

Section I

Notices of Development of Proposed Rules and Negotiated Rulemaking

DEPARTMENT OF INSURANCE

Division of Insurer Services

RULE CHAPTER TITLE: Viatical Settlements
 RULE CHAPTER NO.: 4-204

PURPOSE AND EFFECT: To promulgate a rule to implement the 1999 amendments to the Viatical Settlement Act, Part XI of Chapter 626, Florida Statutes which are contained in SB1242.

SUBJECT AREA TO BE ADDRESSED: Record keeping requirement related to executed viatical settlement contracts and viatical settlement purchase agreements.

SPECIFIC AUTHORITY: 624.308, 626.9925 FS.

LAW IMPLEMENTED: 626.99235, 626.9922, 626.9911, 626.9926 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00, August 6, 1999

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Ted Straughn, Financial Examiner/Analyst Supervisor, Division of Insurer Services, Bureau of Specialty Insurers, Department of Insurance

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting: Yvonne White, (850)922-3110, Ext. 4214.

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

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE TITLE: Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property
 RULE NO.: 12A-1.051

PURPOSE AND EFFECT: The proposed amendment to Rule Chapter 12A-1.051, FAC, is needed to incorporate statutory changes to Chapter 212, F.S., made by the 1998 Legislature; to remove provisions that are inconsistent with those statutory changes; to reorganize and restructure the rule to make it easier for the reader to locate relevant provisions; to eliminate

obsolete provisions; to address certain recurring issues that are not currently addressed in the rule; and to incorporate judicial interpretations of the relevant statutes and of the rule.

SUBJECT AREA TO BE ADDRESSED: The subject of this rule development workshop is the application of the sales and use tax law to the purchase, use, or sale of tangible personal property by real property contractors. Particular areas to be addressed include distinguishing real property from tangible personal property, contract pricing methods, treatment of mixed contracts that involve both real and personal property, and taxation of the cost of items fabricated by real property contractors.

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1) FS.
 LAW IMPLEMENTED: 212.02(4),(7),(16),(20),(21), 212.06(1), 212.06(14), 212.07(1),(8), 212.08(6), 212.14(5), 212.183 FS.

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

TIME AND DATE: 9:00 a.m., August 4, 1999

PLACE: Auditorium, R. A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida

Copies of the agenda for the rule development workshop may be obtained from Linda W. Bridges, Tax Law Specialist, Sales and Use Tax Section II, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9412.

Pursuant to the provisions of the American with Disabilities Act, any persons requiring special accommodations to participate in this program are asked to advise the Department at least five (5) calendar days before the program by contacting Tracie Grantham at (850)488-2577. If you are hearing or speech impaired, please contact the Department by calling 1(800)DOR-TDD1 (1(800)367-8331).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Linda W. Bridges, Tax Law Specialist, Sales and Use Tax Section II, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9412

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

(Substantial Rewording of Rule 12A-1.051 follows. See Florida Administrative Code for present text.)

12A-1.051 Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property.

(1) Scope of the rule. This rule governs the taxability of the purchase, sale, or use of tangible personal property by contractors and subcontractors who purchase, acquire, or manufacture materials and supplies for use in the performance of real property contracts other than public works contracts performed for governmental entities, which are governed by

the provisions of Rule 12A-1.094, F.A.C. If a real property project involves multiple subcontractors, each subcontractor is responsible for paying, accruing, collecting and remitting tax on his subcontract in accordance with this rule.

(2) Definitions. For purposes of this rule, the following terms have the following meanings:

(a) "Fabricated cost" means the cost to a real property contractor of fabricated items, as defined in the following paragraph. The elements of cost included in fabricated cost are set forth in Rule 12A-1.043, F.A.C. Fabricated cost does not include the cost of transporting fabricated items from the contractor's plant to the job site or the cost of labor at the job site where the fabricated items are incorporated into the real property improvement.

(b) "Fabricated items" means items contractors manufacture, produce, process, compound, or fabricate for their own use in performing contracts for improvements to real property. The term applies only to items the contractor manufactures, produces, processes, compounds, or fabricates at a plant or shop maintained by the contractor. For this purpose, a temporary facility established at a job site that is used exclusively in connection with performing a contract for a real property improvement at that job site is not considered to be a plant or shop maintained by the contractor.

(c)1. "Fixture" means an item that is an accessory to a building, other structure, or to land, that retains its separate identity upon installation, but that is permanently attached to the realty. Fixtures include such items as wired lighting, kitchen or bathroom sinks, furnaces, central air conditioning units, elevators or escalators, or built-in cabinets, counters, or lockers.

2. In order for an item to be considered a fixture, it is not necessary that the owner of the item also own the real property to which the item is attached. A retained title provision in a sales contract or in an agreement that is designated as a lease but is in substance a conditional sales contract is not determinative of whether the item involved is or is not a fixture. Similarly, the fact that a lessee or licensee of real property rather than the lessor/owner enters into a contract for an item to be permanently attached to the real property does not prevent that item from being classified as a fixture.

