must be stopped to prevent the movement of smoke by mechanical means from the zone in alarm to adjacent smoke zones.

(q) Air handling and fan coil units serving exit access corridors for the zone in alarm must shut down upon fire alarm.

(r) Smoke or fire/smoke dampers must close upon fire alarm and upon manual shutdown of the associated supply, return or exhaust fan.

(s) Mixing valves used in shower applications must be of the balanced-pressure type design.

(t) The temperature of hot water supplied to resident use lavatories, showers and bath must be between 105°F. (45.5°C) and 110°F (46.1°C) at the discharge end of the fixture.

(u) Wall mounted water closets, lavatories, drinking fountains and hand washing facilities must be attached to floor mounted carriers and shall withstand an applied vertical load of a minimum of 250 pounds (113.39 kilograms) to the front of the fixture and provide deep seal traps for floor drains in resident showers.

(v) Ice machines, rinse sinks, dishwashers, and beverage dispenser drip receptacles must be indirectly wasted.

(w) Each water service main, branch main, riser and branch to a group of fixtures must have valves. Stop valves must be provided for each fixture. Panels for valve access must be provided at all valves.

(x) Backflow preventers (vacuum breakers) must be installed on bedpan-rinsing attachments, hose bibs and supply nozzles used for connection of hoses or tubing in housekeeping sinks and similar applications.

(y) A backflow preventer must be installed on the facility main water source(s).

(5) Electrical requirements:

(a) All material, including equipment, conductors, controls, and signaling devices, must be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facility requirements as shown in the specifications and as indicated on the plans. All materials and equipment must be listed as complying with applicable standards of Underwriter's Laboratories, Inc., or other nationally recognized testing facilities. Field labeling of equipment and materials will be permitted only when provided

by a Nationally Recognized Testing Laboratory (NRTL) that has been certified by the Occupational Safety & Health Administration (OSHA) for that referenced standard.

(b) For purposes of this section, a resident room, a resident therapy area or an examination room shall be considered a "patient care area" as described in NFPA 99 "Health Care Facilities, and Chapter 27, "Electrical Systems" of the Florida Building Code.

(c) Panels located in spaces subject to storage must have the clear working space per Chapter 27, "Electrical Systems" of the Florida Building Code, permanently marked "Electrical Access – Not For Storage" with a line outlining the required clear working space on the floor and wall.

(d) Panels and electrical equipment, other than branch circuit devices serving the corridor, must not be located in egress corridors in new construction.

(e) Lighting.

1. All spaces occupied by people, machinery and equipment within buildings, approaches to buildings and parking lots must have electric lighting.

2. Resident bedrooms must have general lighting and separate fixed night lighting. The night-light must have a switch at the entrance to each resident's room. A reading light must be provided for each resident. Resident reading lights and other fixed lights not switched at the door must have switch controls convenient for use at the luminary. Wall-mounted switches for control of lighting in resident area must be of quiet operating type.

(f) Receptacles.

1. Provide one general purpose receptacle on another wall to serve each resident and one additional receptacle at the head of the bed if a motorized bed is provided.

2. Duplex receptacles for general use must be installed in all general purpose corridors, approximately 50 feet (15.24 meters) apart and within 25 feet (7.62 meters) of corridor ends.

(g) Fire alarm systems.

1. A fire alarm annunciator panel must be provided at a single designated 24-hour monitored location. The panel must indicate audibly & visually, the zone of actuation of the alarm and system trouble. As a minimum, devices located in each smoke compartment must be interconnected as a separate fire alarm zone. Annunciator wiring must be supervised. Annunciators must clearly indicate the zone location of the alarm. An adjacent zone location map to quickly locate alarm condition must be provided.

(h) Nurse call systems. Each facility must have a nurse call system that meets the following requirements.

1. A nurse call system must be provided that will register a call from each resident bed to the related staff work area(s) by activating a visual signal at the resident room door and activating a visual and audible signal in the clean utility, soiled utility, nourishment station, medication prep and the master station of the nursing unit or sub-nursing unit. Audible signals

may be temporarily silenced provided subsequent calls automatically reactivate the audible signal. In rooms containing two or more calling stations indicating lights must be provided for each calling station. In multi-corridor nursing units corridor zone lights must be installed at corridor intersections in the vicinity of staff work areas.

2. An emergency calling station of the pull cord type must be provided and must be conveniently located for resident use at each resident toilet, bath or shower room but not inside the shower. The call signal must be the highest priority and shall be cancelled only at the emergency calling station. The emergency station must activate distinctive audible and visual signals immediately.

3. The nurse call master station must not block incoming resident calls. The master station control settings must not prevent the activation of the incoming audible and visual signals.

4. In multi-resident rooms, activation of an emergency call shall not cancel a normal call from the same room.

5. A corridor dome light must be located directly outside of any resident care area that is equipped with a nurse call station.

(i) Emergency electrical system.

1. A Type 1 essential electrical system must be provided in all ICF/DD facilities as described in NFPA 99, "Health Care Facilities" The emergency power for this system must meet the requirements of a Level 1, Type 10, Class 48 generator as described in NFPA 110, "Emergency Standby Power Systems".

2. In new construction, the normal main service equipment must be separated from the emergency distribution equipment by locating it in a separate room. Transfer switches must be considered emergency distribution equipment for this purpose.

3. Switches for critical branch lighting must be completely separate from normal switching. The devices or cover plates must be of a distinctive color. Critical branch switches may be adjacent to normal switches. Switches for life safety lighting are not permitted except as required for dusk-to-dawn automatic control of exterior lighting fixtures.

4. There must be selected life safety lighting provided at a minimum of 1 footcandle and designed for automatic dusk-to-dawn operation along the travel paths from the exits to the public way or to safe areas located a minimum of 30 feet (9.14 meters) from the building.

5. If a day tank is provided, it must be equipped with a dedicated low level fuel alarm and a manual pump. The alarm must be located at the generator derangement panel.

6. Transfer switch contacts must be of the open type and must be accessible for inspection and replacement.

7. If required by the facility's emergency food plan, there must be power connected to the equipment branch of the essential electrical system for kitchen refrigerators, freezers

and range hood exhaust fans. Selected lighting within the kitchen and dry storage areas must be connected to the critical branch of the essential electrical system.

(6) Other general requirements.

(a) There must be at least one telephone, and it will be accessible to the residents.

(b) An accessible, adequate, safe, acceptable, and potable supply of water must be provided in all facilities and must be in compliance with Chapter 64E-8, F.A.C.

(c) An adequate and safe method of sewage collection, treatment and disposal must be provided in each facility and must be in compliance with Chapter 17-6, F.A.C., Sewage Works, or Chapter 64E-6, F.A.C., Individual Sewage Disposal. Whenever a municipal or public sewer system is available to the property, such system must be used. All plans regarding wastewater collection and treatment facilities must be approved by the Department of Environmental Protection.

(d) In all facilities, vermin must be controlled in all areas of the facility in compliance with Chapter 64E-11, F.A.C., Insecticides and rodenticides must be handled in accordance with Rules 5E-14.101-.116, F.A.C.

(e) All facilities must comply with the requirements of Chapter 64E-16, F.A.C.

(7) Physical Plant Requirements for Disaster Resistance of ICF/DD Construction.

(a) Definitions. The following definitions must apply specifically to this section:

1. Existing Facility. A facility that prior to April 1, 2006;

a. Is licensed and certified, or

b. Has received a stage II preliminary plan approval from the Agency for a new facility.

2. New Facility. An ICF/DD licensed after April 1, 2006; or a facility that receives a Stage II Preliminary Plan approval after April 1, 2006; or an addition of a wing or floor to an existing ICF/DD, which has not received a Stage II Preliminary Plan approval pursuant to this section.

3. Net Square Footage. The clear floor space of an area excluding cabinetry and other fixed furniture or equipment.

4. During and Immediately Following. A period of 72 hours following the loss of normal support utilities to the facility.

5. Occupied Resident Area(s). The location of residents inside the new facility or in the addition of a wing or floor to an existing facility during and immediately following a disaster. If residents are to be relocated into an area of the existing facility during and immediately following a disaster, then for these purposes, that location will be defined as the "occupied resident area".

6. Resident Support Area(s). The area(s) required to ensure the health, safety and well-being of residents during and immediately following a disaster, such as a staff work area,

clean and soiled utility areas, food preparation area and other areas as determined by the licensee to be kept operational during and immediately following a disaster.

7. On-site – Either in, immediately adjacent to, or on the campus of the facility, or addition of a wing or floor to an existing facility.

8. Resident(s) Served. The number of residents as determined by the licensee that will be served in the occupied resident area(s) during and immediately following a disaster, including residents from other facilities, as applicable.

(b) New Facility Construction Standards. The following construction standards are in addition to the physical plant requirements described in this rule. These minimum standards are intended to increase the ability of the new facility to be structurally capable of serving as a shelter for residents, staff and the family of residents and staff and equipped to be self-supporting during and immediately following a disaster.

1. Space standards.

a. Each new facility must provide a minimum of 30 net square feet (2.79 square meters) per resident served in the occupied resident area(s). The number of residents served is to be determined by the facility.

b. Each licensee must have space for administrative and support activities and must be provided space for use by facility staff to allow for care of residents in the occupied resident area(s).

c. As determined by the licensee, space must be provided for all staff and family members of residents and staff.

2. Site standards.

a. All new facilities and additions to existing facilities must be located above the 100-year flood plain or hurricane Category 3 (Saffir-Simpson scale) hurricane surge inundation elevation as provided by the local county emergency management office, whichever requires the highest elevation, or

b. The floor elevation of all new occupied resident area(s) and all resident support area(s) and resident support utilities, including mechanical, electrical except fuel storage as noted in sub-subparagraph 59A-26.022(7)9.f., and food services must be located above the 100-year flood plain or hurricane Category 3 (Saffir-Simpson scale) hurricane surge inundation elevations whichever requires the highest elevation, or

c. New additions or floors added to existing facilities, as determined by their site locations, must be so designed and constructed as to be in compliance with the current standards of the National Flood Insurance Program of the Federal Emergency Management Agency, incorporated by reference and available from Federal Emergency Management Agency, Federal Insurance Administration, Attn. Publications, P. O. Box 70274, Washington, D.C. 20024.

d. Where an off-site public access route is available to the new facility at or above the 100-year flood plain, a minimum of one on-site emergency access route must be provided that is located at the same elevation as the public access route.

e. New landscaping elements must be located so if damaged they will not block the on-site emergency access route to the facility. Outdoor signs and their foundations must be designed to meet the wind load criteria of the Florida Building Code.

f. New light standards and their foundations used for lighting the on-site emergency access route must be designed to meet the wind load criteria of the American Society of Civil Engineers (ASCE 7-98), fifty-year recurrence interval of wind velocity with appropriate exposure category dependent on site location.

3. Structural standards. Wind load design of the building structure and exterior envelope including exterior wall systems must be designed in accordance with the Florida Building Code.

4. Roofing standards.

a. Roofing membrane material must resist the uplift forces specified in the Florida Building Code. Roof coverings must be installed according to the specifications provided by the manufacturer.

b. Loose-laid ballasted roofs are not permitted.

c. All new roof appendages such as ducts, tanks, ventilators, receivers, dx condensing units and decorative mansard roofs and their attachment systems must be structurally engineered to meet the wind load requirements of the Florida Building Code. All of these attachment systems must be connected directly to the underlying roof structure or roof support structure.

5. Exterior unit standards.

a. All exterior window units, skylights, exterior louvers and exterior door units including vision panels and their anchoring systems must be designed to resist the wind load requirements of the Florida Building Code and the debris impact requirements as specified by ss. 1626.2-1626.4.

b. Permanently attached protective systems such as shutters and baffling must be designed to meet the wind load requirements of the Florida Building Code and the debris impact requirements as specified by ss. 1626.2-1626.4.

c. Removable protective systems designed to fit intricately with the wall/window system of the facility, stored on-site at the facility, that meet the wind load requirements of the Florida Building Code and the debris impact requirements specified by ss. 1626.2-1626.4 may be used to protect the exterior units.

d. All anchoring and attachments to the building of both the permanently attached and removable protective systems must be designed to meet wind load requirements of the Florida Building Code and the impact requirements specified by ss. 1626.2-1626.4. These designs must be signed, sealed and dated by a Florida registered structural engineer.

e. The glazed openings inside or outside of the protective systems must meet the cyclical loading requirements specified by ss. 1626.2-1626.4.

f. All of the exterior impact protective systems must be designed and installed so that they do not come in contact with the glazing under uniform, impact or cyclic pressure loading. The location or application of exterior impact protective systems must not prevent required exit/ egress from the building.

g. When not being used to protect the windows, the protective system must not restrict the operability (if provided) of the windows in the occupied resident bedrooms.

h. When not being used to protect the windows, the protective systems must not reduce the clear window opening below that required by the Florida Building Code for the resident room.

