

(d) A member fails to maintain a minimum 2.0 grade point average.

(2) Benefits under the education assistance programs will not be paid for courses that a member drops prior to completion; or for courses that a member has repeated and benefits had been paid for the course the first time the member had taken it.

(3) If a member is in noncompliance pursuant to this rule, the member must reimburse the Department of Military Affairs for all tuition charges and student fees for which the member received payments within thirty (30) days of being notified by the Department that such fees are owed. A member in noncompliance can request in writing to the Department of Military Affairs, to make payments in installments. If approved, the time for repayment shall not exceed 36 months. If the member fails to repay the amount owed, the Department may submit the matter for collections.

Specific Authority 250.10(7), (8) FS. Law Implemented 250.10(7), (8), (9) FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Department of Military Affairs
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Department of Military Affairs
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 18, 2008
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 3, 2008

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF STATE

Division of Library and Information Services

Table with 2 columns: RULE NOS. and RULE TITLES. Rows include 1B-30.002, 1B-30.003, and 1B-30.005 with their respective titles.

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. 34, No. 50, December 12, 2008 issue of the Florida Administrative Weekly.

1B-30.002 Style and Form for Filing Rules; Certification Accompanying Materials.

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

(b) The following rule certification form shall be used in filing new, amended or repealed rules under the provisions of Section 120.54(6), F.S., entitled "Adoption of Federal Standards":

CERTIFICATION OF (NAME OF AGENCY)
ADMINISTRATIVE RULES FILED WITH THE
DEPARTMENT OF STATE
PURSUANT TO SECTION 120.54(6),
FLORIDA STATUTES
(ADOPTION OF FEDERAL STANDARDS)

I hereby certify:

[] (1) That the time limitations prescribed by Section 120.54(6), F.S., and all applicable rulemaking requirements of the Department of State have been complied with; and

[] (2) That there is no non-frivolous objection, under Section 120.54(6)(c), F.S., pending on those portions of any rule covered by this certification; and

[] (3) All rules covered by this certification are filed not less than 21 days after the notice required by Section 120.54(6)(a), F.S.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No(s).

(List in Columns)

Under the provisions of Section 120.54(6)(b), F.S., the rule(s) take effect upon the date designated below (but not earlier than the date of filing):

Effective: _____

(month) (day) (year)

Signature, Person Authorized to Certify Rules

Title

Number of Pages Certified

(c) The following rule certification form shall be used in filing new, amended or repealed rules under the provisions of Section 120.54(1)(i)5., F.S.:

CERTIFICATION OF (NAME OF AGENCY)
ADMINISTRATIVE RULES FILED WITH THE
DEPARTMENT OF STATE
PURSUANT TO SECTION 120.54(1)(i)5.,
FLORIDA STATUTES

I hereby certify:

- [] (1) That all statutory rulemaking requirements of Chapter 120, F.S., and all applicable rulemaking requirements of the Department of State have been complied with; and
[] (2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and
[] (3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S.; and
[] (a) Are filed not more than 90 days after the notice; or
[] (b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or
[] (c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or
[] (d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or
[] (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or
[] (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or
[] (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or
[] (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or
[] (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

(4) All rules covered by this certification are filed within the time limitations of Section 120.54(1)(i)5., F.S., and no objection to the rules in the certification was filed with the Department by a substantially affected person with 14 days after the date of publication of the notice of intent pursuant to Section 120.54(1)(i)5., F.S.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No(s).

(List in Columns)

Under the provision of Section 120.54(1)(i)5., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)

Signature, Person Authorized to Certify Rules

Title

Number of Pages Certified

(d) through (9) No change.

Rulemaking Authority 120.55(1)(d) FS. Law Implemented 120.54(3)(e)4., (6), 120.55(1)(c), 403.8055 FS. History-New 5-29-80, Formerly 1-1.02, Amended 12-30-81, 2-9-84, 10-1-84, 11-14-85, 10-19-86, 4-10-90, 6-17-92, 10-1-96, 9-13-98, 8-23-99, 6-20-02, Formerly 1S-1.002, Amended _____.

1B-30.003 Publication of Notices in the Florida Administrative Weekly (FAW).

(1)(a) No change.

(2) No change.

(a) Agencies shall contact the Administrative Code and Weekly Section to designate one or more at least one agency administrator(s) to. The agency administrator manages the agency's submissions on the e-rulemaking website. The agency administrator's duties include managing the agency's submissions, payment profiles, rule notices, general notices, public comments and designating the designation of rule and chapter numbers on the e-rulemaking website. In addition, the agency administrator may assign additional rulemaking roles to agency personnel. The rulemaking roles that may be assigned to agency personnel are as follows:

1. Rule Notice Editors manage the submission of rule notices, general notices and public comment received in response to rule notices. Rule Notice Editors may also designate rule and chapter numbers.

2. General Editors manage general notices and may review rule notices and public comment received in response to rule notices.

3. Notice Reviewers review rule notices, general notices and public comment received in response to rule notices.

~~4. Comment Managers manage public comment received in response to rule notices.~~

~~5. Comment Reviewers review public comment received in response to rule notices.~~

(b) No change.

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

(b) A Notice of Proposed Rule shall be published in the FAW before filing any rule for adoption, except emergency rules adopted pursuant to Section 120.54(4), F.S., or rules adopted pursuant to Section 120.54(1)(i)~~5.2.~~, 120.54(6) or 403.8055, F.S. Rule text included in the Notice of Proposed Rule shall be coded as described in subsection (3) of this rule. The following format shall be used for a Notice of Proposed Rule, but only one of the alternatives listed in the hearing portion of the format should be selected for publication in the FAW.

NOTICE OF PROPOSED RULE

NAME OF AGENCY

Division or Board

RULE NO.: RULE TITLE:

PURPOSE AND EFFECT:

SUMMARY:

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will ___ or will not ___ have an impact on small business. A SERC has ___ or has not ___ been prepared by the agency.

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.

RULEMAKING AUTHORITY (formerly "Specific Authority"):

LAW IMPLEMENTED:

___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 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):

(or)

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

DATE AND TIME:

PLACE:

(or)

___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:

THE FULL TEXT OF THE PROPOSED RULE IS:

(TEXT OF RULE)

NAME OF PERSON ORIGINATING PROPOSED RULE:

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE:

DATE PROPOSED RULE APPROVED BY AGENCY HEAD:

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:

(c) through (e) No change.

(f) A Notice of Change pursuant to the requirements of Section 120.54(3)(d)1., F.S., shall be filed when changes are made to proposed rule text. The rule text published in the Notice of Proposed Rule of the rule shall be used as the basis for coding the additional rule changes included in the Notice of Change. Coding of rule text in the Notice of Change shall be coded as described in subsection (3) of this rule. The following notice format shall be used:

NAME OF AGENCY

Division or Board

RULE NO.: RULE TITLE:

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with Section 120.54(3)(d)1., F.S., published in Vol. ____, No. ____, (date), issue of the Florida Administrative Weekly. ~~The reason for this change (select one) (1) public hearing; (2) written material received on or before the date of the public hearing; or (3) proposed objection by JAPC.~~

(Text of proposed rule changes)

(g) through (j) No change.