3. The determination whether an item is a fixture depends upon review of all the facts and circumstances of each situation. Among the relevant factors that determine whether a particular item is a fixture are the following:

a. The method of attachment. Items that are screwed or bolted in place, buried underground, installed behind walls, or joined directly to a structure's plumbing or wiring systems are likely to be classified as fixtures. Attachment in such a manner that removal is impossible without causing substantial damage to the underlying realty indicates that an item is a fixture.

b. Intent of the property holder in having the item attached. If the property holder who causes an item to be attached to realty intends that the item will remain in place for an extended or indefinite period of time, that item is more likely to be a fixture. That intent may be determined by reviewing all of the property holder's actions in regard to the item, including how the item is treated for purposes of ad valorem and income tax purposes. For example, if a property owner reports the value of the item for purposes of ad valorem taxation of the realty and depreciates the item for tax and financial accounting purposes as real property, that indicates an intent that the property is permanently attached as a fixture.

c. Real property law. If an interest in an item arises upon acquiring title to the land or building, the item is more likely to be considered a fixture. For example, if the seller of real property would be expected to leave an item behind when vacating the premises for a new owner without the contract specifically requiring that it be left, that item is likely to be classified as a fixture.

d. Customization. If items are custom designed or custom assembled to be attached in a particular space, they are more likely to be classified as fixtures. Customization indicates intent that the items are to remain in place following installation.

e. Permits and licensing. If installation of an item requires a construction permit or licensing of the contractor under statutes or regulations governing the building trades, that item is more likely to be regarded as a fixture.

f. Legal agreements. The terms of any purchase agreement, deed, lease, or other legal document pertaining specifically to an item may be relevant in determining whether that item is a fixture of real property.

The foregoing list of factors relevant to determining whether an item is a fixture is intended to be illustrative only. Additional factors may exist in any particular case, and the weight to be given to the factors will also vary in each case.

4. The term "fixture" does not include the following items, whether or not such items are attached to real property in a permanent manner:

a. Trade fixtures.

b. Titled property.

c. Machinery or equipment.

(d) "Improvement to real property" or "real property improvement" includes the activities of building, erecting, constructing, altering, improving, repairing, or maintaining of real property.

(e)1. "Machinery or equipment" means and includes property that:

a. is intended to be used in the production, manufacturing, processing, packaging, moving, or otherwise handling personal property for sale or other commercial use, in the performance of commercial services, or for other purposes not related to a building or other fixed real property improvement;

b. may, on account of its nature, be attached to the real property but which does not lose its identity as a particular piece of machinery and equipment; and

c. if attached, is removable without substantial damage to the real property or part thereof to which it is attached.

2. “Machinery or equipment” does not include junction boxes, switches, conduits, wiring, valves, pipes, and tubing incorporated into the electrical, cabling, plumbing, or other structural systems of fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of machinery and equipment.

3. Machinery or equipment serves a particular commercial activity that is carried on at a location rather than serving general uses of land or a structure. Examples of machinery and equipment include conveyor systems, printing presses, drill presses, or lathes. Examples of items that are not machinery or equipment because they are integrated into the structure or realty and retain their usefulness no matter what activity is carried on at the site include heating and air conditioning system components or water heaters. Any property that would qualify for exemption as machinery or equipment under section 212.08(5), Florida Statutes, or any other provision of Chapter 212, Florida Statutes, is considered to be machinery or equipment for purposes of this rule.

(f) “Manufacture, produce, compound, process, or fabricate” means:

1. to convert or condition tangible personal property by changing the form, composition, quality, or character of the property;

2. to make, build, create, produce, or assemble components or items of tangible personal property in a new or different manner;

3. to physically apply materials and labor necessary to modify or change the characteristics of tangible personal property.

The terms do not include activities that do not result in any change in the character or quality of tangible personal property. For example, a repair or restoration of property to return it to its original state and level of functionality is not included within the defined activities.

(g) “Real property” means land, improvements to land, and fixtures. It is synonymous with the terms “realty” and “real estate.”

(h)1. “Real property contract” means an agreement, oral or written, whether on a lump sum, time and materials, cost plus, guaranteed price, or any other basis, to:

a. Erect, construct, alter, repair, or maintain any building, other structure, road, project, development or other real property improvement;

b. Excavate, grade, or perform site preparation for a building, other structure, road, project, development or other real property improvement; or

c. Furnish and install tangible personal property that becomes a part of or is directly wired or plumbed into the central heating system, central air conditioning system, electrical system, plumbing system, or other structural system that requires installation of wires, ducts, conduits, pipes, vents or similar components that are embedded in or securely affixed to the land or a structure thereon.

2. The term “real property contract” does not include:

a. A contract for the sale or for the sale and installation of tangible personal property such as machinery and equipment, or

b. a contract to furnish tangible personal property that will be installed or affixed in such a way as to become a fixture or improvement to real property if the person furnishing the property has not also contracted to affix or install it.

3. A contract is a real property contract if described in subparagraph 1. above whether or not such agreement also involves providing property or services that would not be considered improvements to real property.