6. Heating, Ventilation and Air Conditioning (HVAC) Standards.

a. Air moving equipment, dx condensing units, through-wall units and other HVAC equipment located outside of or on the roof of the facility are permitted only when either of the following are met:

i. They are located inside a penthouse designed to meet the wind load requirements of the Florida Building Code, or

ii. Their fastening systems are designed to meet the wind load requirements of the Florida Building Code and they and all associated equipment are protected as specified in ss. 1626.2-1626.4 from damage by horizontal impact by a separate and independent structure that allows access to all parts of the equipment at all times.

b. All occupied resident areas and resident support areas must be supplied with sufficient HVAC as determined by the facility to ensure the health, safety and well being of all residents and staff during and immediately following a disaster.

c. As determined by the licensee these selected HVAC systems and their associated support equipment, such as a control air compressor essential to the maintenance of the occupied resident and resident support area(s), must receive their power from the emergency power supply system(s).

d. Ventilation air change rates in occupied resident areas must be maintained as specified in this section during and immediately following a disaster.

e. Auxiliary equipment and specialties such as hydronic supply piping and pneumatic control piping must be located, routed and protected in such a manner as determined by the licensee to ensure the equipment receiving the services will not be interrupted.

7. Plumbing standards.

a. There must be an independent on-site supply such as water well, or on-site storage capability such as empty water storage containers or bladders, of potable water at a minimum

quantity of 3 gallons per resident served per day during and immediately following a disaster. Hot water in boilers or tanks must not be counted to meet this requirement.

b. There must be an independent on-site supply or storage capability of potable water at a minimum quantity of 1 gallon per facility staff, and other personnel in the facility per day during and immediately following a disaster. For planning purposes, the number of these personnel must be estimated by the licensee.

c. The licensee must determine what amount of water will be sufficient to provide for resident services, and must maintain an on-site supply or on-site storage of the determined amount.

d. When used to meet the minimum requirements of this rule, selected system appurtenances such as water pressure maintenance house pumps and emergency water supply well pumps must take power from the emergency power supply system.

8. Medical gas systems standards. The storage, distribution piping system and appurtenances must be contained within a protected area designed and constructed to meet the structural requirements of the Florida Building Code and debris impact requirements as specified by ss. 1626.2-1626.4.

9. Emergency electrical generator and essential electrical system standards. There must be an on-site Level 1 emergency electrical generator system designed to support occupied resident areas and resident support areas with at least the following support services:

a. Ice making equipment to produce ice for the residents or freezer storage equipment for the storage of ice for the residents.

b. Refrigerator units and food service equipment as required by the emergency food plan.

c. At a minimum there must be one clothes washer and one clothes dryer for laundry service.

d. Selected HVAC systems as determined by the licensee and other systems required by the Florida Building Code.

e. An emergency generator system must be fueled by a fuel supply stored on-site sized to fuel the generator for 100 percent load for 64 hours or 72 hours for actual demand load of the occupied resident areas and resident support areas and resident support utilities during and immediately following a disaster, whichever is greater.

f. Fuel supply located below ground or contained within a protected area that is designed and constructed to meet the structural requirements of the Florida Building Code and debris impact requirements as specified by ss. 1626.2-1626.4. If an underground system is used, it must be designed so as to exclude the entrance of any foreign solids or liquids.

g. Fuel lines supporting the generator system that are protected with a method designed and constructed to meet the structural requirements of the Florida Building Code and debris impact requirements as specified by ss. 1626.2-1626.4.

h. Panel boards, transfer switches, disconnect switches, enclosed circuit breakers or emergency system raceway systems required to support the occupied resident area(s), resident support area(s) or support utilities which are contained within a protected area(s) designed and constructed to meet the structural requirements of the Florida Building Code and debris impact requirements as specified by ss. 1626.2-1626.4, and that do not rely on systems or devices outside of this protected area(s) for their reliability or continuation of service.

i. An emergency generator(s) that is air-or self-contained-liquid cooled and which along with, other essential electrical equipment is installed in a protected area(s) designed and constructed to meet the structural requirements of the Florida Building Code and debris impact requirements as specified by ss. 1626.2-1626.4.

j. If the facility does not have a permanent onsite optional standby generator to operate the normal branch electrical system, there shall be a permanently installed pre-designed electrical service entry for the normal branch electrical system that will allow a quick connection to a temporary electrical generator. This quick connection shall be installed inside of a permanent metal enclosure rated for this purpose and may be located on the exterior of the building.

10. Fire protection standards. If the facility requires fire sprinklers as part of its fire protection, one of the following must be met:

a. On-site water storage capacity to continue sprinkler coverage, in accordance with the requirements of NFPA 13, "Sprinkler Systems," fire watch, conducted in accordance with the requirements of NFPA 601.

b. If the facility provides a fire watch in lieu of water storage to continue sprinkler coverage, then one 4-A type fire extinguisher or equivalent must be provided for every 3 or less 2-A fire extinguishers required by NFPA 10, "Portable Extinguishers" for the area served. These additional extinguishers must be equally distributed throughout the area they are protecting.

11. External Emergency Communication. Each new facility must provide for an external electronic communication not dependent on terrestrial telephone lines, cellular, radio or microwave towers, such as on-site radio transmitter, satellite communication systems or a written agreement with an amateur radio operator volunteer group(s). This agreement must provide for a facility volunteer operator and communication equipment to be re-located into the facility in the event of a disaster until communications are restored. Other methods that can be shown to maintain uninterrupted

electronic communications not dependent on land-based transmission must be pre-approved by the Agency's Office of Plans and Construction.

Specific Authority 400.967 FS. Law Implemented 400.967(2)(a) FS. History--New _____.

59A-26.023 Disaster Preparedness.

(1) Each licensee must have a written plan with procedures to be followed in the event of an internal or externally caused disaster or emergency event. The initiation, development, and maintenance of this plan must be the responsibility of the facility administrator, and must be reviewed and approved by the County Emergency Management Agency. The plan must be reviewed and approved annually and include, at a minimum, the following:

(a) Basic information concerning the facility to include:

1. Name of the facility, address, telephone number, 24 hour contact number if different from the facility number, emergency contact telephone number, and fax number.

2. Name of the licensee of the facility, address, telephone number.

3. Year facility was built, including type of construction.

4. Name of administrator, address, work and home telephone number.

5. Name, address, work and home telephone number of persons implementing the provisions of this plan, if different from the administrator.

6. An organizational chart showing all positions with key emergency positions identified by title, name and telephone numbers at home and work.

7. An organizational chart, if different from the previous chart required, identifying the hierarchy of authority in place during emergencies, and all positions on a day to day basis.

8. A description of the potential hazards that the facility is vulnerable to such as hurricanes, tornadoes, flooding, fires, hazardous materials incidents or transportation accidents, proximity to a nuclear power plant, power outages during severe cold or hot weather, including procedures for each of these hazards. Indicate past history and lessons learned.

9. Provide a copy of the Fire Safety Plan as stated in the Life Safety Code 2003 edition.

(b) Site specific information concerning the facility to include:

1. Number of facility beds and maximum number of residents on site.

2. Type of residents served by the facility to include, but not limited to, residents with seizure disorders, residents requiring special equipment such as wheelchairs, crutches, braces or other ambulatory assistance; residents with behavior or psychiatric disorders that may require one-to-one supervision; residents with special care needs such as oxygen, dialysis, or tube feeding.

3. Identification of the flood zone within which the facility is located as indicated on a Flood Insurance Rate Map.

4. Identification of the hurricane evacuation zone within which the facility is located.

5. Proximity of the facility to a railroad or major transportation artery (per hazardous materials incidents).

6. Whether the facility is located within the 10 or 50-mile emergency planning zone of a nuclear power plant. The 10 mile zone is called the Emergency Planning Zone (EPZ) and the 50 mile zone is called the Ingestion Pathway Zone (IPZ).

(c) Definition of management functions for emergency operations:

1. Identify by name and title, who is in charge during an emergency, and one alternate, should that person be unable to serve in that capacity.

2. Identify the chain of command to ensure continuous leadership and authority in key position.

3. Provide the procedures to ensure timely activation and staffing of the facility in emergency functions including any provisions for emergency workers' families.

4. Provide the operational and support roles for all facility staff. This may be accomplished through the development of standard operating procedures which must be attached to this plan.

5. Procedures to ensure the following are supplied:

a. Food, water and sleeping arrangements.

b. The type of emergency power, natural gas, diesel or other. If natural gas, identify alternate means should loss of power occur that would affect the natural gas system. Specify the capacity of the emergency fuel system.

c. Transportation of residents, staff and supplies.

d. Seventy-two hour supply of all essential supplies and resident medications.

e. 24-hour staffing on a continuing basis until the emergency has abated.

6. Procedures for the facility to receive timely information on impending threats and the alerting of facility decision makers, staff and residents to potential emergency conditions.

a. Define how the facility will receive warnings, to include, evenings, nights, weekends, and holidays.

b. Identify the facility 24-hour contact number, if different than the number listed in the introduction.

c. Define how key staff will be alerted.

d. Provide the procedures and policy for reporting to work for key workers.

e. Define how residents will be alerted and the precautionary measures that will be taken.

f. Identify primary notification and the alternative means of notification should the primary system fail for on duty and off duty staff.

g. Identify procedures for notifying the resident's representative that the facility is being evacuated, including contact information for continued communication.

7. Provide the policies, responsibilities and procedures for the evacuation of residents from the facility.

a. Identify the individual responsible for implementing facility evacuation procedures.

b. Identify and provide transportation arrangements through mutual aid agreements that will be used to evacuate residents. These agreements must be in writing, and copies of these agreements must be submitted during plan review.

c. Describe transportation arrangements for logistical support to include moving records, medications, food, water, equipment and other necessities. Provide copies of agreements if transportation is provided by other than the licensee.

d. Identify the pre-determined locations to which residents will be evacuated.

e. Provide a copy of the mutual aid agreement that has been entered into with a facility to receive residents. It must include name, address, telephone number and contact person for the host facility. It must include the number of evacuees to be sheltered, including residents, staff and family members.

f. Provide evacuation routes, maps, written instructions and secondary routes that will be used should the primary route be impassable.

g. Specify the amount of time it will take to evacuate all residents successfully to the receiving facility.

h. Provide the procedures that ensure facility staff will accompany evacuating residents.

i. Provide the procedures to include a log system that will be used to keep track of residents once they have been evacuated.

j. Determine the items and supplies and the amount of each that should accompany each resident during the evacuation. Provide for a minimum 72-hour stay, with provisions to extend this period of time if needed.

k. Provide procedures for notifying resident representatives of evacuation.

l. Provide procedures for ensuring all residents are accounted for and are out of the facility.

m. Describe when the facility will begin the pre-positioning of necessary medical supplies and provisions.

n. Describe when and at what point the mutual aid agreements for transportation and the notification of alternative facilities will begin.

8. Provide the procedures that specify prerequisites needed and the process for residents to re-enter the facility.

a. Identify the responsible person for authorizing re-entry to occur.

b. Provide procedures for inspecting the facility to ensure it is structurally sound.

c. Identify how residents will be transported from the receiving facility back to their home facility and how the facility staff will receive accurate and timely data on re-entry operations.

9. If the facility is to be used as a receiving facility for an evacuating facility, describe the sheltering or hosting procedures that will be used once the evacuating residents arrive.

a. Describe the receiving procedures for residents arriving from the evacuating facility.

b. Identify where the additional residents will reside. Provide a floor plan, which identifies the room area where residents will be housed, room size, and number of residents per room or area.

c. Identify provision of additional food, water and medical needs of residents being hosted for a minimum of 72 hours.

d. Describe the procedures for ensuring 24-hour operations.

e. Describe procedures for providing shelter for family members of key workers.

f. Provide procedures for tracking additional residents sheltered within the facility.