(k) The following format shall be used for preparing notices of public meetings, hearings, or workshops:

NOTICES OF PUBLIC MEETINGS, HEARINGS, OR WORKSHOPS

The (name of agency) announces a (public meeting, hearing or workshop) to which all persons are invited:

DATE AND TIME:

PLACE:

GENERAL SUBJECT MATTER TO BE CONSIDERED:

A copy of the agenda may be obtained by contacting:

(l) The following format shall be used for notices of petitions for declaratory statements:

NOTICES OF PETITIONS FOR DECLARATORY STATEMENTS

NOTICE IS HEREBY GIVEN THAT (name of agency) ____, has received a petition for a declaratory statement from (name of petitioner). The petition seeks the agency's opinion as to the applicability of (statute, rule or order number) as it applies to the petitioner.

(m) The following format shall be used for notices of dispositions of declaratory statements:

NOTICES OF DISPOSITIONS OF DECLARATORY STATEMENTS

NOTICE IS HEREBY GIVEN THAT (name of agency) has issued an order disposing of the petition for declaratory statement filed by (petitioner’s name) on (date of petition). The following is a summary of the agency’s disposition of the petition: (Insert a statement that the petition was denied and the reasons for the denial or that the petition was granted and set out a summary of the substance of the response.)

(n)(4)1. The following format shall be used for notice of the invalidation of a proposed or effective rule:

NOTICE OF THE INVALIDATION OF A PROPOSED OR EFFECTIVE RULE

(name of agency) HEREBY GIVES NOTICE that a hearing officer has determined that (rule no.) is invalid. The time for filing an appeal of this decision expired (date). (If desired insert optional summary of the hearing officer’s determination.)

2. If the rule declared invalid is a proposed rule, the rule number inserted in the notice shall be prefixed by the word “proposed.”

(6) No change.

Rulemaking Authority 120.55(1)(d)(e) FS. Law Implemented 120.54(2), 120.542(6), (8), 120.55(1), (3) FS. History—New 5-29-80, Formerly 1-1.021, Amended 7-12-81, 12-30-81, 7-8-82, 2-9-84, 10-1-84, 11-14-85, 10-19-86, 4-10-90, 6-17-92, 9-2-93, 4-1-96, 10-1-96, 9-13-98, 6-20-02, Formerly 1S-1.003, Amended _____.

1B-30.005 Materials Incorporated by Reference.

(1) through (2) No change.

(a) Specific identification of the incorporated material, along with an effective date. Forms and their instructions should be identified by title, the form number, and effective date. In addition, incorporated forms and instructions should clearly display the form title, form number, effective date, and the number of the rule in which it is incorporated ~~rule number in which it is incorporated within.~~

(b) through (5) No change.

Rulemaking Authority 120.54(1)(i)6., 120.55(1)(d) FS. Law Implemented 120.54(1)(i) FS. History—New 5-29-80, Formerly 1-1.04, Amended 9-13-98, Formerly 1S-1.005, Amended _____.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NOS.:	RULE TITLES:
12A-1.0011	Schools Offering Grades K through 12; Parent-Teacher Associations; and Parent-Teacher Organizations
12A-1.005	Admissions

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 33, No. 41, October 12, 2007 issue of the Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NOS.:	RULE TITLES:
12A-1.011	Sales of Food Products for Human Consumption by Grocery Stores, Convenience Stores, and Supermarkets; Sales of Bakery Products by Bakeries, Pastry Shops, or Like Establishments; Drinking Water; Ice
12A-1.0115	Sales of Food Products Served, Prepared, or Sold in or by Restaurants, Lunch Counters, Cafeterias, Caterers, Hotels, Taverns, or Other Like Places of Business and by Transportation Companies
12A-1.071	Rentals, Leases, or License to Use Tangible Personal Property
12A-1.097	Public Use Forms

NOTICE OF PUBLIC HEARING

The Florida Department of Revenue announces an additional hearing regarding the above rule, as noticed in Vol. 33, No. 41, October 12, 2007, Florida Administrative Weekly.

DATE AND TIME: February 23, 2009, 10:00 a.m.

PLACE: Room 118, Carlton Building, 501 South Calhoun Street, Tallahassee, Florida

GENERAL SUBJECT MATTER TO BE CONSIDERED: Proposed changes to the following sections of Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), as published in Vol. 33, No. 41, pp. 4739-4750, October 12, 2007, issue of the Florida Administrative Weekly. A Notice of Change was published in Vol. 33, No. 52, pp. 6183-6184, December 28, 2007, issue of the Florida Administrative Weekly.

A Notice of Withdrawal of proposed Rule 12A-1.0011, F.A.C. (Schools Offering Grades K through 12; Parent-Teacher Associations; and Parent-Teacher Organizations), and proposed Rule 12A-1.005, F.A.C. (Admissions), will be published in this edition of the Florida Administrative Weekly. A copy of the preliminary text formatted to highlight the changes made by the Department since the rule hearing held on November 7, 2007, is available on the Department’s website at myflorida.com/dor/rules.

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in this hearing is asked to advise the Department at least 48 hours before the hearing by contacting Larry Green at (850)922-4830. If you are hearing or speech impaired, please

contact the Department by using the Florida Relay Service, which can be reached at (800)955-8770 (voice) and (800)955-8771 (TDD).

THE FULL TEXT OF THE PROPOSED RULES IS:

(Substantial Rewording of Rule 12A-1.011 follows. See Florida Administrative Code for present text.)

12A-1.011 Sales of Food Products and Drink for Human Consumption by Grocery Stores, Convenience Stores, and Supermarkets; Sales of Bakery Products by Bakeries, Pastry Shops, or Like Establishments; Drinking Water; Ice Sales of Food or Drinks Served, Cooked, Prepared, or Sold by Restaurants or Other Like Places of Business.

(1) SCOPE.

(a) The purpose of this rule is to clarify the application of tax on the sale of food products generally sold in or by grocery stores, convenience stores, supermarkets, bakeries, fish markets, produce markets, and other like places of business. This rule is also intended to clarify the application of tax on the sale of bakery products by bakeries, pastry shops, or like establishments and on the sale of drinking water or ice.

(b) Rule 12A-1.0115, F.A.C., is intended to clarify the application of tax on food products generally served, prepared, or sold in or by restaurants, lunch counters, cafeterias, caterers, hotels, taverns, or other like places of business.

(2) TAX-EXEMPT FOOD PRODUCTS.

(a) Food products for human consumption, whether processed, cooked, raw, canned, or in any other form which is generally regarded as food, are exempt. The following is a non-exhaustive list of exempt food products:

1. Baby foods and baby formulas;
2. Baked goods and baking mixes, including ready-to-eat and ready-to-bake products;
3. Baking and cooking items advertised and normally sold for use in cooking or baking, such as chocolate morsels, flavored frostings, glazed or candied fruits, marshmallows, powdered sugar, or food items intended for decorating baked goods;
4. Cereals and cereal products, including ready-to-eat, instant, regular hot cereals;
5. Cheeses, including cured and whey cheese, cream, natural, grating, processed, spread, dip, and other miscellaneous cheeses;
6. Cocoa;
7. Coffee and coffee substitutes;
8. Condiments and relishes, including seasoning sauces and spreads, such as mayonnaise, ketchup, or mustard;
9. Cookies, including chocolate-coated or cream-filled;
10. Dairy products;
11. Dairy substitutes;

12. Dietary supplements (including herbal supplements) and meal replacements, including liquid food supplements and nutrition bars, including those that are candy-coated or chocolate-coated;

13. Eggs and egg products, including liquid, frozen, or dried eggs;

14. Fish, shellfish, and other seafood products, whether fresh or frozen;

15. Food coloring;

16. Frozen dinners and other frozen food products;

17. Fruit (including fruit sliced, chunked, or otherwise cut by the retailer), fruit snacks, fruit roll-ups, and dried fruit, including those sweetened with sugar or other sweeteners;