4. A contract contains the terms of the agreement between the contractor and the owner (or other interest holder) of the real property and is entered into in advance of any work being undertaken. A proposal prepared by a contractor prior to entering an agreement is not a contract. Statements, invoices, or other billings submitted after work has begun are not contracts. For example, a developer solicits bids on the plumbing work for a project. A contractor prepares a proposal that lists all the materials anticipated to be necessary with unit pricing, labor costs, and a markup based on a percentage of the total material and labor costs. The developer accepts the proposal. The parties enter into an agreement that requires the contractor to provide all the materials and labor necessary to supply the plumbing system for the project for a single lump sum price. When the work is completed, the contractor sends an invoice for the lump sum amount that shows a breakdown into materials and labor. Neither the proposal nor the invoice is a contract under which the developer agrees to pay separately for materials and labor. They are documents prepared by the contractor to explain or justify the price. The contract is the agreement between the parties that an entire installed plumbing system will be provided for a single lump sum.

(i) “Titled property” means property that must be registered, licensed, titled, or documented by this state or by the United States, such as airplanes, boats, and motor vehicles. A houseboat, even if permanently docked and used as a primary residence, is not real property. Mobile homes are titled property unless they are assessed for ad valorem tax purposes as real property. Owners may report mobile homes as real property and have them assessed as such for ad valorem tax purposes. These mobile homes are issued special decals. Classification of a mobile home as personal property by a seller or a lender does not prohibit the owner of the mobile

home from having the property assessed as a real property. A mobile home that is issued a real property decal is treated as real property for purposes of this rule.

(j) "Trade fixtures" means items that are attached to real property by the operator of a trade or business that occupies the premises, are useful solely in connection with or to facilitate that trade or business, and are removable without causing substantial damage to the underlying real property. For example, the operator of a bakery has a special glass display counter installed for displaying cookies and doughnuts. The counter would not be useful to a different type of retail business because of the shelving configuration and materials used. The counter is bolted to the floor but could be removed without causing substantial damage. The counter is a trade fixture and not a fixture of the realty. If the bakery has a sign installed to identify the location by name of the business, that sign is a trade fixture unless it is attached in such manner that it cannot be removed without causing substantial damage to the building or land. If the same bakery operator has built-in storage shelving installed in a supply room or overhead lighting installed in the shop area, those items are not trade fixtures because the storage shelving and lighting are equally functional for any subsequent user of the premises.

(3) Classification of contracts by pricing. The taxability of purchases and sales by real property contractors is determined by the pricing arrangement in the contract. Contracts generally fall into one of the following categories:

(a) Lump sum contracts. These are contracts in which a contractor or subcontractor agrees to furnish materials and supplies and necessary services for a single stated lump sum price.

(b) Cost plus or fixed fee contracts. These are contracts in which the contractor or subcontractor agrees to furnish the materials and supplies and necessary services in exchange for reimbursement of costs plus a fee that is fixed in advance or calculated as a percentage of the costs.

(c) Upset or guaranteed price contracts. These are contracts in which the contractor or subcontractor agrees to furnish materials and supplies and necessary services based on costs plus fees but with an upset or guaranteed maximum price which may not be exceeded.

(d) Retail sale plus installation contracts. These are contracts for improvements to real property in which the contractor or subcontractor agrees to sell specifically described and itemized materials and supplies at an agreed price or at the regular retail price and to complete the work either for an additional agreed price or on the basis of time consumed. In order for a contract to fit in this category, all the materials that will be incorporated into the work must be itemized and priced in the contract before work begins. If a contract itemizes some materials but does not itemize other materials that will be incorporated into the work, the contract is not included in this category. Because the sale of the materials is a separable

transaction from the installation, the purchaser must assume title to and risk of loss of the materials and supplies as they are delivered rather than accepting title only to the completed work. The contractor may remain liable for negligence in handling and installing the items.

(e) Time and materials contracts. These are contracts in which the contractor or subcontractor agrees to furnish materials and supplies and necessary services for a price that will be calculated as the sum of the contractor's cost or a marked up cost for materials to be used plus an amount for services to be based on the time spent performing the contract. These contracts are similar to cost plus or fixed fee contracts because the final price to the property holder will be determined based on the cost of performance. A time and materials contract may or may not also have a guaranteed or upset price clause. Time and materials contracts differ from contracts described in paragraph (d) because the materials are not completely identified, itemized, and priced in the contract in advance and because the property owner is contracting for a finished job rather than the purchase of materials.

(4) General rule of taxability of real property contractors. Contractors are the ultimate consumers of materials and supplies they use to perform real property contracts and must pay tax on their costs of those materials and supplies, unless the contractor has entered a retail sale plus installation contract. Contractors performing only contracts described in paragraphs (3)(a), (b), (c), or (e) do not resell the tangible personal property used to the real property owner but instead use the property themselves to provide the completed real property improvement. Such contractors should pay tax to their suppliers on all purchases. They should also pay tax on all materials they fabricate for their own use in performing such contracts, as discussed in subsection (10). They should charge no tax to their customers, regardless of whether they itemize charges for materials and labor in their proposals or invoices, because they are not engaged in selling tangible personal property. Such contractors should not register as dealers unless they are required to remit tax on the fabricated cost of items they fabricate to use in performing contracts.