10. Identify the procedures for increasing employee awareness of possible emergency situations and provide training on the emergency roles before, during and after an emergency, and on an annual basis.

a. Identify how key workers will be instructed in their emergency roles during non-emergency times.

b. Provide a training schedule for all employees and identify the providers of the training.

c. Identify the provisions for training new employees regarding their disaster related roles.

d. Provide the schedule for exercising all or portions of the emergency plan on an annual basis with all staff and all shifts.

11. If the licensee evacuates, the licensee must immediately, but within no more than 24 hours upon completion of evacuation, report to the Agency's Long Term Care Unit in Tallahassee at (850)488-5861, the location and number of residents evacuated and contact information for continued communication for the duration of the evacuation. In the event the Long Term Care Unit is unavailable to receive such information, contact the appropriate Agency field office.

Specific Authority 400.967(2) FS. Law Implemented 400.967(2)(g) FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Kim Smoak

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Alan Levine, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 1, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 25, 2005

AGENCY FOR HEALTH CARE ADMINISTRATION**Certificate of Need**

RULE NO.:

RULE TITLE:

59C-1.021

Certificate of Need Penalties

PURPOSE AND EFFECT: The agency is proposing to amend the rule that outlines assessment of administrative fines for noncompliance with conditions placed on a Certificate of Need (CON) or Certificate of Need Exemption. The amendment adds a formula to be used in calculating the dollar amount of the fine for noncompliance.

SUMMARY: The rule is amended to include a formula for the assessment of administrative fines for failure to comply with conditions placed on a Certificate of Need (CON) or Certificate of Need Exemption.

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

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

SPECIFIC AUTHORITY: 408.034(6), 408.15(8) FS.

LAW IMPLEMENTED: 408.040(1)(b), (d), (2)(a) FS.

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

DATE AND TIME: April 18, 2006, 2:00 p.m. EST.

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room C, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rommel Bain, Certificate of Need, 2727 Mahan Drive, Building 1, MS 28, Tallahassee, Florida 32308

THE FULL TEXT OF THE PROPOSED RULE IS:

59C-1.021 Certificate of Need Penalties.

(1) through (2) No change.

(3) Penalties for Failure to Comply with Certificate of Need or Certificate of Need Exemption Conditions. The agency shall review the annual compliance report submitted by the health care providers who are licensed and operate the facilities or services and other pertinent data to assess compliance with certificate of need or certificate of need exemption conditions. Providers who are not in compliance with certificate of need or certificate of need exemption conditions may be subject to a fine pursuant to paragraph 408.040(1)(d), Florida Statutes shall be fined. Failure to report compliance with any condition upon which the issuance of the certificate of need or certificate of need exemption was predicated constitutes noncompliance. For community nursing homes or hospital-based skilled nursing units certified as such

by Medicare, the first compliance report on the status of conditions must be submitted 30 calendar days following the eighteenth month of operation or the first month where an 85 percent occupancy is achieved, whichever comes first. The schedule of fines is as follows:

(a) Facilities failing to comply with any conditions or failing to provide the certificate of need office with a report on its compliance with conditions set forth on the certificate of need or certificate of need exemption, will be assessed a fine, not to exceed \$1,000 per failure per day. In assessing the penalty the agency shall take into account the degree of noncompliance. Fines for non-compliance with an indigent care condition may be assessed using the following formula unless the provider profited from that non-compliance in an amount that exceeded the fine amount calculated for any given reporting year:

CAGP = the service condition agreed to by certificate of need or certificate of need exemption holder

ACTP = the actual percentage of service provided by the certificate of need or the certificate of need exemption holder during the reporting year

FAMT = dollar amount of the fine

FAMT = \$365,000 x (CAGP – ACTP) / CAGP

Indigent care includes charity care and Medicaid. Charity care is defined, for purposes of condition compliance, as the portion of the facility charges reported to the Agency for Health Care Administration for which there is no compensation, other than restricted or unrestricted revenues provided to a facility by local governments or tax districts regardless of the method of payment, for care provided to a patient whose family income for the twelve months preceding the determination is less than or equal to 200 percent of the federal poverty level unless the amount of charges due from the patient exceed 25 percent of the annual family income. However, in no case shall the facility charges for a patient whose family income exceeds four times the federal poverty level for a family of four be considered charity. Medicaid patient days is defined, for purposes of condition compliance, as the patient days reimbursed by Medicaid.

(b) A provider who profited from its non-compliance in an amount that exceeds the fine amount calculated under the formula in paragraph (3)(a) of this rule may be assessed the fine calculated in paragraph (3)(a) plus the profit derived from non-compliance, but the total fine shall not exceed \$365,000.

(c) Mitigating factors to be considered before assessing a fine may include but are not limited to the following:

1. The CON or CON exemption holder's history of condition compliance.

2. The CON or CON exemption holder's overall indigent care service.

3. The CON or CON exemption holder's level of indigent care relative to all other similar providers in the relevant planning area.

4. The conditioned facility showing an operating loss or negative total margin on its most recent audited financial statement.

- (b) renumbered (3)(d) No change.
(4) No change.

Specific Authority 408.15(8), 408.034(6)(5) FS. Law Implemented 408.040(1)(b), (d), (2)(a), 408.064(6), 408.08(2), 408.044 FS. History--New 7-25-89. Amended 12-13-04, Formerly 10-5.021, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rommel Bain, Health Services and Facilities Consultant
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Karen Rivera, Consultant Supervisor
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 3, 2006
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 9, 2005

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Engineers

RULE NO.: 61G15-22.003
RULE TITLE: Qualifying Activities for Area of Practice Requirement

PURPOSE AND EFFECT: Purpose and effect is to eliminate the use of courses taken to satisfy continuing education requirements for P.E. licensure in other states to satisfy the PDH area of practice requirements.

SUMMARY: Subsection (7) of the rule is eliminated.
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: 455.213(6), 455.2177, 455.2178, 455.2179, 471.017(3), 471.019 FS.

LAW IMPLEMENTED 455.213(6), 455.2177, 455.2178, 455.2179, 471.008, 471.017(3), 471.019 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: Paul Martin, Executive Director, Board of Professional Engineers, 2507 Callaway Road, Suite 200, Tallahassee, Florida 32301.

THE FULL TEXT OF THE PROPOSED RULE IS:

61G15-22.003 Qualifying Activities for Area of Practice Requirement.
(1) through (6) No change.

(7) Courses taken to satisfy continuing education requirements for P.E. licensure in other states may be used to satisfy the PDH area of practice requirements, if the courses are otherwise in compliance with these rules.

Specific Authority 455.213(6), 455.2177, 455.2178, 455.2179, 471.017(3), 471.019 FS. Law Implemented 455.213(6), 455.2177, 455.2178, 455.2179, 471.008, 471.017(3), 471.019 FS. History--New 9-16-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Professional Engineers
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Professional Engineers
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 8, 2005
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 10, 2006

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 JUVENILE JUSTICE

Education

RULE NOS.: 63B-1.001, 63B-1.002, 63B-1.003
RULE TITLES: Purpose and Scope, Educational and Vocational Programming, Program Evaluation

PURPOSE AND EFFECT: The proposed rule implements Section 985.315, Florida Statutes, governing the provision of educational and vocational services in delinquency programs.

SUMMARY: The proposed rule establishes the standards and requirements governing education and career-related programming, including the hours of instruction per week, the need for individual education plans, curricular offerings, transition planning, and program evaluation.

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

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

SPECIFIC AUTHORITY: 20.316, 985.405, 985.315 FS.
LAW IMPLEMENTED: 985.315 FS.

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

DATE AND TIME: April 17, 2006, 10:00 a.m.

PLACE: DJJ Headquarters, Knight Building, Probation Conference Room 108, 2737 Centerview Drive, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Clyde Benedix, Policy Development Officer, Department of Juvenile Justice, Office of Administration, 2737 Centerview Drive, Ste. 312, Tallahassee, FL 32399-3100, (850)921-4116

THE FULL TEXT OF THE PROPOSED RULES IS:

63B-1.001 Purpose and Scope.

The rule establishes the standards and requirements for the department's statewide, regionally administered system of juvenile justice educational and career-related programs.

Specific Authority 985.315 FS. Law Implemented 985.315 FS. History--New _____.

63B-1.002 Educational and Vocational Programming.

(1) Educational and career-related programming shall be provided 25 hours per week.

(2) Students in education programs 22 days or longer shall have an individual education plan developed based upon entry assessments and past education history. The plan must address the areas of academic, literacy, and life skills.

(3) All students shall be enrolled in curricular offerings, consistent with the Florida Course Code Directory. The department shall ensure that department personnel collaborate with the responsible school board in ensuring students are provided with basic, career education and exceptional student programs as appropriate and access to appropriate courses and instruction to prepare them for standardized testing.

(4) Juveniles will be enrolled in school with individual education plans specified in Section 1003.52(6), F.S. and Rule 6A-6.05281, F.A.C. All educational programs will teach personal accountability skills and behaviors that are appropriate for youth in all age groups and ability levels and that lead to work habits that help maintain employment and living standards.

(5) Department programs shall offer an orientation to career choices, based upon personal abilities, aptitudes, and interests.

(6) The department shall, contingent upon resource availability, provide internet access that is essential to student participation in Florida Virtual High School courses in accordance with Section 1003.52, F.S.

(7) Department personnel will also participate in individual transition planning as specified in subsection 6A-6.05281(5), F.A.C.

Specific Authority 985.315 FS. Law Implemented 985.315(4)(a) FS. History--New _____.

63B-1.003 Program Evaluation.

The department will collaborate in the educational quality assurance process with the Florida Department of Education as specified in Section 1003.52(15)(b), F.S., with the purpose of determining whether the programming is related to successful post release adjustments.

Specific Authority 985.315 FS. Law Implemented 985.315(4)(b) FS. History--New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Clyde Benedix, Policy Development Officer, Office of Administration, Department of Juvenile Justice

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jane McElroy, Assistant Secretary for Administration, Department of Juvenile Justice

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 23, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 3, 2006

DEPARTMENT OF JUVENILE JUSTICE

Residential Services

RULE NO.: 63E-2.023
 RULE TITLE: Quarterly Inspection and Evaluation Standards

PURPOSE AND EFFECT: The proposed rule implements Section 985.309(8) and (9), Florida Statutes, governing the quarterly inspection and evaluation of juvenile boot camp programs.

SUMMARY: The proposed rule establishes the standards by which boot camp programs are inspected and evaluated. The inspection shall cover compliance with department rules and contracts, program safety and security, the provision of treatment, behavior management, medical services, and administration.

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

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

SPECIFIC AUTHORITY: 20.316, 985.405, 985.309 FS.

LAW IMPLEMENTED: 985.309(8), (9) FS.

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

DATE AND TIME: April 17, 2006, 10:00 a.m.

PLACE: DJJ Headquarters, Knight Building, Probation Conference Room 108, 2737 Centerview Drive, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Clyde Benedix, Policy Development Officer, Department of Juvenile Justice, Office of Administration, 2737 Centerview Drive, Ste. 312, Tallahassee, FL 32399-3100, (850)921-4116

THE FULL TEXT OF THE PROPOSED RULE IS:

63E-2.023 Quarterly Inspection and Evaluation Standards.

(1) All boot camp programs, whether operated by the department, county or municipal government shall be inspected and evaluated by the department to determine operational compliance at least quarterly. The inspection and evaluation shall include, but are not limited to:

(a) Department policy, rule and contract compliance:

1. The inspection/evaluation shall include operational compliance with admission criteria and screening, behavior management sanctions and privileges, and disciplinary confinement.

2. Boot camp procedures shall be developed and implemented in accordance with policy requirements as established by the department.

3. A contractual boot camp will comply with the terms and conditions as identified in their contract.

(b) Safety and security:

1. The boot camp shall implement procedures governing the safety and security of staff and youth, security inspections and checks, and preventive maintenance and control of safety and security equipment.

2. The boot camp shall implement procedures covering escape prevention and escape response plans.

3. The boot camp shall implement procedures regarding youth counts, movements, transportations, staffing, disturbances and disaster or emergencies.

(c) Treatment:

1. The boot camp shall implement procedures governing youth treatment and activities, living environment issues, youth work assignments, physical training, delivery of specialized treatment services, and youth case management.

2. The boot camp shall provide for visitation and family involvement, correspondence and telephone communications for the youth in the program.

3. The boot camp shall include academic and vocational activities, life and job skills, and appropriate decision making training for the youth.

(d) Behavior Management:

1. The boot camp shall implement a behavior management system, which includes consequences, sanctions and privileges for youth. The system may elaborate upon, but may not contradict, the requirements of Rule 63E-2.013, F.A.C.