18. Gelatins, puddings, and fillings, including flavored gelatin desserts, puddings, custards, parfaits, pie fillings, and gelatin base salads;

19. Grain products and pastas, including macaroni and noodle products, rice and rice dishes;

20. Honey;

21. Ice cream, frozen yogurt, sherbet, and similar frozen dairy or nondairy products sold in units larger than one pint;

22. Jams and jellies;

23. Marshmallows;

24. Meat and meat products;

25. Meat substitutes;

26. Milk, including natural fluid milk, homogenized milk, pasteurized milk, whole milk, chocolate milk, buttermilk, half and half, whipping cream, condensed milk, evaporated milk, powdered milk, or similar milk products, and products intended to be mixed with milk;

27. Natural fruit or vegetable juices or their concentrates or reconstituted natural concentrated fruit juices in any form, whether frozen or unfrozen, aerated, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned with salt or spice, or unseasoned. Only those juices that are permitted by federal law and regulation to be labeled "100 percent juice" or "100 percent juice with added-" "ingredient(s)," "preservative," or "sweetener" will be considered natural fruit or vegetable juices. [Title 21 (Food and Drug), Chapter 9 (Federal Food, Drug, and Cosmetic Act), Subchapter IV (Food) 21 U.S.C. ss. 341; 343 (January 24, 2002), hereby incorporated by reference]; [21 C.F.R. Ch. 1, ss. 101.30; 102.5; 102.33, 146.114-146.187; 156.3; 156.145 (4-1-06), hereby incorporated by reference].

28. Peanut butter;

29. Poultry and poultry products;

30. Salad dressings and dressing mixes;

31. Salt, salt tablets, pepper, spices, seeds, herbs, seasonings, blends, extracts, and flavorings, whether natural or artificial;

32. Sandwich spreads;

33. Sauces and gravies;

34. Snack foods, including chips, corn chips, potato chips, cheese puffs and curls, cereal bars, cracker jacks, granola bars, nuts and edible seeds, pork rinds, and pretzels, whether such products are chocolate-coated, honey-coated, or candy-coated.

35. Soups and soup mixes;

36. Sugar, sugar products, and sugar substitutes;

37. Tea (including herbal tea), unless sold in a liquid form;

38. Vegetables and vegetable products;

39. Vegetable oils, lard, olive oil, shortenings, and oleomargarine.

(b) Food products prepared off the seller's premises are exempt when:

1. Sold in the original sealed container;

2. Sliced into smaller portions; or

3. The product is sold frozen and then heated on the seller's premises by the customer.

(c) Taxpayers who have a question regarding the taxable status or exempt status of a food product may submit a written description of the food product and a copy of the food product label to the Department to obtain a determination of the taxability of the product. This request should be addressed to the Florida Department of Revenue, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443.

(3) BAKERY PRODUCTS SOLD BY BAKERIES, PASTRY SHOPS, OR LIKE ESTABLISHMENTS.

(a) Bakery products sold by bakeries, pastry shops, or like establishments as hot prepared food products are taxable.

1. Bakery products that are kept warm by a heat source used to maintain them in a heated state, or to reheat them, are hot prepared food products.

2. Bakery products that are sold while still warm from the initial baking are not hot prepared food products.

3. Example: A bakery establishment toasts a bagel for a customer. The sale of the bagel is subject to tax, whether the bakery establishment has eating facilities or does not have eating facilities.

(b)1. Bakery products, excluding bakery products sold for consumption off the premises, sold by bakeries, pastry shops, or like establishments that have eating facilities are subject to tax.

2. For purposes of this subsection, "eating facility" is a place which facilitates the consumption of the bakery products on the seller's premises on items such as benches, chairs, stools, tables, and counters. For example, a pastry shop that has bar stools and a counter where the bakery products and drinks are served to patrons will be considered a pastry shop with eating facilities. A bakery located within the food court of a mall where tables and chairs are located in the common areas of the food court for patrons to consume food products will be considered a bakery with eating facilities.

(c)1. Bakery products, excluding items sold as hot prepared food products, sold for consumption off the premises are exempt.

2. For the purpose of this paragraph, there shall be a rebuttable presumption that the sale of bakery products by bakeries, pastry shops, or like establishments that have eating facilities are taxable when:

a. Such bakery products are sold in quantities of five (5) or fewer items; or

b. The bakery products sold, regardless of the quantity, are not packaged in a manner consistent with an intention by the customer to consume the products off the seller's premises.

3. Bakery products that are sold, regardless of the quantity, in packaging that is glued, stapled, wrapped, or sealed are examples of packaging consistent with an intention by the customer to consume products off the seller's premises.

4. Bakeries, pastry shops, or like establishments that have eating facilities and make tax-exempt sales of bakery products that are for consumption off the premises are required to separately account for the tax-exempt sales of bakery products for consumption off the premises.

a. Examples of methods to separately account for tax-exempt sales of bakery products for consumption off the premises are: using sales invoices which contain documentation that the sales of the bakery product is for consumption off the premises; using a separate key on a cash register to record tax-exempt sales of bakery products; or using a separate cash register to record tax-exempt sales of bakery products.

b. Example. A bakery operates an establishment with eating facilities. The bakery sells donuts, toasted bagels, and other pastries, as well as coffee and other drinks. The bakery sells bakery products to patrons who take the products home for consumption in sealed containers. Products sold for consumption on the premises are served to the customers on trays. The bakery uses separate keys on its cash registers to account for the sales of tax-exempt bakery products to patrons who purchase the products for consumption off the premises in sealed containers separately from the accounting for taxable sales of toasted bagels, coffee, other drinks, and bakery products for consumption on the premises. The bakery products sold for consumption off the premises are exempt because the bakery's packaging and accounting methods overcome the rebuttable presumption that the products are sold for consumption on the premises.

(d) Bakery products, excluding items sold as a hot prepared food products, that are sold by bakeries, pastry shops, or like establishments that do not have eating facilities are exempt.

(4) TAXABLE FOOD PRODUCTS. The exemption for food products for human consumption does not apply to any of the items specified in this subsection.

(a) Candy, chewing gum, bubble gum, breath mints, and any similar product regarded as candy or confection, based on its normal use as indicated on the label or advertising, is subject to tax. The term “candy and similar products” does not include snack foods not regarded as candy or confection, as indicated on the label or advertising of the product.

(b) Food prepared, whether on or off the seller’s premises, and sold for immediate consumption is subject to tax. This does not apply to food prepared off the seller’s premises and sold in the original sealed container, or to the slicing of products into smaller portions.

1. Food prepared for immediate consumption is food prepared to a point generally accepted as ready to be eaten without further preparation and that is sold in a manner that suggests readiness for immediate consumption. In determining whether an item of food is sold for immediate consumption, the customary consumption practices prevailing at the selling facility shall be considered.

2. Examples:

a. Potato salad is prepared and delivered to a dealer in bulk. The dealer repackages the potato salad into smaller containers. Because the potato salad is not sold in the original sealed container, the sale of the repackaged smaller containers of potato salad is subject to tax.

b. A grocery store buys cold cuts in five-pound packages. The grocery store slices cold cuts for the customer according to the thickness and the amount the customer desires. The food is then packaged for sale to the customer. Because the cold cuts are sliced into smaller portions, the sale of the cold cuts is exempt from tax.

c. A supermarket offers freshly popped popcorn for shoppers for sale. The sale of the popcorn is subject to tax.

d. A supermarket prepares seafood products, such as smoked fish or steamed shrimp, for sale. The sale of the smoked or steamed shrimp is subject to tax.

e. A supermarket prepares fruit and vegetable products into various fresh salads for sale. When packaged without eating utensils and sold as a grocery item, the sale of the prepared fresh fruit or vegetable salad is exempt. When the prepared fresh salads are packaged with eating utensils, such as with a fork and a napkin, the salad is a food product prepared and sold for immediate consumption and is subject to tax.