(5) Rule for (3)(d) contractors. Contractors who perform contracts described in paragraph (3)(d) do sell tangible personal property. They should register as dealers and provide resale certificates for materials that are itemized and resold under paragraph (3)(d) contracts. They should not provide resale certificates for items that they use themselves rather than reselling, such as hand tools, shop equipment, or office supplies. They must charge their customers tax on the price paid for tangible personal property, unless a valid exemption certificate is provided, but not on the charges for installation labor.

(6) Sales of tangible personal property. Contractors, manufacturers or dealers who sell and install items of tangible personal property, including those enumerated in Rule

12A-1.016, F.A.C., must collect tax on the full selling price, including any installation or other charges, even though such charges may be separately stated. The items listed in Rule 12A-1.016, F.A.C., are tangible personal property even after installation, and their sale with installation is not classified as a real property contract. Contractors, manufacturers, or dealers who sell property over-the-counter without performing installation services must collect tax on the full sales price of such items, even though those items will become improvements to real property upon installation by the purchaser. At the point at which they are sold in over-the-counter transactions, those items are tangible personal property.

(7) Repairs to machinery and equipment. Any owner or lessee that engages another to make repairs to or perform maintenance services on machinery and equipment that, because of its size, configuration, method of attachment, or other characteristics, has the appearance of real property, must inform the service provider that the machinery or equipment is tangible personal property. The owner or lessee should pay sales tax on the full price of the repair or maintenance to any service provider that is a registered dealer. If the service provider ordinarily operates as a real property contractor and is not a registered dealer, the owner or lessee must remit tax on the full price of the repair or maintenance directly to the state.

(8) Mixed contracts. A real property contract may also include materials and labor that are not real property improvements. In such cases, taxability depends upon the predominate nature of the work performed under the contract and upon the contract terms.

(a) If the predominate nature of a mixed contract is a contract for real property improvements, taxability will be determined as if the contract was entirely for real property. For example, a residential developer routinely provides some items of tangible personal property, such as free standing appliances, with new homes sold under cost-plus contracts. The predominate nature of the contract is for a dwelling. The developer should pay sales or use tax on the appliances. A contractor constructs a factory under a turnkey contract that includes providing and installing some manufacturing equipment. The contract is predominately for a factory, a real property improvement, and the contractor should pay use tax on the cost of the equipment. No tax is collected from the property owner in either case, even though some tangible personal property is included in the project.

(b) If the predominate nature of a mixed contract is a contract for tangible personal property, taxability of the contract will be determined as if the contract was entirely for tangible personal property. For example, a vendor of manufacturing equipment under a lump sum contract pours concrete footings and embeds steel plates in the concrete to permit installation of the equipment by bolting it to the plates. The contract is predominately for the sale of equipment. The

contractor should buy the equipment, concrete, and steel plates using a resale certificate and charge tax on the full price charged to the customer.

(c) The determination of the predominate nature of a contract will depend upon the facts and circumstances of each case. Consideration will be given to the description of the project and the responsibilities of the contractor as set forth in the contract. Consideration will also be given to the relative cost of performance of the real property and tangible personal property components of the contract.

(d) If a mixed contract clearly allocates the contract price among the various elements of the contract, and such allocation is bona fide and reasonable in terms of the costs of materials and nature of the work to be performed, taxation will be in accordance with the allocation. For example, a residential developer builds and sells a home on a cost plus basis, but the contract provides separately stated prices for the sale and installation of certain optional free standing appliances that are tangible personal property and are not classified as real property fixtures. The contractor may purchase those appliances using a resale certificate and charge sales tax on the price paid for the appliances, including installation, by the home buyer. The contractor is responsible for paying tax on all the materials that are included in the cost plus price of the home other than the separately itemized appliances. Similarly, a manufacturer who sells and installs industrial machinery, which is tangible personal property, could state a separate charge in the contract for providing concrete footers and embedded steel plates to support the machinery. The footings and plates would be considered a real property improvement. The contractor should pay tax on the materials used for the real property part of the contract and not charge tax to the customer on the related charge. The customer should pay tax on the rest of the contract price allocable to the machinery itself.

(e) This subsection does not effect any exemption provided in chapter 212 for machinery or equipment that may be claimed by a contractor based on a temporary tax exemption permit, affidavit, or other authorized certification by the owner of real property. For example, purchases of certain equipment for generating electrical power or of certain machinery for manufacturing tangible personal property for sale are exempt from sales and use taxes. In order for the property owner to receive the benefit of these exemptions, it has been specifically provided that contractors who purchase and install the exempt items may claim the exemption based on the property owner's providing the required documentation of entitlement. The guidelines on mixed contracts are not intended to impact these exemptions. In the case of a mixed contract that is treated as a real property contract, the contractor is still entitled to purchase the qualified equipment or machinery tax-exempt. In the case of a mixed contract treated as a sale of tangible personal property, the contractor would purchase the equipment or machinery using a resale certificate and accept the property

owner's authorized documentation of exemption in lieu of charging tax on the subsequent sale of the equipment or machinery to the property owner.

(9) Dual operators. Some contractors both use materials themselves in the performance of contracts and resell materials either in over-the-counter sales or under contracts described in paragraph (3)(d). Those contractors should register as dealers. When they purchase materials of a type that they may either use themselves or resell, they may issue a resale certificate. If those materials are subsequently resold, tax should be collected from the buyer and remitted to the state. If the materials are used by the contractor, use tax should be paid instead.