2. The boot camp behavior management system shall not deny a youth meals, clothing, sleep, education, exercise or physical and mental health services.

3. Boot camp procedures shall be implemented for usage of disciplinary confinement, mechanical restraints, and control techniques and providing appropriate documentation requirements. The use of disciplinary confinement must be in accordance with Rule 63E-2.014, F.A.C.

(e) Medical:

1. The boot camp shall implement a written plan or procedure governing medical, substance abuse and mental health services and assessments.

2. The boot camp shall have a written suicide prevention and response plan.

3. The boot camp shall have a designated health authority.

4. The boot camp shall implement procedures covering medication storage, documentation, monitoring and distribution; sick call and medical appointments; "medical and mental health alerts"; management of health and mental health records and information; and control of infectious and communicable diseases.

(f) Administration.

1. The boot camp shall implement procedures governing the administrative operation of the program, community interaction and involvement, staff responsibilities, staffing requirements, and administration of program services.

2. The boot camp shall have a written program description and mission statement.

3. Boot camp procedures shall be developed and implemented covering personnel, budgetary, property management, scheduling and operation of the program.

(2) All deficiencies or failures to comply shall be reported, in writing, to the department's regional director and Assistant Secretary for Residential and Correctional Facilities.

(3) The boot camp shall develop a corrective action plan to address all deficiencies reported and submit the plan to the department's regional director and Assistant Secretary for Residential and Correctional Facilities.

(4) The department shall terminate the program in the event the program fails to comply with department policies or rules within three months or unless there are documented extenuating circumstances.

Specific Authority 985.309 FS. Law Implemented 985.309(8), (9) FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Clyde Benedix, Policy Development Officer, Office of Administration, Department of Juvenile Justice

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jane McElroy, Assistant Secretary for Administration, Department of Juvenile Justice

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 23, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 3, 2006

DEPARTMENT OF JUVENILE JUSTICE

Residential Services

RULE NOS.:	RULE TITLES:
63E-3.001	Purpose and Scope
63E-3.002	Program Guidelines
63E-3.003	Program Monitoring and Evaluation
63E-3.004	Construction
63E-3.005	Human Immunodeficiency Virus (HIV) Testing.
63E-3.006	Research Projects

PURPOSE AND EFFECT: The proposed rule implements Section 985.31, Florida Statutes, establishing program guidelines, standards and requirements for serious or habitual juvenile offender programs.

SUMMARY: The proposed rule establishes the program guidelines for serious or habitual juvenile offender programs, including the standards for monitoring and evaluation, facility construction, the protocol for conducting research, and the requirements governing HIV testing.

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

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

SPECIFIC AUTHORITY: 20.316, 985.405, 985.31 FS.

LAW IMPLEMENTED: 985.31 FS.

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

DATE AND TIME: April 17, 2006, 10:00 a.m.

PLACE: DJJ Headquarters, Knight Building, Probation Conference Room 108, 2737 Centerview Drive, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Clyde Benedix, Policy Development Officer, Department of Juvenile Justice, Office of Administration, 2737 Centerview Drive, Ste. 312, Tallahassee, FL 32399-3100, (850)921-4116

THE FULL TEXT OF THE PROPOSED RULE IS:

63E-3.001 Purpose and Scope.

This rule establishes the standards and requirements for the department’s administration of the serious habitual offender programs as required by statute.

Specific Authority 985.31 FS. Law Implemented 985.31(1) FS. History–New _____.

63E-3.002 Program Guidelines.

A serious habitual offender program shall include the following components.

- (1) Appropriate care, custody and supervision commensurate with the risk presented by the resident population;
- (2) Incorporation of restorative justice principles;
- (3) Case management;
- (4) Admission and orientation;
- (5) Discharge;
- (6) Health services;
- (7) Mental health;
- (8) Substance abuse;
- (9) Educational services;
- (10) Pre-vocational and vocational training;
- (11) Mentoring, positive role modeling and positive one-on-one and small group interactions;
- (12) Recreation and leisure activities;
- (13) Community involvement opportunities;
- (14) Treatment modalities that include aggression replacement training;
- (15) Health education programming; and
- (16) Behavior management.

Specific Authority 985.31 FS. Law Implemented 985.31(2) FS. History–New _____.

63E-3.003 Program Monitoring and Evaluation.

(1) Regional staff shall develop a monitoring plan for each Serious Habitual Offender Program as it relates to the terms and conditions of the contract, procurement response and expected services to be delivered.

(2) Regional staff shall conduct site visits, assessing program effectiveness, maintaining supporting documentation and ensuring the implementation and completion of corrective actions.

Specific Authority 985.31 FS. Law Implemented 985.31(1), (5) FS. History–New _____.

63E-3.004 Construction.

(1) The department shall assess the need for additional facilities prior to the siting or construction of more than one facility in any judicial circuit in compliance with all local zoning codes.

(2) The department shall ensure that any newly constructed or leased facility is designed to comply with the following:

- (a) The number of beds per facility shall not exceed 25.
- (b) Designated facilities for serious or habitual juvenile offenders shall be separate and secure facilities.
- (c) Provide adequate space for the activities of the facility, to include sleeping rooms, day rooms, and multipurpose areas.

(d) Provide adequate toilets, washbasins and showers consistent with the number of youth in the facility.

(e) Provide appropriate facilities to safely and securely meet the needs of handicapped youth.

(f) Provide adequate classroom space equipped with audio/video surveillance capabilities.

(g) Provide adequate outdoor space to allow at least one hour of outside activity.

(3) All construction shall comply with established building codes and requirements.

Specific Authority 985.31 FS. Law Implemented 985.31(5) FS. History--New _____.

63E-3.005 Human Immunodeficiency Virus (HIV) Testing.

(1) Serious habitual offender programs shall provide for youth to have HIV testing, as well as individual, confidential, pre- and post-test HIV counseling.

(2) Testing procedures and confidentiality of results shall be governed by Rule 63M-1, F.A.C.

Specific Authority 985.31 FS. Law Implemented 985.31(4) FS. History--New _____.

63E-3.006 Research Projects.

(1) All research project requests must follow the department's Institutional Review Board Proposal Review Process, prior to any contact with youth.

(2) No research project involving contact with youth or access to confidential information may be authorized without the department's IRB and permission from the Secretary of the department.

Specific Authority 985.31 FS. Law Implemented 985.31(4) FS. History--New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Clyde Benedix, Policy Development Officer, Office of Administration, Department of Juvenile Justice

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jane McElroy, Assistant Secretary for Administration, Department of Juvenile Justice

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 23, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 3, 2006

DEPARTMENT OF JUVENILE JUSTICE

Residential Services

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
63E-4	Intensive Residential Treatment Programs
RULE NOS.:	RULE TITLES:
63E-4.001	Purpose and Scope
63E-4.002	Program Guidelines

63E-4.003

Program Monitoring and Evaluation

63E-4.004

Quality Assurance Standards for Mental Health and Substance Abuse

63E-4.005

Construction

63E-4.006

Human Immunodeficiency Virus (HIV) Testing

63E-4.007

Research Projects

PURPOSE AND EFFECT: The proposed rule implements Section 985.311, Florida Statutes, establishing program guidelines, standards and requirements for intensive residential treatment programs for offenders less than 13 years of age.

SUMMARY: The proposed rule establishes the program guidelines for intensive residential treatment programs, including the standards for monitoring and evaluation, quality assurance measures for mental health and substance abuse, facility construction, the protocol for conducting research, and the requirements governing HIV testing.

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

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

SPECIFIC AUTHORITY: 20.316, 985.405, 985.311 FS.

LAW IMPLEMENTED: 985.311 FS.

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

DATE AND TIME: April 17, 2006, 10:00 a.m.

PLACE: DJJ Headquarters, Knight Building, Probation Conference Room 108, 2737 Centerview Drive, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Clyde Benedix, Policy Development Officer, Department of Juvenile Justice, Office of Administration, 2737 Centerview Drive, Ste. 312, Tallahassee, FL 32399-3100, (850)921-4116

THE FULL TEXT OF THE PROPOSED RULES IS:

63E-4.001 Purpose and Scope.

This rule establishes the standards and requirements for the department's administration of the intensive residential treatment program for offenders less than 13 years of age as required by statute.

Specific Authority 985.311 FS. Law Implemented 985.311(1) FS. History--New _____.

63E-4.002 Program Guidelines.

An intensive residential treatment program shall include the following components:

(1) Appropriate care, custody and supervision commensurate with the risk presented by the resident population;

(2) Incorporation of restorative justice principles;

(3) Case management;

(4) Admission and orientation;

(5) Discharge;

(6) Health services;

(7) Mental health;

(8) Substance abuse;

(9) Educational services;

(10) Pre-vocational and vocational training;

(11) Mentoring, positive role modeling and positive one-on-one and small group interactions;

(12) Recreation and leisure activities;

(13) Community involvement opportunities;

(14) Treatment modalities that include validated methods of changing negative or inappropriate behavior and promoting pro-social behavior;

(15) Self-sufficiency planning; and

(16) Counseling.

Specific Authority 985.311 FS. Law Implemented 985.311(2) FS. History–New _____.

63E-4.003 Program Monitoring and Evaluation.

(1) Regional staff shall develop a monitoring plan for each Intensive Residential Treatment Program as it relates to the terms and conditions of the contract, procurement response and expected services to be delivered.

(2) Regional staff shall conduct site visits, assessing program effectiveness, maintaining supporting documentation and ensuring the implementation and completion of corrective actions.

Specific Authority 985.311 FS. Law Implemented 985.311(1), (5) FS. History–New _____.

63E-4.004 Quality Assurance Standards for Mental Health and Substance Abuse.

(1) The department's Bureau of Quality Assurance will establish standards for mental health and substance abuse services based on department policy. These standards shall:

(a) Include the credential requirements for mental health service providers working in an intensive residential treatment program as provided for in Chapter 458 or 459, or Chapters 490 and 491, or Section 394.466(23), Florida Statutes.

(b) Be reviewed by the department's Office of Health Services annually.

(c) Be reviewed and updated as required by the Bureau of Quality Assurance annually.

(2) The Bureau of Quality Assurance will monitor and review the intensive residential treatment program annually or as required by the department.

Specific Authority 985.311 FS. Law Implemented 985.311(1), (5) FS. History–New _____.

63E-4.005 Construction.

(1) The department shall conduct an assessment of the need for additional intensive residential treatment programs prior to the siting or construction of more than one facility in any judicial circuit.

(2) The department shall ensure that any newly constructed or leased facility is designed to comply with the following:

(a) The number of beds per facility shall not exceed 25.

(b) Designated facilities for youth requiring treatment in an intensive residential treatment program shall be separate and secure facilities.

(c) Shall provide adequate space for the activities of the facility, to include sleeping rooms, day rooms and multipurpose areas.

(d) Provide adequate toilets, washbasins and showers consistent with the number of youth in the facility.

(e) Provide appropriate facility designs, which will safely and securely meet the needs of handicapped youth.

(f) Provide adequate classroom space equipped with audio/video surveillance capabilities.

(g) Provide adequate outdoor space that allows for youth to engage in, at a minimum, one hour of outside activity daily.

(3) All siting and construction activities shall comply with local zoning codes and requirements and be in compliance with all state building codes and requirements.

Specific Authority 985.311 FS. Law Implemented 985.311(5) FS. History–New _____.

63E-4.006 Human Immunodeficiency Virus (HIV) Testing.

(1) Intensive residential treatment programs shall provide for youth to have HIV testing, as well as individual, confidential, pre- and post-test HIV counseling.

(2) Testing procedures and confidentiality of results shall be governed by Chapter 63M-1, F.A.C.

Specific Authority 985.311 FS. Law Implemented 985.311(4) FS. History–New _____.

63E-4.007 Research Projects.

(1) All research project requests must follow the department's Institutional Review Board Proposal Review Process, prior to any contact with youth.

(2) No research project involving contact with youth or access to confidential information may be authorized without the department's Institutional Review Board and permission from the department's Secretary.

Specific Authority 985.311 FS. Law Implemented 985.311(4) FS. History--New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Clyde Benedix, Policy Development Officer, Office of Administration, Department of Juvenile Justice

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jane McElroy, Assistant Secretary for Administration, Department of Juvenile Justice

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 23, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 3, 2006

DEPARTMENT OF JUVENILE JUSTICE

Residential Services

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
63E-5	Sex Offender Programs
RULE NOS.:	RULE TITLES:
63E-5.001	Purpose and Scope
63E-5.002	Program Goals
63E-5.003	Program Services
63E-5.004	Performance Data
63E-5.005	Inspection, Evaluation and Monitoring

PURPOSE AND EFFECT: The proposed rule implements Section 985.308, Florida Statutes, establishing program guidelines, standards and requirements for juvenile sexual offender commitment programs.