(c)1. Hot prepared food products, whether sold separately or in combination with other food items, when the food is heated by the seller rather than by the customer, is subject to tax.

2. Hot prepared food products are those products, items, or components that have been prepared for sale in a heated condition and sold at any temperature that is higher than the air temperature of the room or place where the products are sold. Preparation of a “hot prepared food product” includes cooking, microwaving, warming, toasting, or any other method of heating the food. Food products, including bakery products, are

considered “hot prepared food products” when a heat source is used to maintain the food product in a heated state or is used to reheat the food product. Bakery products that are sold while still warm from the initial baking are not “hot prepared food products.” Their temperature is a result of the timing of the customer’s purchase rather than an indication of preparation to be sold in a heated condition.

3. When a single price is charged for a combination of hot prepared food products and cold food items or other components, the single price charged for the combination is subject to tax.

4. Examples:

a. A supermarket sells barbecued chicken that is kept hot by a rotisserie to be taken home and eaten. The sale of the chicken is subject to tax.

b. A grocery store bakes bread in an oven. The bread is packaged for sale while it is still warm. A customer purchases a package of the bread while it is still warm. The sale of the warm bread is not subject to tax.

c. A single price is charged for a combination of a hot meal, hot pizza, hot specialty dish, or hot sandwich, with cold components, such as a salad or fruit or other side items, by a convenience store. The single price charged for the combination is subject to tax.

(d) Sandwiches sold ready for immediate consumption, whether refrigerated or heated by the customer or by the retailer, are subject to tax. An example of a sandwich not sold ready for immediate consumption would be a frozen sandwich or a sandwich with a frozen or partially frozen filling.

(e) Meals sold for consumption on or off the seller's premises are subject to tax.

(f) Ice cream, frozen yogurt, and similar frozen dairy or nondairy products in cones, small cups, or pints, and popsicles, frozen fruit bars, or other novelty items, whether sold separately or in multiple units, are subject to tax.

(5) TAXABLE SOFT DRINKS. The exemption for food products for human consumption does not apply to soft drinks. The following sales of soft drinks are subject to tax:

(a) Nonalcoholic beverages, whether carbonated or noncarbonated.

(b) Any noncarbonated beverage made from milk derivatives, such as ice cream sodas, milkshakes, or malts.

(c) Any beverages and preparations commonly referred to as a “soft drink,” such as sodas, soda water, ginger ale, colas, root beer, tonic, fizzes, or cocktail mixes.

(d) Any beverage containing fruit or vegetable juice labeled with the word(s) “ade,” “beverage,” “cocktail,” “drink,” or “fruit or vegetable flavor, flavored, or flavorings.” Federal law and regulations require that any beverage containing more than 0 percent juice, but less than 100 percent fruit or vegetable juice, which represents or suggests by its physical characteristics, name, labeling, ingredient statement, or advertising that it contains fruit or vegetable juice, be

labeled in a manner that is appropriate to advise the consumer that the product is less than 100 percent juice. [Title 21 (Food and Drug), Chapter 9 (Federal Food, Drug, and Cosmetic Act), Subchapter IV (Food) 21 U.S.C. ss. 341; 343 (January 24, 2002)]; [21 C.F.R. Ch. 1, ss. 101.30; 102.5; 102.33, 146.114-146.187; 156.3; 156.145 (4-1-06)]. Examples of taxable beverages include: apple blend, cranberry juice cocktail, grape juice beverage, lemonade, limeade, orangeade, raspberry and cranberry flavored drink, fruit drink, fruit punch, diluted fruit juices, and diluted vegetable juices.

(e) Tea sold in a liquid form.

(6) VENDING MACHINES AND MOBILE VENDORS.

Food products sold through a vending machine, push cart, motor vehicle, or any other form of vehicle are subject to tax. See Rule 12A-1.044, F.A.C., for sales through vending machines.

(7) WATER AND ICE.

(a)1. Drinking water, including water enhanced by the addition of minerals, sold in bottles, cans, or other containers is exempt, except when carbonation or flavorings has been added to the water in the manufacturing process. When carbonation or flavorings is added to drinking water at a water treatment facility, the sale of the drinking water in bottles, cans, or other containers remains exempt.

(b) The sale of ice, including dry ice, is subject to tax, except when the ice is purchased for use as a packaging material to package food products for sale. See Rule 12A-1.040, F.A.C., for provisions for packaging materials.

(c) Fluoride used in the treatment of drinking water is exempt.

(d) Germicides (such as chlorine), sodium silicate, activated charcoal, and similar purification agents used in the treatment of drinking water are exempt.

(e) The charge for water conditioning (water softening) is not subject to tax. The sale of salt for use in water softeners to regenerate the minerals required for softening water is not the sale of a purification agent used in the treatment of drinking water and is subject to tax. Dealers must pay tax on items used to provide water conditioning to their customers, such as minerals, tanks, equipment, and other materials.

(8) COMPLIMENTARY AND DONATED FOOD PRODUCTS.

(a)1. Dealers that primarily sell food products at retail are not subject to sales or use tax on any food or drink provided without charge as a sample or for the convenience of customers, even when cooked or prepared on the dealer's premises. For example, hot coffee provided in a grocery store for shoppers is not subject to sales or use tax.

2. Dealers that primarily sell food products at retail are not subject to sales or use tax on any item given to a customer as part of a price guarantee plan related to point-of-sale errors.

3. The exemption, as provided in this paragraph, does not apply to businesses whose primary activity is to serve prepared meals or alcoholic beverages for immediate consumption.

(b) Dealers that sell food products at retail are not subject to sales or use tax on any food product donated to a food bank or an organization determined to be currently exempt from federal income tax pursuant to s. 501(c) of the Internal Revenue Code of 1986, as amended.

(9) FOOD STAMPS AND VOUCHERS.

(a) Food products are exempt when purchased with food stamps issued by the United States Department of Agriculture, or with Special Supplemental Food Program for Women, Infants, and Children (WIC) vouchers issued under authority of federal law.

(b) When a purchase of food products is made partly with food stamps or vouchers and partly with cash or manufacturer's coupons, the food stamps or vouchers will first be used to defray the cost of the taxable food and drinks, less the value of any manufacturer's coupons, that can be purchased with the food stamps or vouchers. When the food stamps or vouchers are insufficient to purchase the taxable items, tax is due on the remaining sales price of taxable food and drinks.

(10) MULTIPLE ITEMS PACKAGES.

(a) When a package contains both exempt food products and taxable tangible personal property (e.g., a basket of food and candy, a basket of nuts, or decorated cans or glasses filled with food items) and the tax-exempt food products are separately itemized and priced from the taxable tangible personal property, no tax is due on the tax-exempt food products.

(b) When the total charge for a package containing both exempt food products and taxable tangible personal property is a single charge, the application of tax depends upon the essential character of the complete package, as follows:

1. When the taxable tangible personal property represents more than twenty-five percent (25%) of the value of the package, the total charge is subject to tax.