(10) Use tax on fabrication costs. Contractors may maintain shops, plants, or similar facilities where they manufacture, produce, compound, process, or fabricate items for their own use in performing contracts. Contractors are required to pay use tax on the fabricated cost of those items. The elements that must be included in the taxable cost of such items are set forth in Rule 12A-1.043, F.A.C. In the case of real property contractors, the taxable cost of an item manufactured, produced, compounded, processed, or fabricated for use in performing a contract does not include labor that occurs at the job site where the item will be incorporated into a real property improvement or transportation from the plant where an item was fabricated to the job site. Examples of real property contractors who are subject to tax under this subsection include cabinet contractors who build custom cabinets in their shops, roofing contractors who operate tile plants, or heating/air conditioning/ventilation contractors who maintain sheetmetal shops for making ductwork. Real property contractors that are required to remit use tax on fabricated items must register as dealers for purposes of remitting such tax if they are not already registered as dual operators.

(11) Percent of contract price method.

(a) The Department is authorized to adopt rules that establish an elective percent of contract price method for calculating use tax obligations of real property contractors that manufacture, produce, compound, process, or fabricate tangible personal property for their own use in performing contracts. For example, a rule could be adopted to provide that cabinet makers that build cabinets at their own shops and install them could elect to pay use tax on a certain percentage of the contract price paid by the real property holder rather than keeping track of the elements of taxable cost of the fabricated cabinets.

(b) In order to initiate a rulemaking project to adopt the percent of contract price method for an industry group, the Department must receive a petition from the majority of the members of the group or from a statewide association representing the group. The petition must be accompanied by a proposal setting forth the percent of contract price the group believes should be adopted in the rule and by sufficient information and documentation to establish that the proposed

percentage is based on a reasonable estimate of average taxable costs incurred by members of the petitioning group. The industry group may propose and the Department may in appropriate cases establish alternative percentages for members of the group who are registered dealers and do not pay tax on purchases of direct materials that are incorporated into fabricated items and for members of the group who pay sales tax on those purchases. The Department will consider the information supplied with the petition as well as any other relevant information that is available. Petitions should be submitted to Department of Revenue, Technical Assistance and Dispute Resolution, Post Office Box 7443, Tallahassee, Florida 32314-7443.

(c) The Department may review rules adopted at the petition of industry groups and amend them to adjust the percentage to insure it continues to reflect a reasonable estimate of taxable costs for that industry group. The percentage of contract price established in a rule described in this subsection can not be amended during the first five years after its adoption. After that time, the Department may review and amend the rule, but all such reviews must be at least five years apart. In conducting a review, the Department will consider any information submitted by the industry group affected as well as any other available information.

(d) If the Department adopts a percent of contract price rule for an industry group, members of that group may elect to apply the method on a contract-by-contract basis or to apply it to all contracts in any period by timely accruing and remitting tax using the method. Timely accrual and remittance means accrual as of the time invoices are issued based on applying the established percentage to the amount invoiced to calculate the taxable cost and remittance with a timely filed return filed in the reporting period immediately after the accrual (i.e., in the month following the issuance of the invoice and accrual of the tax for a contractor who is required to file on the regular monthly schedule). The contractor must maintain records to document the timely accrual and payment of the tax on each contract for which the method is used.

(e) Application of the established percentage to the contract price is intended to capture the taxable cost of fabricated items used in performing the contract. If the contractor pays sales tax on purchases of materials incorporated into the fabricated items, the use tax due on the fabricated cost under the percent of contract method should be reduced to reflect the tax already paid on those materials. For example, a real property contractor who fabricates some of the items used in performing contracts is entitled to use a 50% of contract price method to compute use tax on fabricated cost. The contractor agrees to fabricate and install items for a lump sum price of \$10,000. The contractor does not make any sales of tangible personal property. He can not issue a resale certificate and pays sales tax on all purchases of materials and supplies. The cost of materials incorporated into the fabricated

items for the contract is \$3,000, on which the contractor has already paid \$180 ($\$3,000 \times 6\%$) in sales tax to the supplier. Those materials costs on which tax has already been paid are subtracted from the taxable percentage of the contract price before calculating the use tax due on the finished item. The use tax to be accrued and remitted under the percent of contract method is \$120 (50% of $\$10,000 = \$5,000 - \$3,000 = \$2,000 \times 6\% = \$120$).

(f) Use of the percent of contract price method applies only to the use tax owed on fabricated items. Other taxes may also be owed in connection with performance of a contract. For example, a real property contractor who fabricates some of the items used in performing contracts is entitled to use a 50% of contract price method to compute use tax on fabricated cost. The contractor agrees to fabricate items, install those items, and supply materials and labor for on-site work that does not require shop fabrication. The contract is for a lump sum price of \$10,000. The contractor also makes over-the-counter sales. He is therefore a registered dealer and buys all the materials involved using a resale certificate. The cost of materials used for the on-site work is \$1000. Use tax must be remitted on 50% of the contract price for the fabricated items and on \$1,000 for the on-site materials. The total tax owed is \$360 ($\$5,000 + \$1,000 = \$6,000 \times 6\% = \360).