SUMMARY: The proposed rule establishes the program guidelines for juvenile sexual offender commitment programs, including program goals and services, inspection and evaluation of the program, and standards for reporting performance data.

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

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

SPECIFIC AUTHORITY: 20.316, 985.405, 985.308 FS.

LAW IMPLEMENTED: 985.308 FS.

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

DATE AND TIME: April 17, 2006, 10:00 a.m.

PLACE: DJJ Headquarters, Knight Building, Probation Conference Room 108, 2737 Centerview Drive, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Clyde Benedix, Policy Development Officer, Department of Juvenile Justice, Office of Administration, 2737 Centerview Drive, Ste. 312, Tallahassee, FL 32399-3100, (850)921-4116

THE FULL TEXT OF THE PROPOSED RULES IS:

63E-5.001 Purpose and Scope.

This rule establishes the standards and requirements for the department's administration of juvenile sex offender commitment programs.

Specific Authority 985.308 FS. Law Implemented 985.308 FS. History--New _____.

63E-5.002 Program Goals.

A state operated or contracted juvenile sex offender program shall incorporate the following program goals:

- (1) Help youth develop appropriate sexual behavior, self-monitoring and impulse control;
- (2) Enhance victim empathy and improve social competence to prevent further sex offending;
- (3) Employ research based and statistically proven treatment strategies specifically designed for treatment of juvenile sex offenders;
- (4) Provide for comprehensive treatment and counseling to include individual, group and family counseling;
- (5) Incorporate restorative justice principles; and
- (6) Promote the involvement of community-based organizations.

Specific Authority 985.308 FS. Law Implemented 985.308(1) FS. History--New _____.

63E-5.003 Program Services.

A state operated or contracted juvenile sex offender program shall include the following components:

- (1) Appropriate care, custody and supervision commensurate with the risk presented by the resident population;
- (2) Case management;
- (3) Admission and orientation;
- (4) Diagnostic evaluation;
- (5) Health services;
- (6) Mental health;
- (7) Substance abuse;
- (8) Educational services;
- (9) Pre-vocational/vocational training, to include job training activities;
- (10) Mentoring, positive role modeling and positive one-on-one and small group interactions;
- (11) Social and life skill enhancement;
- (12) Recreation and leisure activities; and
- (13) Transportation.

Specific Authority 985.308 FS. Law Implemented 985.308 FS. History--New _____.

63E-5.004 Performance Data.

A state operated or contracted juvenile sex offender program shall utilize methods to measure and capture performance data for each youth. The program shall report escapes and batteries committed by youth upon staff and upon other resident youth.

Specific Authority 985.308 FS. Law Implemented 985.308(10) FS. History--New _____.

63E-5.005 Inspection, Evaluation and Monitoring.

Inspection, evaluation and monitoring of juvenile sex offender programs shall be conducted in compliance with the Quality Assurance system, Contract Management and Program Monitoring, and Monitoring of Residential Programs – Monitoring/Reviewing Specialized Treatment Services in Department Residential and Correctional Facilities policies.

(1) The Quality Assurance system shall:

(a) Establish quality assurance goals and objectives for Specialized Treatment Services, Sex Offender Treatment Services;

(b) Evaluate each Specialized Treatment Services, Sex Offender Treatment Services program operated by the department or a provider under a contract with the department and establish minimum thresholds for each program component.

(2) Contract Management procedures shall ensure that contractual services are delivered in accordance with the terms and conditions of the contract prior to approving invoices for payment.

(3) Program Monitoring procedures shall ensure that quality services are provided, that department standards are maintained, and department policies, related statutes and rules are followed.

(4) Monitoring of Residential Services – Monitoring/Reviewing Specialized Treatment Services in Department Residential and Correctional Facilities shall:

(a) Guide the department regional program monitors or staff in monitoring and reviewing Department Specialized Treatment Services, Sex Offender Treatment Services;

(b) Establish recommended key indicators and key measures for Specialized Treatment Services, Sex Offender Treatment Services;

(c) Develop tools, such as reviewer checklists, to capture program performance and compliance with established recommended key indicators and key measures for Specialized Treatment Services, Sex Offender Treatment Services.

Specific Authority 985.308 FS. Law Implemented 985.308(9) FS. History--New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Clyde Benedix, Policy Development Officer, Office of Administration, Department of Juvenile Justice

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jane McElroy, Assistant Secretary for Administration, Department of Juvenile Justice
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 23, 2006
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 3, 2006

DEPARTMENT OF JUVENILE JUSTICE

Medical

RULE CHAPTER NO.: 63M-1
RULE CHAPTER TITLE: Human Immunodeficiency Virus (HIV)

RULE NOS.: 63M-1.001, 63M-1.002
RULE TITLES: Testing, Confidentiality

PURPOSE AND EFFECT: The proposed rule implements Sections 985.31(4)(e) and 985.311(4)(e), Florida Statutes, governing the accessibility of testing results for human immunodeficiency virus in specified programs.

SUMMARY: The proposed rule establishes the guidelines for making HIV testing available in delinquency programs, and provides for the confidentiality of test results.

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

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

SPECIFIC AUTHORITY: 20.316, 985.405, 985.31, 985.311 FS.

LAW IMPLEMENTED: 985.31(4)(e), 985.311(4)(e) FS.

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

DATE AND TIME: April 17, 2006, 10:00 a.m.

PLACE: DJJ Headquarters, Knight Building, Probation Conference Room 108, 2737 Centerview Drive, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Clyde Benedix, Policy Development Officer, Department of Juvenile Justice, Office of Administration, 2737 Centerview Drive, Ste. 312, Tallahassee, FL 32399-3100, phone number (850)921-4116

THE FULL TEXT OF THE PROPOSED RULES IS:

63M-1.001 Testing.

(1) Department facilities housing juveniles shall ensure that their facility operating procedures allow for the following:

(a) Means by which resident youth may request, with appropriate informed consent, an HIV/AIDS test;

(b) The availability of testing either on or off site;

(c) The availability of appropriate counseling;

(d) Confirmatory testing when indicated; and

(e) Medical follow-up.

(2) Pregnant youth must be offered an HIV test and, should the youth decline, a documented written objection must be filed in the child’s individual healthcare record.

Specific Authority 985.31, 985.311 FS. Law Implemented 985.31(4)(e), 985.31(4)(e) FS. History–New _____.

63M-1.002 Confidentiality.

(1) Each facility shall include in their facility operating procedures a description of who in the facility has access to HIV test results.

(2) The identity of the test subject shall remain confidential, as are records containing laboratory reports or any notation of a laboratory report relating to HIV testing.

(3) The results of any serologic blood or urine test shall be sealed in an envelope marked “confidential” and filed in the youth’s individual healthcare record.

(4) Written consent shall be obtained from the youth prior to the release of HIV/AIDS status to relevant healthcare providers.

Specific Authority 985.31, 985.311 FS. Law Implemented 985.31(4)(e), 985.31(4)(e) FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Clyde Benedix, Policy Development Officer, Office of Administration, Department of Juvenile Justice

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jane McElroy, Assistant Secretary for Administration, Department of Juvenile Justice

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 23, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 3, 2006

FLORIDA HOUSING FINANCE CORPORATION

RULE NOS.:	RULE TITLES:
67-57.001	Purpose and Intent
67-57.005	Definitions
67-57.010	Fees
67-57.020	Notice of Funding Availability (NOFA)
67-57.030	Membership Application Procedures
67-57.040	Property Standards
67-57.050	HOP Program Restrictions
67-57.060	Eligible Homebuyer Requirements
67-57.070	Homebuyer Loan Process
67-57.080	HOME Regulations

PURPOSE, EFFECT AND SUMMARY: This rule establishes the procedures by which the Florida Housing Finance Corporation shall administer the Homeownership Pool (HOP) Program which provides down payment and closing costs assistance to eligible homebuyers. The Rule and adopted reference materials are necessary and appropriate for the efficient administration of the Program.

SPECIFIC AUTHORITY: 420.507(12), (14) FS.

LAW IMPLEMENTED: 420.507(23), 420.5089 FS.

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

DATE AND TIME: Wednesday, April 19, 2006, 10:00 a.m. – 12:00 Noon

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Bridget Warring, Homeownership Loan Program Manager, Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, (850)488-4197

THE FULL TEXT OF THE PROPOSED RULES IS:

67-57.001 Purpose and Intent.

The purpose of this rule chapter is to establish the Homeownership Pool (“HOP”) Program procedures by which the Corporation shall administer the Application process, determine loan amounts, service loans, and provide purchase assistance to Eligible Homebuyers under the HOME Investment Partnerships Program (HOME) as authorized by Section 420.5089, F.S. and HUD regulations, 24 CFR § 92, which is adopted and incorporated into this rule chapter by reference and which is available on our website at: <http://www.floridahousing.org/Home/Developers/HomeownershipPrograms/HOP>.

Specific Authority 420.507(12), (14) FS. Law Implemented 420.507(23), 420.5089(2) FS. History–New _____.

67-57.005 Definitions.

(1) “Adjusted Income” means the gross income from wages or assets, cash or non-cash contributions, and any other resources and benefits determined to be income by the U.S. Department of Housing and Urban Development (HUD), adjusted for household size.

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

(3) “AMI” or “Area Median Income” means the median income for an area, with adjustments made for household size, as determined by the U. S. Department of Housing and Urban Development (HUD).

(4) “Applicant” means any person or legally formed entity that is seeking participation in one of the Corporation’s programs.

(5) “Appraisal” means an appraisal of a residence prepared by a Qualified Appraiser.

(6) “Board” means the Board of Directors of Florida Housing Finance Corporation.

(7) “CHDO” means a state-certified Community Housing Development Organization as determined by the U.S. Department of Housing and Urban Development (HUD).

(8) “CLT” or “Community Land Trust” means a community housing development organization which acquires or develops parcels of land for the primary purpose of providing affordable housing in perpetuity through conveyance of the structural improvement subject to a long term ground lease which retains a preemptive option to purchase any such structural improvement at a price determined by a formula designed to ensure the improvement remains affordable in perpetuity.

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

(10) “Contact Person” means the person with whom the Corporation will correspond concerning the Application; this person cannot be a third party consultant.

(11) “Corporation” means the Florida Housing Finance Corporation as defined in Section 420.503, F.S.

(12) “Default” means the failure to make required payments on a financial loan secured by a first mortgage which leads to foreclosure and loss of property ownership.

(13) “Disability” means, pursuant to the Americans with Disabilities Act of 1990, Public Law 101-336, with respect to an individual:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(b) A record of such an impairment; or

(c) Being regarded as having such impairment.

(14) “Eligible Homebuyer” means one or more natural persons or a household, irrespective of race, creed, religion, national origin, or sex, determined by the Corporation to be of very low or low to moderate income and who will utilize the Unit as their primary residence.

(15) “Eligible Properties” means newly constructed Units that are single family detached houses, manufactured homes, homes with shared-wall construction, condominiums or co-ops.

(16) “Executive Director” means the Executive Director of the Florida Housing Finance Corporation.

(17) “F.A.C.” means the Florida Administrative Code.

(18) “FAW” means the Florida Administrative Weekly.

(19) “F.S.” means the Florida Statutes.

(20) “Financial Beneficiary” means any Member and its Principals who receives or will receive a financial benefit of 3% or more of the total development cost of the Unit.

(21) “Financial Institution” means a state or federal association, bank, trust company, international bank agency, representative office or international administrative office, or credit union.

(22) “First Mortgage” means the recorded mortgage which is superior to any other lien or encumbrance on the property.

(23) “HOME” means the HOME Investment Partnerships Program administered by the Corporation pursuant to HUD Regulation 24 CFR § 92 and Section 420.5089, F.S.

(24) “HOP” means the Homeownership Pool Program administered by the Corporation pursuant to HUD Regulation 24 CFR § 92 and Section 420.5089, F.S.

(25) “HOP Loan” means a zero percent (0%) interest rate, non-amortizing second mortgage loan made to an Eligible Homebuyer, who has an Adjusted Income that does not exceed eighty percent (80%) AMI, for the purpose of down payment in the amount necessary to reduce the purchase price to an affordable amount and closing costs assistance.