2. When the taxable tangible personal property represents twenty-five percent (25%) or less of the value of the package, the total sale is exempt. The seller is required to pay tax on any taxable items included in the package that were purchased tax-exempt for the purposes of resale. The cost price of any promotional items included in the package is subject to tax.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(14)(c), 212.07(2), 212.08(1), (4)(a)1., (7)(oo), (pp); ~~212.18(2)~~ FS. History-Revised 10-7-68, 6-16-72, 9-28-78, 10-29-81, Formerly 12A-1.11, Amended 12-8-87, 1-2-89, 8-10-92, 6-19-01, 4-17-03, _____.

12A-1.0115 Sales of Food Products Served, Prepared, or Sold in or by Restaurants, Lunch Counters, Cafeterias, Caterers, Hotels, Taverns, or Other Like Places of Business and by Transportation Companies.

(1) SCOPE.

(a) The purpose of this rule is to clarify the application of tax on food products generally served, prepared, or sold in or by restaurants, lunch counters, cafeterias, caterers, hotels, taverns, or other like places of business where food products are sold for immediate consumption on the seller's premises or packaged or wrapped and taken away from the seller's premises.

(b) Rule 12A-1.011, F.A.C., is intended to clarify the application of tax to the sale of food products generally sold by grocery stores, convenience stores, supermarkets, bakeries, fish markets, produce markets, and other like places of business, the sale of bakery products by bakeries, pastry shops, and like establishments, and the sale of drinking water or ice.

(2) FOOD PRODUCTS SERVED, PREPARED, OR SOLD IN OR BY RESTAURANTS OR SIMILAR PLACES OF BUSINESS.

(a) Food products served, prepared, or sold in or by restaurants, lunch counters, cafeterias, hotels, taverns, or other similar places of business are subject to tax.

(b) Food products that are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware are subject to tax. The food products are subject to tax, even though the tables, chairs, or counters and the trays, glasses, dishes, and other tableware may be provided by a person with whom the dealer contracts to furnish, prepare, or serve the food products to others.

(c) Food products that are ordinarily sold for immediate consumption on the seller's premises or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location are subject to tax. The food products remain subject to tax even when the product is sold on a "take out" or "to go" basis and are packaged or wrapped and taken away from the dealer's facility. The customary practices prevailing at the dealer's facility will be used to determine whether a food product is sold for immediate consumption at the selling facility. The premises of a caterer, with respect to catered meals or beverages, is the place where such meals or beverages are served.

(d) Restaurants, lunch counters, cafeterias, hotels, taverns, or other like places of business that also maintain a separate department that includes groceries are not required to collect tax on tax-exempt sales of food products, as provided in Rule 12A-1.011, F.A.C., when separate records are maintained for the separate department; however, food products that are sold as prepared food through a separate department are subject to tax.

(3) FOOD PRODUCTS CONSUMED IN PLACES WHERE AN ADMISSION IS CHARGED.

(a) Food products are subject to tax when furnished, served, prepared, or sold on the premises of a place where admission is charged for entrance. The term "premises" will be construed broadly to include: the lobby, aisle, or auditorium of a theater; the seating, aisle, or parking area of an arena, rink, or stadium; the parking area of a drive-in or outdoor theater; or similar places.

(b) When food products are furnished to patrons who have paid an admission charge for entrance as a part of that admission charge and there is no separately itemized charge to the patron for the food products, tax is due on the cost of the food products furnished. When the food products are purchased from a caterer, restaurant, or similar establishment, tax is due on the total charge made by the caterer, restaurant, or similar establishment.

(c) When the charges for food products are separately itemized and priced from the admission charge to the patron, tax is required to be collected on the sales price of the food products. (See Rule 12A-1.005, F.A.C., for admission charges.) Food products that are separately itemized and sold to the patron may be purchased for resale, as provided in Rule 12A-1.039, F.A.C.

(4) VENDING MACHINES AND MOBILE VENDORS. Food products sold through a vending machine, push cart, motor vehicle, or any other form of vehicle are subject to tax. See Rule 12A-1.044, F.A.C., for sales through vending machines.

(5) COUPONS, DISCOUNTS, AND DONATED FOOD PRODUCTS.

(a) When a dealer sells two meals for the price of one meal, the dealer is required to collect tax on the total amount charged. No tax is due on the second meal.

(b) The sale of a meal ticket or coupon book to be redeemed for the purchase of taxable food products is not subject to tax at the time of sale. When the ticket or coupon is redeemed by a customer, the seller is required to collect the tax on the total consideration received, including the value of the ticket or coupon redeemed, and any additional compensation received by the seller.

(c) When the seller provides a customer taxable food products without charge after purchasing a designated number of taxable food products, tax is due on the sales price of the taxable food products sold. No tax is due on the item provided to the customer without charge. For example, a sandwich shop offers customers a coupon that will entitle the customer to receive a free sandwich after purchasing five sandwiches. When the customer's coupon indicates that the customer has purchased five sandwiches, the customer redeems the coupon for the free sandwich. The sandwich shop is required to collect

tax on the sale of the first five sandwiches. No tax is due on the sandwich provided, without charge, to the customer, who has purchased the required five sandwiches.

(d) Dealers that sell food products at retail are not subject to tax on any food or beverage donated to a food bank or an organization determined to be currently exempt from federal income tax pursuant to s. 501(c) of the Internal Revenue Code of 1986, as amended.

(6) FOOD PRODUCTS SOLD OR FURNISHED BY RESTAURANTS OR SIMILAR PLACES OF BUSINESS TO EMPLOYEES.

(a) Food products furnished by an employer to its employees are not subject to tax, provided no cash changes hands as payment for the food products furnished and the assigned value of the food products is not required to be reported as income to the employee for federal income tax purposes.

(b) Food products sold by a restaurant to its employees are subject to tax.

(c) Food products consumed by the owner and his family are not subject to sales tax.

(7) TRANSPORTATION COMPANIES.

(a) Food products sold ready for immediate consumption by airlines, railroads (except Amtrak), vessels, or other transportation companies to their passengers, while within Florida, are subject to tax. A transportation company may extend a copy of its Annual Resale Certificate to the selling dealer instead of paying tax on the purchase of food products ready for immediate consumption for purposes of resale to their passengers.

(b)1. Transportation companies, except Amtrak, are required to pay tax on their purchases of meals and food products ready for immediate consumption when:

a. The food products are delivered to the transportation company in this state, whether consumed in this state or outside this state;

b. The food products are furnished to the passengers; and

c. There is no separately itemized charge to the passenger for the food product.

2. For the partial exemption available to airlines, see Section 212.0598, F.S. For the partial exemption available to vessels engaged in interstate or foreign commerce under Section 212.08(8), F.S., see Rule 12A-1.0641, F.A.C.

(c) The purchase or sale of food products ready for immediate consumption by Amtrak, an instrumentality of the United States government, is not subject to tax.

(8) CATERERS.

(a) For purposes of this rule, the term "caterer" means any person engaged in the business of furnishing, cooking, preparing, or serving food or drinks on the premises of the

customer, or on premises supplied by the customer, including premises leased by the customer from a person other than the caterer.

(b) The total charge made by caterers for furnishing, cooking, preparing, or serving food or drinks, whether performed by the caterer, the caterer's employees, or persons contracting with the caterer, is subject to tax. Caterers are considered the ultimate consumer and are liable for the tax on their purchase or lease of items, such as pots, pans, and other dishes, silverware, glasses, chairs, tables, tablecloths, and similar items used to furnish, cook, prepare, or serve food or drinks. Any separately itemized charge by the caterer for the use of these items is considered to be a part of the total charge for furnishing, cooking, preparing, or serving food or drinks and is subject to tax.