(g) The percent of contract price method involves an alternative way to calculate the use tax owed and alternative timing for accrual and payment of tax. It does not change the nature of the tax liability. The tax involved is still a use tax on fabricated cost. It is not a tax on the income earned from contracts. Election of the method, therefore, does not affect the jurisdiction where the tax is owed. Tax is owed in the jurisdiction where fabrication occurs, not in the jurisdiction where the contract is performed. For example, if a real property contractor purchases materials and fabricates items in Florida for a contract, taxable fabrication has occurred in Florida and tax is owed to Florida. Subsequent transportation of the item to another state for installation does not make the fabrication exempt from Florida use tax.

(12) Asphalt contractors. Contractors that manufacture asphalt for their own use in the performance of improving real property must calculate the tax on that asphalt based on the sum of the following:

(a) the cost of materials which become a component part or which are an ingredient of the finished asphalt multiplied by 6 percent; plus

(b) the costs of transportation of such components and ingredients to the plant site multiplied by 6 percent; plus

(c) an indexed tax per ton representing all other costs associated with the manufacture of the asphalt.

If sales tax has been paid on the purchase of materials or transportation in (a) or (b) above, the cost of such materials or transportation is not included in computing the total use tax due. The indexed tax is computed based on the "materials and

components for construction" series of the producer price index, as calculated and published by the United States Department of Labor, Bureau of Statistics. The indexed tax is revised annually effective each July 1. The Department is responsible for publishing the new rate each year in time to permit timely accruals and payment of use tax by asphalt contractors.

(13) Use tax on rock, shell, fill dirt, etc. A real property contractor is taxable on the cost of rock, shell, fill dirt, or similar materials the contractor uses to perform a real property contract for another person.

(a) If the contractor acquires the materials from a location the contractor owns or leases, the contractor must remit use tax based on one of the following methods:

1. the fair retail market value, which means either the price the contractor would have to pay on the open market or the price at which the contractor would sell the materials to third parties; or

2. the cost of the land plus all costs of clearing, excavating, and loading the materials, including labor, power, blasting, and similar costs.

(b) If the contractor purchases the materials and as part of the agreement excavates and removes them from the seller's land (including state-owned submerged land), the taxable cost is the purchase price paid to the seller plus all the costs incurred by the contractor in clearing, excavating, and removing the materials, including labor.

(c) A contractor on a road project owes no tax on borrow materials that are provided at no charge by the Department of Transportation, including materials extracted from pits that are provided at no charge by that department.

(14) Mobile homes. A contractor who makes improvements or repairs to a mobile home is required to ascertain the status of that home to determine how tax should be paid. If the mobile home has a real property decal, the contract should be treated as a real property contract. In that case, the contractor generally will be subject to tax on the materials used, and the customer will pay no tax. If the mobile home does not have a real property decal, the job is a sale or repair of tangible personal property. The contractor should charge tax on the full price paid by the customer, including charges for installation labor. In that case, the contractor is not subject to tax on the materials that are incorporated into and become a part of the improvement or repair of the mobile home.

(15) Contracts performed for nongovernmental tax-exempt entities. Contractors who perform lump sum, cost-plus, guaranteed price, or time and materials contracts for nongovernmental entities that are exempt from sales taxes, such as private schools, hospitals, or churches, are taxable on materials the contractor purchases for use in performing those contracts. Such contractors are not permitted to use the consumer's certificate of exemption issued to the exempt entity

in order to purchase materials for the contract exempt from taxes. The entity's exempt status is not relevant because it applies only to sales of tangible personal property to the entity, not to the contractor. The contractor, not the exempt entity, is the taxable consumer of the materials the contractor purchases to use in performing that contract. The fact that an exempt entity will bear the economic burden of the taxes paid by the contractor in the form of a higher contract price does not change the contractor's tax liabilities.

(16) Subdivision and similar improvements.

(a) Subdivision owners and developers or their contractors are subject to tax on purchases of materials for use in the construction of streets, roadways, water distribution systems, sewers, and similar improvements that the owner or developer subsequently transfers to a municipality or other governmental unit. These transfers are not donations or sales of tangible personal property to a governmental unit.

(b) If a municipality or other governmental unit purchases and installs water mains and distribution pipes for a property owner, including a subdivision developer, under an arrangement whereby the municipality retains ownership, possession, and control of the mains and pipes, but recovers all or part of its cost from the property owner through the collection of an installation charge, such installation charge is equivalent to an assessment for benefits. It is not taxable.