(26) “HOP Membership Application” means the forms and exhibits created by the Corporation for developers of affordable housing to apply for participation in the HOP program.

(27) “HUD” means the U.S. Department of Housing and Urban Development.

(28) “Loan Servicing” means the process by which the Corporation or Corporation’s designee reviews potential Eligible Homebuyers and services and monitors HOP Loans.

(29) “Low Income” means the Adjusted Income for persons or households that does not exceed eighty percent (80%) AMI.

(30) “Maximum Purchase Price” means the maximum purchase price of a Unit in an area as determined by HUD.

(31) “Member” means an entity, which includes non-profit and for-profit organizations, Community Housing Development Organizations (CHDOs), counties and eligible municipalities that are recipients of SHIP funding, and the United States Department of Agriculture – Rural Development (USDA-RD), which has been approved by the Corporation to participate in the HOP program.

(32) “Mortgage” means Mortgage as defined in Section 420.503, F.S.

(33) “Non-Participating Jurisdiction” or “Non-PJ” means a unit of general local government that has not been designated by HUD to receive annual HOME allocations.

(34) “Note” means a unilateral agreement containing an express and absolute promise to pay to the Corporation a principal sum of money on a specified date, which provides the interest rate, and is secured by a mortgage.

(35) “PLP” or “Predevelopment Loan Program” means the Predevelopment Loan Program administered by the Corporation.

(36) “Participating Jurisdiction” or “PJ” means a unit of general local government that is designated by HUD to receive annual HOME allocations.

(37) “Principal” means any general partner of a Member, and any officer, or director of any Member or of any general partner of a Member.

(38) “Qualified Appraiser” means an individual or firm that is licensed in Florida and is qualified as an appraiser by the society of real estate appraisers or the American Institute of Real Estate Appraisers, and acceptable or approved by FHA, VA, FannieMae, Freddie Mac or any private mortgage insurance provider to provide appraisal reports.

(39) “SHIP” means the State Housing Initiatives Partnership Program.

(40) “Second Mortgage” means the recorded mortgage securing the HOP Loan which is subordinate only to the First Mortgage unless otherwise approved by the Board.

(41) “Self Help” means a type of construction utilizing sweat equity operating under the guidelines Habitat for Humanity International or USDA-RD.

(42) “Site” means the parcel of property on which an individual housing Unit will be located.

(43) “State” means the State of Florida.

(44) “Threshold” means the minimum criteria to be met for an Application to be considered complete, as required by this rule chapter and the Application Package.

(45) “Unit” means a residential unit used as a single family residence and the land appurtenant that is taxed as real property under state laws.

(46) “USDA-RD” means United States Department of Agriculture – Rural Development which includes Section 502 Direct Loans and Section 502 Self Help Loans.

(47) “Very Low-Income” means the Adjusted Income of persons or households that does not exceed fifty percent (50%) AMI.

(48) “Website” means the Florida Housing Finance Corporation website, the Universal Resource Locator (URL) of which is www.floridahousing.org.

Specific Authority 420.507(12), (23) FS, Law Implemented 420.507(23), 420.5089 FS, History–New

67-57.010 Fees.

(1) The Corporation shall collect a HOP Membership Application fee of \$500, with an annual renewal fee of \$50, from all entities when applying to become a member of the pool for the HOP program.

(2) Florida Housing shall be responsible for any HOP Loan servicing fees associated with the required homebuyer analysis and on-going compliance.

(3) Any fees associated with inspections required under 24 CFR § 92.251(a)(2) are the Member’s responsibility.

Specific Authority 420.507(12), (23) FS, Law Implemented 420.507(19), 420.5089 FS, History–New

67-57.020 Notice of Funding Availability (NOFA)

(1) The Corporation shall post NOFAs, which advise of the availability and set-asides of HOP funding, on the Corporation’s Website at <http://www.floridahousing.org/Home/Developers/HomeownershipPrograms/HOP> and publish in the Florida Administrative Weekly (FAW).

(2) Funding will be made available in the form of reservations for Eligible Homebuyers on a first-come, first-served basis.

Specific Authority 420.507(12), (23) FS, Law Implemented 420.5089 FS, History–New

67-57.030 Membership Application Procedures.

(1) In order to participate in the HOP program, the Applicant must first apply to become a Member by meeting the requirements of the HOP Membership Application (“HOP Membership Application – 4/1/06”), which is adopted and incorporated herein by reference and is available on the Corporation’s Website at <http://www.floridahousing.org/Home/Developers/HomeownershipPrograms/HOP>.

(2) Staff shall review the Applicant’s qualifications and experience, and upon verification that the threshold requirements have been met, Applicants shall be notified and provided a Member number.

(3) If a Member submits a reservation for a Unit that was part of a development requesting HOME funds in a previous application to Florida Housing, pursuant to rule Chapter 67-50, F.A.C., and that Member or any Principal thereof had any ownership interest in that previous applicant entity, then it is deemed that the Member contemplated using HOME funds for the Unit prior to its construction and all applicable HOME provisions relating to Davis-Bacon, Affirmative Marketing, and environmental review will apply to that Unit, pursuant to 24 CFR § 92.

(4) If a Member has previously been awarded HOME funds for a development, then all of the Units committed to in conjunction with that award of funds, subject to the policy adopted by the Board on October 14, 2005, which is adopted and incorporated by reference, must be delivered before any other Units in the development are eligible for a reservation of

funds under this chapter. This policy is available on the Corporation's Website at <http://www.floridahousing.org/Home/Developers/HomeownershipPrograms/HLP>.

(5) Beginning January 31, 2008, Members must renew their membership by advising any changes to the development team or organization structure and paying a \$50 renewal fee by January 31st of each year.

(6) Failure to submit the fully and properly completed form and payment of the fee will result in the Member being disqualified from HOP and the cancellation of any pending reservations.

Specific Authority 420.507(12), (23) FS, Law Implemented 420.507(18), 420.5089 FS, History--New

67-57.040 Property Standards.

(1) All Units must meet the more stringent of the State or local building code requirements as applicable. All Units must contain at a minimum:

- (a) Range and oven and Energy Star rated refrigerator;
- (b) Washer and dryer hookups;
- (c) Telephone hook-ups (minimum of 2);
- (d) Cable or satellite TV hookups (minimum of 2);
- (e) Hallways should be no less than 36" wide;
- (f) Thermostat and light switches should be no more than 48" above floor level;
- (g) Electrical outlets should be located no less than 18" above floor level;
- (h) Reinforced walls for future installation of horizontal grab bars in toilet, bathtub, and shower walls;
- (i) Lever-action handles on all doors and faucets in Units and public areas;
- (j) Toggle-type switches for lights and fans;
- (k) Minimum of 32" clear openings in all interior and bathroom doorways; and

(1) At least one accessible means of egress/ingress, which may be waived for manufactured housing units.

(2) All Units must include the following exterior features:

- (a) Minimal landscaping;
 - (b) Paved/surfaced driveway and walkway to one entry door; and
 - (c) Off-street parking.
- (3) Site standards must include:

(a) Slope and terrain must be suitable for development. There shall be no problems with drainage, steep slopes or waterways on the site;

(b) Access to site must be compatible with existing traffic patterns and street capacity. Site shall not enter or exit onto a major high-volume traffic artery that would create problems for resident access or hazards to children;

(c) Site must be free from excessive traffic and noise, including that from cars, trains and airplanes. Members must submit a mitigation plan, detailing the proposed means and

methods of risk reduction, if a Unit is (i) located within 3,000 feet of an active railroad line and/or subject to high railroad noise levels, (ii) located within 1,000 feet of a major high-volume traffic artery, freeway, or other highway would carry a daily volume of 25,000 motor vehicles or more, or (iii) within 500 feet of a highway that would carry more than 10,000 vehicles but fewer than 25,000. The site must not be located in an airport clear zone;

(d) The site must be free from significant industrial or agricultural hazards, including hazardous substances, toxic chemicals, gas, oil and chemical storage tanks and facilities, runoff, spills, odors, noise and airborne particulates; and

(e) The neighborhood shall be primarily residential and adjacent areas should be compatible with residential development.

(4) Manufactured homes must meet or exceed the following standards, which are adopted and incorporated herein by reference and are available at <http://www.floridahousing.org/Home/Developers/HomeownershipPrograms/HOP>, unless superseded by state or local building codes:

(a) Meet the manufactured Home Construction and Safety Standards (MHCSS) pursuant to 24 CFR XX, Part 3280;

(b) Be sited on a permanent foundation in accordance with Handbook 4145.1, REV-2, Change 1, Feb. 14, 1992;

(c) Be built to the increased standards in the HOP Manufactured Housing Standards;

(d) Be considered real property by the local property appraiser and the land and home must be taxed together;

(e) Be connected to permanent utility hook-ups; and

(f) All purchase contracts must be turn-key.

Specific Authority 420.507(12), (23) FS, Law Implemented 420.507(18), 420.5089 FS, History--New

67-57.050 HOP Program Restrictions.

(1) All units must be new construction and cannot have been previously occupied.

(2) At no time shall the HOME financing exceed the Maximum Per Unit Subsidy Limits pursuant to 24 CFR § 92.250.

(3) The maximum per-unit subsidy of HOME funding is limited to the lesser of twenty five percent (25%) of the purchase price of the Unit, \$70,000, or the amount necessary to meet the borrower analysis criteria, with the exception of Eligible Homebuyers with disabilities and those at fifty percent (50%) AMI or below, which shall not exceed thirty five percent (35%) of the purchase price, \$80,000, or the amount necessary to meet the borrower analysis criteria.

(4) Eligible participants include non-profit organizations, as defined in Internal Revenue Code of 1986 (26 USC 42, subsections 501(c)(3) or 501(c)(4)) and organized under Chapter 617, F.S., if a Florida Corporation, or under similar state law if organized in a jurisdiction other than Florida,

for-profit organizations, Community Housing Development Organizations (CHDOs), counties and eligible municipalities that are recipients of SHIP funding, and the United States Department of Agriculture – Rural Development (USDA-RD), which has been approved by the Corporation to participate in the HOP program.

(5) Any Member may not be a Financial Beneficiary of another Member.

(6) Members shall be limited to a maximum of 60 Units per calendar year and no more than 10 Units in the reservation system at a time.

(7) The HOP Loan shall be evidenced by a properly executed and recorded note and secured by a properly executed and recorded mortgage provided by the Corporation.

(8) The HOP Loan must be in not lower than a second lien position and shall not share priority with any other liens unless approved by the Board.

(9) The combined loan-to-value ratio cannot exceed one hundred five percent (105%) of the after construction or appraised value of the HOME-Assisted Unit with the exception of Eligible Homebuyers with disabilities for which the ratio cannot exceed one hundred twenty percent (120%). In the loan-to-value calculation, the Corporation will not include any subsidy that contains forgivable terms within a five (5) year period or any portion of a subsidy that is forgivable within a five (5) year period.

(10) In the case of Community Land Trusts, Eligible Homebuyers may assume HOP Loans, subject to further approval by Corporation staff.

(11) When HOME funds are used with other Corporation programs, the more stringent borrower analysis criteria will apply as it relates to eligibility requirements.

(12) All Units must undergo any inspections required under CFR § 92.251(a)(2)24.

(13) If a Member or any Principal, or Affiliate of a Member has any existing developments participating in any Corporation programs that remain in non-compliance with the Code, the applicable Florida Statutes and rule chapters, loan documents, or any loan commitment after any applicable cure period granted for correcting such non-compliance has ended, at the time of submission of the HOP homebuyer reservation the requested allocation will be denied.

(14) If the Board determines that any Member or any Affiliate of a Member has:

(a) Engaged in fraudulent actions;

(b) Materially misrepresented information to the Corporation regarding any of its developments within the current Application or in any previous applications for financing or an allocation of Housing Credits administered by the Corporation;

(c) Been convicted of fraud, theft or misappropriation of funds;

(d) Been excluded from federal or Florida procurement programs; or

(e) Been convicted of a felony, and upon determination by the Board that such action substantially increases the likelihood that the Member will not be able to produce quality affordable housing, the Member or any Principal, or Affiliate of an Member or developer will be ineligible for funding or allocation in any program administered by the Corporation for a period of two (2) years, which will begin from the date the Board makes such determination, pursuant to Sections 420.507(14) and (34), F.S. Such determination shall be made either pursuant to a proceeding conducted pursuant to Sections 120.569 and 120.57, F.S., or as a result of a finding by a court of competent jurisdiction.