(c) Tax applies to charges by a caterer, or any other person, for planning, designing, coordinating, or supervising an event when the charges to the customer are made in connection with the furnishing, cooking, preparing, or serving food or drinks at the event. Tax does not apply to charges for services unrelated to the furnishing, cooking, preparing, or serving food or drinks, such as entertainment charges, when the charges are separately itemized and separately priced to the customer on the customer's bill, invoice, statement, or other evidence of sale.

(d) When caterers purchase or lease items that are not used to furnish or serve food or drinks, such as tents, decorative props, special lighting, sound or video systems, dance floors, or stages, the caterer may purchase or lease these item(s) for resale or re-lease tax exempt by extending a copy of its Annual Resale Certificate to the selling dealer instead of paying tax when:

1. The property is purchased or leased exclusively for resale or re-lease to the caterer's customer;

2. The charge to the customer for each item is separately itemized and separately priced on the customer's bill, invoice, statement, or other evidence of sale; and

3. The applicable tax is collected from the customer.

(e) When a caterer sells food or drinks, including any service charges, to other caterers or event planners for the purpose of resale, the caterer may accept a copy of the purchaser's Annual Resale Certificate instead of collecting tax from the purchaser. The purchasing caterer or event planner is required to collect the applicable tax from his or her customer on the charge for catering.

(9) GRATUITIES.

(a) Any charge made by a dealer to a customer for gratuities, tips, or similar charges is a part of the taxable sales price of the food or drinks except when:

1. The charge is separately stated as a gratuity, tip, or other charge on the customer's receipt or other tangible evidence of sale; and

2. The dealer receives no monetary benefit from the gratuity. Money withheld by the dealer for purposes of payment of the employee's share of social security or federal income tax or any fee imposed by a credit card company on the amount of the gratuity, or money withheld pursuant to judicial or administrative orders, is not a monetary benefit for purposes of this rule.

(b) The charge for room service made by hotels for serving meals in guests' rooms is included in the total price of the meal and is subject to tax.

(c) Service charges, minimum charges, corkage fees, setup fees, or similar charges imposed by a restaurant, tavern, nightclub, or other like places of business as part of the charge for furnishing, serving, or preparing food products are subject to tax.

(d) The charge for the preparation of food products furnished by the customer to the preparer is subject to tax, whether prepared for immediate consumption on the preparer's premises or for consumption off the premises.

(10) FOOD OR DRINKS FURNISHED WITH LIVING OR SLEEPING ACCOMMODATIONS.

(a) Food or drinks served or sold at community colleges, junior colleges, and other institutions of higher learning, or fraternities and sororities, are subject to tax. If a lump sum amount is charged by the institution for living or sleeping accommodations and meals, a portion of the lump sum amount must be allocated to the sale of food or drinks to reasonably reflect the value of the food or drinks. Tax is due on the portion that is reasonably allocated to the sale of the food or drinks.

(b)1. Public lodging establishments that advertise that they provide complimentary food and drinks are not required to pay sales or use tax on food or drinks when:

a. The food or drinks are furnished as part of a packaged room rate;

b. No separate charge or specific amount is stated to the guest for such food or drinks;

c. The public lodging establishment is licensed with the Division of Hotels and Restaurants of the Department of Business and Professional Regulation; and

d. The public lodging establishment rents or leases transient accommodations that are subject to sales and use tax.

2. The public lodging establishment may extend a copy of its Annual Resale Certificate to the selling dealer to purchase food and drinks used for this purpose tax-exempt, as provided in Rule 12A-1.039, F.A.C.

(11) DAY NURSERIES AND CUSTODIAL CAMPS. Day care facilities, nurseries, kindergartens, day camps, and custodial camps that primarily provide professional and personal supervisory and instruction services are not required to collect tax on their charges to the students or campers for providing food or drinks as part of their services. However,

when the charges for furnishing food or drinks are separately itemized and separately priced to the student or camper, tax is required to be collected on the sales price of food or drinks.

(12) MEALS SERVED AT LABOR CAMPS.

(a) Labor camps and commercially operated public housing quarters are operated to house and feed workers on a contract basis. The provisions of this subsection are intended to provide the taxability of the housing and meals provided to workers under such contracts.

(b) When the contract provides for meals, and no housing is furnished under the contract, the charge for the meals is subject to tax.

(c)1. When the contract provides for housing and meals for the workers, the charge for meals is subject to tax.

2. When the contract provides for housing for the workers but the workers buy groceries and prepare their own meals, no tax is due on the prepared meals.

(d) Workers residing in public housing quarters or labor camps may enter into agreements under which one worker is appointed to purchase groceries and prepare all meals. The worker may be selected and directed by the group of workers or may be designated and directed by the employer. The employer may deduct from each employee's wages the pro rata share of the groceries purchased for the group or a contracted charge for the meals prepared and served by the employer's designated cook.

1. When the employees select the designated worker to purchase groceries and prepare meals, no tax is due on the amount deducted by the employer for each employee's pro rata share of the cost of the groceries purchased by the designated worker.

2. When the employer selects the worker to be the designated cook who prepares all meals, tax is due on the amount deducted from the employee's wages by the employer for the meals.

(13) HOSPITALS AND HOMES FOR THE AGED.

(a) Meals furnished to residents of homes for the aged, as defined in Section 212.08(7)(i), F.S., are exempt.

(b) Meals furnished to patients and inmates of any hospital or other institution designed and operated primarily for the care of persons who are ill, aged, infirm, mentally or physically incapacitated or for any reason dependent upon special care or attention are exempt.

(c) Meals sold and delivered as a charitable function by a nonprofit volunteer organization to handicapped, elderly, or indigent persons at their residences are exempt.

(14) NON-PROFIT ORGANIZATIONS; SOCIAL OR CIVIC CLUBS.

(a) Food or drinks sold at fundraisers and similar types of events are subject to tax, unless such sales qualify as occasional sales, as provided in Rule 12A-1.037, F.A.C.

(b) Organizations that hold a valid Florida Consumer’s Certificate of Exemption may extend a copy of their certificate to purchase meals and beverages used in the normal nonprofit activities of the organization tax-exempt.

(c) Food or drinks sold by a religious institution that holds a valid Florida Consumer’s Certificate of Exemption and has an established physical place for worship at which nonprofit religious services and activities are regularly conducted and carried on are exempt.

(d) Food or drinks served or sold to or by social, civic, and similar organizations are subject to tax.

(e) When charges for meals and beverages to members of an organization are separately itemized and priced from the dues for membership, the charges for meals and beverages are subject to tax. If the organization indicates on its dues invoices, membership billing statements, dues notices, or membership applications that a specified portion of the dues payment is attributed to the furnishing of meals and beverages, the specified portion attributed to the furnishing of the meals and beverages is subject to tax.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(14)(c), 212.07(1)(b), (2), 212.08(1), (4)(a)1., (6), (7), (7)(i), (k), (m), (oo), (pp), 212.18(3)(c), and 213.37 FS. History–New _____.

12A-1.071 Rentals, Leases, or License to Use Tangible Personal Property.

(1) through (32) No change.