(17) Specific activities classified as real property contracts. Contractors who are engaged in the following activities are generally considered to be real property contractors, although any particular job may be determined not to involve an improvement to real property:

(a) Awning installation;

(b) Block, brick and stone masonry;

(c) Bridge construction;

(d) Burglar and fire alarm system installation;

(e) Cabinetry (built-in only);

(f) Carpentry;

(g) Carpeting installed with tacks, glue, or other permanent means and serving as the finished floor;

(h) Cement and concrete work;

(i) Closet system installation;

(j) Dock, pier, seawall, and similar construction, maintenance, or repair;

(k) Door and window installation or on-site repair;

(l) Driveway installation or repair;

(m) Electrical system installation and repairs, including structural wiring and cabling, meter boxes, switches, receptacles, wall plates, and similar items;

(n) Elevator and escalator installation and maintenance;

(o) Fencing and gates installation intended for permanent use;

(p) Flooring;

(q) Foundations;

(r) Glass and mirror installation if installed in a permanent manner;

(s) Heating, ventilating, and air conditioning system work;

(t) Insulation of structures or structural components;

(u) Iron work, such as railings, banisters, and stairs incorporated into buildings;

(v) Landscaping work, including walls, walkways, permanent structures such as greenhouses, arbors, or gazebos, and permanent plantings such as trees, perennial shrubs, and lawns;

(w) Lathing;

(x) Painting of buildings, decks, and other real property structures;

(y) Paving and surfacing work, including driveways, parking lots, patios, roadwork, and sidewalks;

(z) Plastering;

(aa) Plumbing work;

(bb) Radio and telephone transmission towers;

(cc) Roofing work;

(dd) Septic tank installation or maintenance;

(ee) Sheetmetal/ductwork;

(ff) Siding installation;

(gg) Site work, including clearing, grading, demolition, and excavation;

(hh) Signs that are permanently attached to realty and are not excluded as trade fixtures;

(ii) Solar systems;

(jj) Sprinkler system installation for lawn and garden irrigation or for fire prevention;

(kk) Stucco;

(ll) Structural steel and concrete installation;

(mm) Swimming pool installation, including accessories and parts that are permanently attached or are plumbed or wired into plumbing or electrical systems;

(nn) Tile work;

(oo) Utility poles and lines installation and maintenance;

(pp) Wallpaper installation;

(qq) Water, sewer, and drainage systems;

(rr) Waterproofing of structures, decks, driveways, and other real property components; and

(ss) Well drilling and installation.

(18) Specific activities not classified as real property contracts. The sale, installation, maintenance or repair of the following items is not considered to be a real property contract.

(a) Area rugs and carpets;

(b) Art work (paintings, statuary);

(c) Cabinets and shelving (freestanding);

(d) Computer system components;

(e) Drapes, curtains, blinds, shades, etc.;

(f) Entertainment system (e.g., stereo systems, home theater systems) components;

- (g) Furniture;
 - (h) Household appliances;
 - (i) Lawn markers;
 - (j) Mail boxes;
 - (k) Mirrors (freestanding);
 - (l) Radio and television antennas;
 - (m) Sprinkler systems for lawns or gardens if made up of unburied hoses or tubing and movable sprinkler heads;
 - (n) Stepping stones;
 - (o) Telecommunications system components;
 - (p) Television satellite dishes;
 - (q) Temporary fencing and gates (e.g., for construction sites); and
 - (r) Window air conditioning units.
- (19) Cross references
- (a) For partial exemption of tax on the cost of asphalt manufactured for one's own use, see s. 212.06(1)(c), F.S.
 - (b) For exemption of charges for repairs of industrial machinery and equipment, see s. 212.08(7)(zz), F.S.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(4),(7),(16), (20),(21), 212.06(1), 212.06(14), 212.07(1), (8), 212.08(6), 212.14(5), 212.183 FS. History—Revised 10-7-68, 1-7-70, 6-16-72, Amended 2-3-80, 3-27-80, 6-3-80, 8-26-81, 11-15-82, 6-11-85, Formerly 12A-1.51, Amended 1-2-89, 8-10-92, _____.

DEPARTMENT OF REVENUE

Corporate Income Tax

RULE TITLES:	RULE NOS.:
Explanation of Rules	12C-1.001
Tax Imposed	12C-1.011
Other Methods of Apportionment	12C-1.0152
Payroll Factor for Apportionment	12C-1.0154
Returns; Time and Place for Filing	12C-1.0222
Special Rules Relating to Estimated Tax	12C-1.034
Methods of Accounting	12C-1.042
Forms	12C-1.051

PURPOSE AND EFFECT: Rule 12C-1.001, FAC, is repealed because it is unnecessary. Rule 12C-1.011, FAC, is amended to clarify that corporations with representatives engaged in activities in Florida which exceed those protected by P.L. 86-272 are subject to Florida corporate income tax. Rule 12C-1.0154, FAC, is amended to furnish guidance in computing the payroll factor to taxpayers who hold a partnership interest and are subject to Florida corporate income tax. Rule 12C-1.0222, FAC, is amended to clarify the rule, and to conform the rule to Florida Statutes. Rule 12C-1.034, FAC, is amended to further clarify estimated tax requirements and conform the rule to Florida Statutes. Rule 12C-1.042, FAC, is amended to delete language that is obsolete. Rule 12C-1.051, FAC, is amended to reflect the adoption of current forms used by taxpayers providing information to the Department.

SUBJECT AREA TO BE ADDRESSED: These proposed amendments clarify, explain or define terms and concepts regarding the corporate income tax. This workshop provides the general public an opportunity to provide comments regarding these proposed rule amendments.