Specific Authority 420.507(12) FS, Law Implemented 420.5089(2), FS, History–New _____.

67-57.060 Eligible Homebuyer Requirements

(1) In order to receive a HOP Loan under the HOP program, the Eligible Homebuyer must:

(a) Have an Adjusted Income that does not exceed eighty percent (80%) AMI;

(b) Qualify as an Eligible Homebuyer at the time of purchase;

(c) Occupy the Unit as their principal residence throughout the affordability period;

(d) Provide a minimum down payment of \$500, except when participating in a Self-Help program where the minimum hours of sweat equity are accomplished;

(e) Not have personal assets in excess of \$50,000, excluding equity contributions toward the Unit; and

(f) Comply with the HOP Homebuyer Underwriting Guidelines (4/1/06), which are adopted and incorporated herein by reference and available at <http://www.floridahousing.org/Home/Developers/HomeownershipPrograms/HOP>, if receiving a first mortgage loan.

(2) The Eligible Homebuyer must maintain the following types of insurance, naming the Corporation as an additional insured:

(a) Replacement cost hazard insurance;

(b) Title insurance in the amount of the HOP Loan; and

(c) Flood insurance if the Unit is located within the 100-Year Floodplain.

(3) Repayment of principal on the HOP Loan shall be deferred until the homebuyer sells, transfers or disposes of the Unit either voluntarily or involuntarily, or ceases to occupy the Unit as a principal residence pursuant to 24 CFR § 92.254(4).

(4) The Corporation will consider resubordinating its HOP Loan to a first mortgage loan when a refinancing occurs. In making a determination, the Corporation will review the following terms of the new transaction: loan type, term of the loan, interest rate, type of interest rate (variable or fixed),

principal balance of the loan, reason for the request and whether or not the terms of the new loan are beneficial to the homebuyer.

(a) The homebuyer is subject to the following:

1. The homebuyer must have resided in the property for at least one year;

2. No additional debt can be refinanced into the new first mortgage, with the exception of Unit repairs or improvements which requires that these funds be escrowed;

3. The homebuyer cannot receive any cash out as a result of the refinancing; and

4. The homebuyer is limited to a single approved resubordination prior to repayment of the mortgage.

(b) The homebuyer is subject to a processing fee not to exceed \$50. In the event it is determined that the homebuyer is not eligible, fifty percent (50%) of the processing fee will be returned.

Specific Authority 420.507(12) FS, Law Implemented 420.5089(2) FS, History–New _____.

67-57.070 Homebuyer Loan Process

(1) Once construction on the Unit has begun, Members may reserve homebuyer financing, on a loan-by-loan basis, by submitting a HOP homebuyer reservation which must include the date of the foundation inspection.

(2) A completed environmental checklist with a copy of the building permit must be received and approved by the Corporation within fourteen (14) Calendar Days of making the reservation or the reservation will be cancelled.

(3) Funds shall be reserved for a maximum of one hundred eighty (180) Calendar Days. If the funds for the Eligible Homebuyer are not drawn within that period, the reservation of funds shall be cancelled and the Member must submit a new reservation.

(4) Existing reservations in counties affected by a newly designated Presidentially Declared Disaster Area shall be granted an automatic ninety (90) Calendar Day extension of the reservation. If additional time is needed, Members must submit a request for an extension which requires Board approval. Reservations without Board approved extensions will be cancelled.

(5) At least four (4) weeks prior to the HOP Loan closing, the Member shall submit to Loan Servicing a borrower analysis package, which shall include:

(a) Borrower analysis worksheet;

(b) Certification or evidence of homebuyer education provided by an approved HUD or SHIP counselor;

(c) Copy of first mortgage lender's approval letter;

(d) Third party documentation of household income;

(e) Copy of as-built property appraisal; and

(f) Copy of purchase contract and any addendums.

(6) Loan Servicing shall underwrite the HOP Loan and review the terms and conditions of the first mortgage loan.

(7) A minimum of ten (10) Calendar Days prior to closing, the Member shall provide the loan closing package, which shall include:

(a) Requisition of funds;

(b) Copy of Certificate of Occupancy ("CO");

(c) Loan detail report;

(d) Proof of property insurance;

(e) Proof of title insurance; and

(f) Amenities certification.

(8) Members using Self Help under USDA-RD Section 502 can make reservations four (4) weeks prior to the homebuyer closing. Once a reservation is received, the borrower analysis package, including the statutory environmental checklist, must be sent to Loan Servicing within ten (10) Calendar Days for review and approval. Upon approval, the closing can occur and funds will be held in escrow by USDA-RD until completion of the loan closing package.

Specific Authority 420.507(12), (23) FS, Law Implemented 420.507(18), 420.5089 FS, History–New _____.

67-57.080 HOME Regulations.

(1) All Units must conform to the following federal requirements, as applicable, which are adopted and incorporated herein by reference, available at <http://www.floridahousing.org/Home/Developers/HomeownerShipPrograms/HOP>:

(a) Adjusted Income as enumerated in 24 CFR § 5.609;

(b) Affirmative Marketing as enumerated in 24 CFR § 92.351;

(c) Affordability Requirements, pursuant to 24 CFR § 92.254(4);

(d) Community Housing Development Organization (CHDO) as enumerated in Section 420.503(7), F.S. and organized pursuant to 24 CFR § 92 and the CHDO Checklist (11/02):-

(e) Conflict of Interest as enumerated in 24 CFR § 92.356, 24 CFR § 85.36 and 24 CFR § 84.42;

(f) Debarment and Suspension as enumerated in 24 CFR § 24;

(g) Displacement, Relocation, and Acquisition as enumerated in 24 CFR § 92.353, 42 U.S.C. 4201-4655, 49 CFR § 24, 24 CFR § 42 (Subpart C) (Chapter 104(d) "Barney Frank Amendments");

(h) Economic Opportunity as enumerated in 24 CFR § 135;

(i) Environmental Review as enumerated in 24 CFR § 58.35 (a) and (b), 24 CFR § 92.352, and National Environmental Policy Act of 1969;

(j) Equal Opportunity and Fair Housing as enumerated in 24 CFR § 92.202 and 92.250, 42 U.S.C. 2000d et seq., 42 U.S.C. 3601-3620, 42 U.S.C. 6101, and 24 CFR § 5.105(a);

(k) Equal Opportunity Employment as enumerated in 41CFR § 60;

(l) Flood Insurance as enumerated in Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106);

(m) Handicapped Accessibility as enumerated in 24 CFR § 8;

(n) Labor Standards as enumerated in 24 CFR § 92.354 and 40 U.S.C. 3142-3144, 3146 & 3147 (Davis-Bacon Act), and 24 CFR § 70 (volunteers);

(o) Maximum Per Unit Subsidy Limits as enumerated in 24 CFR 92.250;

(p) Minority/Women Employment as enumerated in 24 CFR § 85.36(e);

(q) Property Standards as enumerated in 24 CFR § 92.251;

(r) Recapture provisions as enumerated in 24 CFR § 92.254(5)(ii)(1); and

(s) Record keeping requirements as enumerated in 24 CFR § 92.508 and 24 CFR § 92.254.

(2) A Unit shall qualify as affordable housing if:

(a) The value or initial purchase price of the property after construction does not exceed ninety-five percent (95%) of the median purchase price for the area;

(b) The purchase price of the property after construction must not exceed the appraised value of the property; and

(c) The Model Energy Code requirements are met or exceeded as enumerated in 2005 Florida State Energy Code (which is more stringent than Section 101 of the Energy Policy Act of 1992).

(3) Members are responsible for providing the assigned servicing entity with completed documentation of the homebuyer.

Specific Authority 420.507(12) FS, Law Implemented 420.5089(2) FS, History--New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bridget Warring, Homeownership Loan Program Manager, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: David R. Westcott, Deputy Development Officer, Homeownership, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

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

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 32, No. 5, February 3, 2006

Any person requiring special accommodation at this hearing because of a disability or physical impairment should contact Bridget Warring at the above address. If you are hearing or

speech impaired, please use the Florida Dual Party Relay system, which can be reached at 1(800)955-8770 (Voice) or 1(800)955-9771 (TDD).

DEPARTMENT OF FINANCIAL SERVICES

Division of State Fire Marshal

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
69A-60	The Florida Fire Prevention Code
RULE NO.:	RULE TITLE:
69A-60.004	Standards of the National Fire Protection Association, NFPA 101, the Life Safety Code, Florida 2003 Edition, Adopted

PURPOSE AND EFFECT: To reconcile a conflict between the Florida Fire Prevention Code and the Florida Building Code and to make the Florida Fire Prevention Code uniform with the Americans with Disabilities Act, which was incorporated into the Florida Building Code.

SUMMARY: Revises the distance of new handrails from walls to 1 and 1/2 inches, to become consistent with the Florida Building Code.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost 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, 633.0215, 633.025 FS.

LAW IMPLEMENTED: 633.01, 633.0215, 633.025 FS.

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

DATE AND TIME: April 17, 2006, 9:00 a.m.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jim Goodloe, Chief, Bureau of Fire Prevention, 200 East Gaines Street, Tallahassee, Florida 32399-0342. Phone (850)413-3621, Fax (850)414-6119, email: Jim.Goodloe@fldfs.com.

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 48 hours before the program by contacting Millicent King, Phone (850)413-3619.

THE FULL TEXT OF THE PROPOSED RULE IS:

69A-60.004 Standards of the National Fire Protection Association, NFPA 101, the Life Safety Code, Florida 2003 Edition, Adopted.

(1) through (2) No change.

(3) Subdivision 7.2.2.4.4.5, of NFPA 101, Florida 2003 edition, as adopted herein, shall read: New handrails shall be installed to provide a clearance of not less than 1 and 1/2 inches between the handrail and the wall or other surface to which it is fastened.

Specific Authority 633.01, 633.0215, 633.025 FS. Law Implemented 633.01, 633.0215, 633.025 FS. History—New 11-15-01, Amended 11-28-04, Formerly 4A-60.004, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jim Goodloe, Chief, Bureau of Fire Prevention, Division of State Fire Marshal, Department of Financial Services

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 3, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 17, 2006

DEPARTMENT OF FINANCIAL SERVICES

Division of Consumer Services

RULE NO.:	RULE TITLE:
69J-2.002	Alternative Procedures for Resolution of Disputed Commercial Lines Residential Insurance Claims Arising from Hurricane and Tropical Storm Damage

PURPOSE AND EFFECT: The rule establishes a mediation program for the resolution of disputed commercial residential insurance claims resulting from the 2004 and 2005 hurricanes and tropical storms that hit the State of Florida.

SUMMARY: The rule requires insurers to notify commercial residential policyholders of their right to request mediation of their disputed claims. The rule creates procedures for a notice of the right to mediation, requesting mediation, assignment of mediators, payment for mediation, scheduling mediation conferences, and the conduct of the mediation conference.

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

SPECIFIC AUTHORITY: 624.308, 626.9611, 627.7015(4) FS.

LAW IMPLEMENTED: 624.307(1), (2), (4), (5), 624.316, 624.3161, 624.317, 624.318, 624.320, 624.324, 624.418(2)(a), 624.4211, 626.859, 626.874, 626.877, 626.9541(1)(a), (e), (i), (u), 626.9561, 626.9641(1)(g), 627.7015 FS.

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

DATE AND TIME: April 18, 2006, 10:00 a.m.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tom Terfinko, Assistant Director, Division of Consumer Services, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0320, (850)413-5802

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program is asked to advise the Department at least 5 calendar days before the hearing by contacting the person listed above.

THE FULL TEXT OF THE PROPOSED RULE IS:

69J-2.002 Alternative Procedures for Resolution of Disputed Commercial Lines Residential Insurance Claims Arising from Hurricane and Tropical Storm Damage.

(1) Purpose and Scope. This rule implements Section 627.7015, F.S., by setting forth a mediation procedure prompted by the critical need for effective, fair, and timely handling of commercial lines residential insurance claims arising out of damages, caused by hurricanes and tropical storms during the 2004 and 2005 hurricane seasons (June 1 to November 30 of each year), to property insured by a commercial residential insurance policy. The procedure established by this rule is available to those first party claimants who have commercial residential claims resulting from damage to property located in the state of Florida. This rule does not apply to commercial insurance, private passenger motor vehicle insurance or to liability coverage contained in property insurance policies. Personal lines residential insurance claims can be mediated pursuant to a separate rule.