~~(33) Caterers are required to pay tax on the purchases or rentals of all dishes, tables, chairs, silver, linens, kitchen utensils, artificial palms, and other items used by them in the conduct of their business. The caterer should pay tax to his supplier and should not furnish the supplier with a resale certificate, except in those instances where he is purchasing or renting such items exclusively for rental and for which he makes a separate charge to his customer.~~

(34) through (36) renumbered (33) through (35) No change.

~~(37) The charge for water conditioning (soft water service) is exempt. The dealer shall pay tax on the acquisition of tanks, minerals, and other equipment used in furnishing such service, unless such materials and supplies are actually sold to the customer.~~

(38) through (47) renumbered (36) through (45) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(1), (4), (10)(g), (12), (14)(a), (15)(a), (16), (19), 212.04, 212.05(1)(c), (d), (f), (h), (i), 212.06(1)(a), (2)(e), (8), 212.08(7)(e), (f), (v), (y), 212.11(2), (3), 212.12(9), 212.18(2), 402.61 FS. History–Revised 10-7-68, 1-7-70, 6-16-72, Amended 12-11-74, 12-31-81, 7-20-82, Formerly 12A-1.71, Amended 1-2-89, 10-5-92, 11-16-93, 8-15-94, 10-17-94, 3-20-96, 8-1-02, 6-12-03, 9-28-04, _____.

12A-1.097 Public Use Forms.

(1) No change.

Form Number	Title	Effective Date
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(2) through (14) No change.

(15)(a) DR 46B	Sales Tax Status of Some Nonalcoholic Preparations, Beverages and Drinks When Sold In Grocery Stores and Similar Establishments (r. 10/89)	08/92
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~~(b)~~ No change.

(16) through (23) No change.

Specific Authority 201.11, 202.17(3)(a), 202.22(6), 202.26(3), 212.0515(7), 212.07(1)(b), 212.08(5)(b)4., (7), 212.11(5)(b), 212.12(1)(b)2., 212.17(6), 212.18(2), (3), 213.06(1), 376.70(6)(b), 376.75(9)(b), 403.718(3)(b), 403.7185(3)(b), 443.171(2), (7) FS. Law Implemented 92.525(1)(b), (3), 95.091, 125.0104, 125.0108, 201.01, 201.08(1)(a), 201.133, 201.17(1)-(5), 202.11(2), (3), (6), (16), (24), 202.17, 202.22(3)-(6), 202.28(1), 203.01, 212.02, 212.03, 212.0305, 212.031, 212.04, 212.05, 212.0501, 212.0515, 212.054, 212.055, 212.06, 212.0606, 212.07(1), (8), (9), 212.08, 212.084(3), 212.085, 212.09, 212.096, 212.11(1), (4), (5), 212.12(1), (2), (9), (13), 212.13, 212.14(4), (5), 212.17, 212.18(2), (3), 213.235, 213.29, 213.37, 219.07, 288.1258, 376.70, 376.75, 403.717, 403.718, 403.7185, 443.036, 443.121(1), (3), 443.131, 443.1315, 443.1316, 443.171(2), (7) FS. History–New 4-12-84, Formerly 12A-1.97, Amended 8-10-92, 11-30-97, 7-1-99, 4-2-00, 6-28-00, 6-19-01, 10-2-01, 10-21-01, 8-1-02, 4-17-03, 5-4-03, 6-12-03, 10-1-03, 9-28-04, 6-28-05, 5-1-06, 4-5-07, 1-1-08, 4-1-08, 6-4-08, 1-27-09, _____.

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE NO.:	RULE TITLE:
12B-8.016	Retalitory Provisions
	NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 34, No. 51, December 19, 2008 issue of the Florida Administrative Weekly.

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

DATE AND TIME: March 2, 2009, 10:00 a.m.

PLACE: Room 118, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Water and Wastewater Treatment Plant Operators

RULE NOS.:	RULE TITLES:
61E12-41.002	Definitions
61E12-41.003	Qualifications for Operator Certification
61E12-41.004	Applications for Certification from Persons with Actual Experience
61E12-41.005	Examinations; Forms for Certification
61E12-41.006	Operator Certification
61E12-41.007	Renewal of Operator Certificates
61E12-41.009	Denial of Application or Renewal of Certificates; Notice of Denial or Renewal
61E12-41.010	Duties of Operators
61E12-41.011	Fees
61E12-41.013	Grounds for Disciplinary Proceedings
61E12-41.014	Citations
61E12-41.016	Suspension and Revocation of Operator Certificates
61E12-41.017	Disciplinary Guidelines; Aggravating and Mitigating Circumstances
61E12-41.018	Actual Experience for Operator Certification

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 35, No. 1, January 9, 2009 issue of the Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO.:	RULE TITLE:
62-304.705	St. Lucie Basin TMDLs

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 34, No. 53, December 31, 2008 issue of the Florida Administrative Weekly.

(1) St. Lucie Estuary (Lower & Middle Estuary) WBID 3193: The Total Maximum Daily Loads (TMDLs) for the St. Lucie Estuary, based on data in the period from 1996 through 2005, are to achieve 0.081 mg/L total phosphorus and 0.72 ~~0.74~~ mg/L total nitrogen at Roosevelt Bridge and are allocated as follows:

(a) through (d) No change.

(2) North Fork St. Lucie River (Freshwater) WBID 3194: The TMDLs for the North St. Lucie (Freshwater) are to achieve 0.081 mg/L total phosphorus, 0.72 ~~0.74~~ mg/L total nitrogen, and 2.0 mg/L biological oxygen demand for this segment. Based on data in the period from 1996 to 2005, the cumulative load from all sources is 140,134 lbs/year total nitrogen, 15,765 lbs/year total phosphorus and 2.0 mg/L biological oxygen demand allocated as follows:

(a) through (d) No change.

(3) North Fork St. Lucie Estuary (Estuarine North Fork) WBID 3194B: The TMDLs for the North Fork St. Lucie Estuary (Estuarine North Fork) are to achieve 0.081 mg/L total phosphorus and 0.72 ~~0.74~~ mg/L total nitrogen in this estuary segment. Based on data in the period from 1996 to 2005, the cumulative load from all sources is 103,174 lbs/year total nitrogen and 11,672 lbs/year total phosphorus allocated as follows:

(a) through (d) No change.

(4) C-24 Canal WBID 3197: The TMDLs for the C-24 Canal are to achieve 0.081 mg/L total phosphorus, 0.72 ~~0.74~~ mg/L total nitrogen, and 2.0 mg/L biological oxygen demand for the canal segment. Based on data in the period from 1996 to 2005, the cumulative load from all sources is 348,957 lbs/year total nitrogen, 39,258 lbs/year total phosphorus and 2.0 mg/L biological oxygen demand allocated as follows:

(a) through (d) No change.

(5) C-23 Canal WBID 3200: The TMDLs for the C-23 Canal are to achieve 0.081 mg/L total phosphorus and 0.72 ~~0.74~~ mg/L total nitrogen in the canal segment. Based on data in the period from 1996 through 2005, the cumulative load from all sources is 242,202 lbs/year total nitrogen and 27,248 lbs/year total phosphorus allocated as follows:

(a) through (d) No change.

(6) South Fork St. Lucie Estuary WBID 3210: The TMDLs for the South Fork St. Lucie Estuary are to achieve 0.081 mg/L total phosphorus and 0.72 ~~0.74~~ mg/L total nitrogen in this estuary segment. Based on data in the period from 1996 through 2005, the cumulative load from all sources is 24,463 lbs/year total nitrogen and 2,752 lbs/year total phosphorus allocated as follows:

(a) through (d) No change.

(7) South Fork St. Lucie River WBID 3210A: The TMDLs for the South Fork St. Lucie River are to achieve 0.081 mg/L total phosphorus and 0.72 ~~0.74~~ mg/L total nitrogen in this river segment. Based on data in the period from 1996 through 2005, the cumulative load from all sources is 90,471 lbs/year total nitrogen and 10,178 lbs/year total phosphorus allocated as follows:

(a) through (d) No change.

(8) Bessey Creek WBID 3211: The TMDLs for Bessey Creek are to achieve 0.081 mg/L total phosphorus and 0.72 ~~0.74~~ mg/L total nitrogen in the creek segment. Based on data in

the period from 2000 through 2005, the cumulative load from all sources is 29,981 lbs/year total nitrogen and 3,373 lbs/year total phosphorus allocated as follows:

(a) through (d) No change.

(9) C-44 Canal WBID 3218: The TMDLs for the C-44 Canal are to achieve 0.081 mg/L total phosphorus, 0.72 ~~0.74~~ mg/L total nitrogen, and 2.0 mg/L biological oxygen demand in this canal segment. Based on data in the period from 1996 through 2005, the cumulative load from all sources is 242,929 lbs/year total nitrogen, 27,330 lbs/year total phosphorus and 2.0 mg/L biological oxygen demand allocated as follows:

(a) through (d) No change.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.061, 403.062, 403.067 FS. History–New_____.

DEPARTMENT OF HEALTH

Board of Optometry

RULE NO.: 64B13-4.001
 RULE TITLE: Examination Requirements

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 34, No. 20, May 16, 2008 issue of the Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF HEALTH

Board of Orthotists and Prosthetists

RULE NO.: 64B14-2.0015
 RULE TITLE: Application, Examination and Initial Licensure Fees

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 34, No. 47, November 21, 2008 issue of the Florida Administrative Weekly.

The above-proposed rule was published in the November 21, 2008 issue of the Florida Administrative Weekly, Vol. 34, No. 47. The following erroneous entries made in the proposed rule are hereby being corrected:

1. In the Purpose and Effect and Summary sections, the reference made to “Section 1 of the Laws of Florida” was erroneous; the correct reference is Section 4.

2. In the Specific Authority section above the full text of the proposed rule, the reference made to Section 456.004(5), F.S., is erroneous and will be deleted.

3. In the Law Implemented section above the full text of the proposed rule, the reference made to Section 456.025(1) is erroneous and will be deleted.

4. In the Law Implemented section above the full text of the proposed rule, the reference made to Section 468.803(2)(a) is incomplete. The correct and complete reference is Section 468.803(2)(a), (5)(a), (b), (c), (d), (e), F.S.

5. In the Specific Authority section below the full text of the proposed rule, the references made to Section 456.036, 468.802 and 468.806, F.S. are erroneous and will be deleted and replaced with Sections 456.013(2), 468.803(2)(a), F.S.

6. In the Law Implemented section below the full text of the proposed rule, the references made to Sections 456.036 and 468.806, F.S. are erroneous and will be deleted and replaced with Sections 456.013(2), 468.803(2)(a), (5)(a), (b), (c), (d), (e), F.S.

7. In the History section, the references made to 2-25-99 and 3-18-01 are erroneous and will be deleted. The correct History is as follows: History–New 9-2-98, Formerly 64B-3.003, Amended 2-8-01, 5-30-02.

8. The date of publishing of the proposed rule development in the Florida Administrative Weekly was erroneously given as November 10, 2008. The correct date is October 10, 2008.

DEPARTMENT OF HEALTH

Board of Orthotists and Prosthetists

RULE NO.: 64B14-5.002
 RULE TITLE: Continuing Education Requirement

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 34, No. 47, November 21, 2008 issue of the Florida Administrative Weekly.

The following erroneous entries made in the proposed rule are hereby being corrected:

1. In the Purpose and Effect and Summary sections, the reference made to “Section 1 of the Laws of Florida” was erroneous; the correct reference is Section 5.

2. The date of publishing of the proposed rule development in the Florida Administrative Weekly was erroneously given as November 10, 2008. The correct date is October 10, 2008.

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: 64B16-26.2031
 RULE TITLE: Licensure by Examination; Foreign Pharmacy Graduates

SECOND NOTICE OF CHANGE

Notice is hereby given that the following change has been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 36, of the September 5, 2008, issue of the Florida Administrative Weekly. The change is to reference the correct form number. The purpose of the Second Notice of Change is to make an updated change to subsection (1). All other changes made in the rule in the Notice of Change published on December 24, 2008 in Vol. 34, No. 52, of the F.A.W. are still valid. The updated change is as follows:

1. Subsection (1) shall now read as follows:

(1) Submit an application for licensure by examination on board approved form DOH/MQA/PH103 (Rev.07/08), Foreign Graduate Pharmacist Examination Application and Instructions, which is hereby incorporated by reference, and which can be obtained from the Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254, and must be accompanied with a non-refundable examination fee and an initial license fee set forth in Rules 64B16-26.1001 and 64B16-26.1002, F.A.C.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254

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

NOTICE OF CANCELLATION OF RULE DEVELOPMENT WORKSHOP

Notice is hereby given that the 2009 HOP Rule Development Workshop scheduled for January 23, 2009 in Tampa, FL, as noticed in Vol. 34, No. 53, December 31, 2008 issue of the Florida Administrative Weekly has been cancelled.

**Section IV
Emergency Rules**

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

**Section V
Petitions and Dispositions Regarding Rule Variance or Waiver**

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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

WATER MANAGEMENT DISTRICTS

NOTICE IS HEREBY GIVEN THAT on January 12, 2009, the South Florida Water Management District (District) received a request for withdrawal of a Petition for Waiver regarding Application No. 08-1230-1 for utilization of Works or Lands of the District known as the L-19 & L-20 Canals; Section 23, Township 44S, Range 36E, Palm Beach County. The District originally, received a petition for waiver from Florida Power & Light Company (FPL) on January 5, 2009, and Notice of receipt of the petition requesting the waiver was published in the Florida Administrative Weekly, Vol. 35, No. 3, on January 23, 2009. No public comment was received.

A copy of the Withdrawal Request and a copy of the Petition for Variance or Waiver may be obtained by contacting: Kathie Ruff, South Florida Water Management District, 3301 Gun Club Road, MSC 1410, West Palm Beach, FL 33406, (561)682-6320 or Email: kruff@sfwmd.gov.

NOTICE IS HEREBY GIVEN THAT on January 5, 2009, the South Florida Water Management District (District or SFWMD), received a petition for waiver from Florida Power and Light Company, Application No. 08-1230-1, for utilization of Works or Lands of the District known as the L-19 and L-20 Canals, to allow for the placement of an aerial powerline run with poles to be located approximately 11' from the top of the canal bank (4' behind the guardrail) along the L-19 and L-20, beginning approximately 1 mile south of SR 80 continuing southerly to approximately 2 miles south of SR 827. The new South Bay feeder will serve the area along US Highway 27 south of South Bay Substation, along with future loads from SFWMD, which includes Compartment B and EAA Reservoir Projects; Section 23, Township 44S, Range 36E, Palm Beach County. The Petition seeks relief from subsection 40E-6.011(4) and (6), Florida Administrative Code, which governs the placement of permanent and/or semi-permanent above-ground structures within 40 feet of the top of the canal bank within Works or Lands of the District.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Kathie Ruff at (561)682-6320 or e-mail at kruff@sfwmd.gov. The District will accept comments