(2) Definitions. The following definitions apply to the terms of this rule as used herein.

(a) "Administrator" means the Department or its designee.

(b) "Authorized representative" means that individual who has been authorized, by the appropriate governing body of a condominium association, cooperative association, or homeowners' association, to represent the association at mediation, make decisions on the association's behalf at mediation, and enter into a binding settlement agreement on behalf of the association.

(c) “Claim” means any matter on which there is a dispute or for which the insurer has denied payment. A “claim” is not subject to mediation unless the amount of difference between the positions of the parties is \$500 or more notwithstanding any applicable deductible. A “claim” is not subject to mediation when the insurer has reported allegations of fraud involving that claim to the Department’s Division of Insurance Fraud.

(d) “Department” means the Department of Financial Services or its designee.

(e) “Mediator” means an individual selected by the Department to mediate disputes pursuant to this rule. The mediators will be selected from a panel of circuit court - civil certified mediators approved by the Florida Supreme Court pursuant to the Florida Rules of Certified and Court Appointed Mediators.

(f) “Governing documents” are those documents creating the forms of property ownership governed by Chapters 718, 719, and 720, F.S., and those documents creating the entities governed by Chapters 718, 719, and 720, F.S.

(g) “Party” or “parties” includes the insured and the insurer, and their respective representatives.

(3) Notice of Right to Mediate Disputed Claims. The insurer shall mail a notice of the right to mediate disputed claims to the insured within 5 days of the time the insured or the Department notifies an insurer of a dispute regarding the insured’s claim. An insurer shall mail to the insured a notice of the right to mediate disputed claims in the same mailing as the insurer’s notice that the claim is to be denied. An insurer is not required to mail to the insured a notice of right to mediate disputed claims if the claim is denied because the amount of the claim is less than the applicable deductible. Notice shall be in writing and shall be legible, conspicuous, and printed in at least 12-point type. The first paragraph of the notice shall contain the following statements: “Tom Gallagher, Chief Financial Officer for the State of Florida, has adopted an emergency rule to facilitate fair and timely handling of commercial residential property insurance claims arising out of the hurricanes that have devastated so many residences in Florida. The emergency rule gives you the right to attend a mediation conference with the insurer in order to settle any dispute about your claim. An independent mediator, who has no connection with the insurer, will be in charge of the mediation conference. You may begin the mediation process by completing a Commercial Residential Mediation Request Form and returning it to the Department of Financial Services. Forms are available by calling the Department at 1(800)227-8676 (1(800)22-STORM), by faxing the Department at (850)488-6372, or by logging onto the Department’s website at <http://www.fldfs.com>. Once the Department receives your completed Commercial Residential

Mediation Request Form, your insurance company will be notified, and will have 21 days to settle your claim before your request for mediation is further processed.

(4) Request for mediation. The Department shall notify the insurer upon receipt of a completed Commercial Residential Mediation Request Form. The Commercial Residential Mediation Request Form (Form No. DFS-II-1669, Revised 3/06) is hereby incorporated by reference. Twenty-one (21) days from the date the Department receives the completed form, the Department will forward the form to the administrator for processing. If an insurer receives a request for mediation, the insurer shall promptly instruct the insured to call the Department at 1(800)227-8676 (1(800)22-STORM) to obtain a Commercial Residential Mediation Request Form.

(5) Mediation Costs. Pursuant to Section 627.7015(3), F.S., the insurer shall bear all costs associated with the mediation program. At the time the Department forwards the request form to the administrator for processing, the insurer shall pay a non-refundable administrative fee of \$1,250 to the administrator to offset the expenses of the program. The insurer shall pay a \$300 hourly fee for the mediator’s time during the mediation conference. The mediator’s fee will be billed by the administrator to the insurer upon completion of the mediation, and payment shall be made to the administrator. If the parties settle the dispute within 5 days of the scheduled mediation conference, the insurer shall pay \$300 to the administrator for the mediator’s fee.

(6) Selection of a Mediator. The administrator will select a mediator from a list of mediators previously approved by the Department. In selecting a mediator, the administrator will consider the costs associated with travel to the mediation conference for the mediator and the parties. A biographical sketch of the mediator shall be made available to the parties by the administrator.

(7) Scheduling of Mediation. Upon receiving a request for mediation, the administrator shall contact the parties, and schedule the mediation conference. The mediation conference shall be scheduled no more than 30 days from the date the Department forwards to the administrator a Commercial Residential Mediation Request Form. The administrator will notify the Department of the scheduled date for each mediation conference. The insurer shall notify the administrator as soon as possible after settlement of any claim that is scheduled for mediation conference pursuant to this rule.

(8) Mediation Conference Statement. Each party shall prepare a “mediation conference statement” which shall summarize the claim and the costs or damages sustained, identify prior demands and offers and provide the party’s assessment of a fair resolution of the claim. The statement shall identify the location of the damaged property, and the claim and policy number for the insured. The statement shall identify and provide an address and telephone number for any professional advisor who will accompany a party to the

mediation conference. A copy of each party's statement shall be provided to the mediator. Such statements shall be exchanged by the parties and provided to the mediator no later than 10 days before the mediation conference.

(9) Additional requirements for Insurers. The representative of the insurer attending the mediation conference must bring a copy of the policy and the entire claims file to the conference. The representative of the insurer attending the conference must know the facts and circumstances of the claim and be knowledgeable of the provisions of the policy. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full amount of the claim at the conclusion of the conference. If inspection and adjustment of the property at issue may be required before the dispute between the parties can be resolved, such inspection and adjustment shall occur before the mediation conference. A failure by the insurer to inspect and adjust the property as necessary before the mediation conference shall constitute a failure to appear at the mediation conference under paragraph (11)(e), below.

(10) Condominiums, Cooperatives, and Homeowners' Associations. The governing board of those properties and entities created by the provisions of Chapters 718, 719 and 720, F.S., shall cause to be prepared the following documentation for review at the mediation conference:

(a) A document by which the governing board for the property or entity designates an authorized representative. It shall state the name of the condominium or cooperative, the name of the association, the date of the meeting at which the designation was made, the name of the designated individual(s), and the authority granted to said individual(s).

(b) A copy of those provisions in the governing documents for the property and entity which relate to (i) the insurance responsibilities of the entity and (ii) the responsibilities of the entity and the unit owners of the property for maintaining and repairing the property.

(c) For claims where there is damage to the structure of the building or foundation, a written, expert analysis of the damage to the property consistent with the standards required in Sections 607.0830(2) and 617.0830(2), F.S.

(d) A written analysis of the damage to the property that allocates the estimated damages between the individually owned parcels or units, the common elements or common areas, and the entity's property in a manner consistent with the governing documents.

(11) Mediation Conference.

(a) It is not necessary to engage a private attorney to participate in the mediation conference. Parties and their representatives must conduct themselves in the cooperative spirit of the intent of the law and this rule. Parties and their representatives must refrain from turning the conference into an adversarial process. Both parties must negotiate in good faith. A party will be determined not to have negotiated in

good faith if the party, or a person participating on the party's behalf, continuously disrupts, becomes unduly argumentative or adversarial, or otherwise inhibits the negotiations as determined by the mediator. The mediator shall terminate the conference if the mediator determines that either party is not negotiating in good faith or if the mediator determines that the conference should be terminated under the provisions of Rule 10.420(b) of the Florida Rules for Certified and Court-Appointed Mediators. The party responsible for causing termination shall be responsible for paying the mediator's fee and the administrative fee for any rescheduled mediation.

(b) A representative of the Department will be present at and participate in the conference if requested at least 5 days prior to the scheduled mediation by a party or the mediator to offer guidance and assistance to the parties. Representatives of the Department who participate in the conference shall not assume an advocacy role but shall be available to provide legal and technical insurance information.

(c) The mediator will be in charge of the conference and will establish and describe the procedures to be followed. Mediators shall conduct the conference in accordance with the standards of professional conduct for mediation under the Florida Rules of Certified and Court-Appointed Mediators. Each party will be given an opportunity to present their side of the controversy. In so doing, parties may utilize any relevant documents and may bring any individuals with knowledge of the issues, such as adjustors, appraisers, or contractors, to address the mediator. The mediator may meet with the parties separately, encourage meaningful communications and negotiations, and otherwise assist the parties to arrive at a settlement. For purposes of this claims settlement process, mediators shall be deemed agents of the Department and shall have the immunity from suit provided to mediators in Section 44.107, F.S. All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation.

(d) A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the Department if the grounds are known prior to the mediation conference. Good cause consists of conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference.

(e) If the insured fails to appear, without good cause as determined by the Department, the insured may have the conference rescheduled only upon the insured's payment of the mediation fees for the rescheduled conference. If the insurer fails to appear at the conference, without good cause as determined by the Department, the insurer shall pay the insured's actual expenses incurred in attending the conference and shall pay the mediator's fee whether or not good cause exists. Failure of a party to arrive at the mediation conference within 30 minutes of the conference's starting time shall be

considered a failure to appear. Good cause shall consist of severe illness, injury, or other emergency which could not be controlled by the insured or the insurer and, with respect to an insurer, could not reasonably be remedied prior to the conference by providing a replacement representative or otherwise. If an insurer fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the insurer shall be subject to penalty, including suspension, revocation, or fine for violating Section 626.9541(1)(i), F.S.

(12) Post Mediation. If the parties reach a settlement, the mediator shall provide a copy of the settlement agreement to the Department and the administrator within 5 days of the conclusion of the conference. Mediation is non-binding. However, if a settlement is reached, it shall act as a release of all specific claims that were presented in the conference. Any additional claims under the policy shall be presented as separate claims. However, the release shall not constitute a final waiver of rights of the insured with respect to claims for damages or expenses if circumstances that are reasonably unforeseen arise resulting in additional costs that would have been covered under the policy but for the release.

(13) If the insured decides not to participate in this claim resolution process or if the parties are unsuccessful at resolving the claim, the insured may choose to proceed under the appraisal process set forth in the insured's insurance policy, by litigation, or by any other dispute resolution procedure available under Florida law.

(14) If as a result of mediation it is determined that the only coverage applicable is provided under the National Flood Insurance Program, the administrative fee and mediator's fee paid by the insurer for the mediation shall be refunded to the insurer or credited to the insurer's account with the administrator.

(15) The Department is authorized to designate an entity or person as its administrator to carry out any of the Department's duties under this rule.

(16) If a court holds any subsection or portion of a subsection of this rule or the applicability thereof to any person or circumstance invalid, the remainder of the rule shall not be affected thereby.

(17) The applicable provisions of Rule 69B-166.031, F.A.C., shall govern issues relating to mediation that are not addressed in this rule. The provisions of this rule shall govern in the event of any conflict with the provisions of Rule 69B-166.031, F.A.C.

Specific Authority 624.308, 626.9611, 627.7015(4) FS. Law Implemented 624.307(1), (2), (4), (5), 624.316, 624.3161, 624.317, 624.318, 624.320, 624.324, 624.418(2)(a), 624.4211, 626.859, 626.874, 626.877, 626.9541(1)(a), (e), (i), (w), 626.9561, 626.9641(1)(g), 627.7015 FS. History—New .

NAME OF PERSON ORIGINATING PROPOSED RULE:
Tom Terfinko, Assistant Director, Division of Consumer Services

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Marta Arrington, Director, Division of Consumer Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 7, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 24, 2006

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF STATE

Division of Historical Resources

RULE NO.: 1A-31.013
RULE TITLES: Prohibited Practices; Penalties
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. 51, December 23, 2005, issue of the Florida Administrative Weekly.

1A-31.013 Prohibited Practices; Penalties.

(1) When the division determines that a person or business organization is violating, or has violated, one or more of the provisions of Sections 267.13(2)(a) and (d), F.S., the division will contact the alleged violator and direct that the offending activity cease immediately and/or direct that the property of the State be returned to the division. If the violation does not cease or is not cured within the time specified by the division, the division will send the alleged violator notice of an administrative proceeding provided in Section 267.13(2)(b), F.S., and/or the division will apply to a court of competent jurisdiction for injunctive relief as specified in Section 267.13(2)(d), F.S.

(2) The division will commence an administrative proceeding if it is determined that the alleged violation resulted in permanent damage to historic property of the State.

(3) The division will apply to a court of competent jurisdiction of injunctive relief if the alleged violation is ongoing and the division determines that continued activity poses a threat to the historic preservation goals of the State.

(4) The division will commence an administrative proceeding and apply to a court of competent jurisdiction for injunctive relief when the division determines that alleged