SPECIFIC AUTHORITY: 213.06(1), 220.182(8), 220.183(6)(d), 220.51 FS.

LAW IMPLEMENTED: 120.55(1)(a)4., 213.21, 220.02(1), 220.03(1)(r), 220.11, 220.12, 220.13, 220.131, 220.15, 220.151, 220.152, 220.16, 220.21, 220.22, 220.221, 220.222, 220.24, 220.241, 220.32, 220.33, 220.34, 220.42, 220.44, 220.51, 220.68, 220.723, 220.801, 220.807, 220.809, 221.02, 221.04 FS.

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

TIME AND DATE: 9:00 a.m., August 5, 1999

PLACE: Department of Insurance, Larson Building, Room 116, 200 East Gaines Street, Tallahassee, Florida 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Beverly L. Hayes, Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, Post Office Box 7443, Tallahassee, Florida 32314-7443; telephone number (850)922-4700

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Persons needing an accommodation to participate in any proceeding before the Technical Assistance and Dispute Resolution Office should call (850)488-8026 (voice) or 1(800)367-8331 (TDD), at least five working days before such proceeding.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12C-1.001 Explanation of Rules.

~~All rules relating specifically to Chapter 220 of the Florida Statutes, bear the initial identification code "12C-1."~~

~~Other rules of the Department of Revenue may also apply. This rule chapter also relates to the administration of Chapter 221, Florida Statutes.~~

Specific Authority 213.06(1), 220.51 FS. Law Implemented 220.01, 221.04 FS. History—New 10-20-72, Amended 12-18-83, Formerly 12C-1.01, Amended 12-21-88, 4-8-92, Repealed.

12C-1.011 Tax Imposed.

(1) The following activities, notwithstanding others within the meaning of taxable privileges described in s. 220.02, F.S., will be construed as conducting business, earning or receiving income in this state, or constitute those activities of a resident or citizen of this state for purposes of this tax, and corporations participating therein are subject to taxation unless exempted by the constitution or the laws of the United States or this state.

(a) through (j) No change.

(k) Making sales that are approved in the state by “independent contractors” who do not hold themselves out as engaged in selling, or soliciting orders for the sale of; more than one principal; or making sales through the use of representatives in this state, when activities engaged in exceed those protected by P.L. 86-272 (15 U.S.C. ss. 381-384), which is incorporated by reference in Rule 12C-1.0511, F.A.C.

(l) through (4) No change.

Specific Authority 213.06(1), 220.51 FS. Law Implemented 220.02(1), 220.11, 220.12, 220.15, 220.151, 220.22 FS. History—New 1-19-73, Amended 10-20-73, 8-23-76, 12-18-83, Formerly 12C-1.11, Amended 12-21-88, 1-30-90, 4-8-92, 5-17-94, 3-18-96,_____.

12C-1.0152 Other Methods of Apportionment.

(1)(a) A departure from the applicable method of apportionment required under the provisions of ss. 220.15 or 220.151, F.S., shall be permitted only where the method does not accurately and fairly reflect business activity in Florida. An alternative method may not be invoked, either by the Department of Revenue or by the taxpayer, merely because it reaches a different apportionment percentage than the regularly applicable formula. However, if the applicable formula will lead to grossly distorted result in a particular case, a fair and accurate alternative method is appropriate (see Norfolk and Western Railway Co. v. Missouri State Tax Commission, 390 U.S. 217, 88 S. Ct. 995, 19 L. Ed. 2d 1201 (1968), which is incorporated by reference in Rule 12C-1.0511, F.A.C.).

(b) ~~A taxpayer~~ ~~The party (Department of Revenue or the taxpayer)~~ seeking to utilize an alternative apportionment method must show by clear and cogent evidence that the regularly applicable formula would result in taxation of extraterritorial values (see Butler Bros. v. McColgan, 315 U.S. 501, 62 S. Ct. 701, 86 L. Ed. 991 (1942), which is incorporated by reference in Rule 12C-1.0511, F.A.C.). This can be shown only if the regularly applicable formula is demonstrated to operate unreasonably and arbitrarily in apportioning to Florida a percentage of income which is out of all proportion to the business transacted in Florida (see Hans Rees' Sons, Inc. v. North Carolina ex rel Maxwell, 283 U.S. 123, 51 S. Ct. 385, 75 L. Ed 879 (1931), which is incorporated by reference in Rule 12C-1.0511, F.A.C.).

(2) through (4) No change.

Specific Authority 213.06 (1), 220.51 FS. Law Implemented 220.15, ~~220.44~~, 220.151, 220.152, 220.44 FS. History—New 5-17-94, Amended 3-18-96,_____.

12C-1.0154 Payroll Factor for Apportionment.

(1) through (5) No change.

(6) Compensation paid to employees of a partnership is included in the denominator of the taxpayer’s payroll factor to the extent of the taxpayer’s interest in the partnership. The amount paid to employees in Florida is also included in the numerator of the payroll factor to the extent of the taxpayer’s interest in the partnership. Partnership payroll should be

allocated to each partner based on each partner’s interest in the partnership, or as designated in the partnership agreement, for inclusion in the Florida payroll factor.

Specific Authority 213.06(1), 220.51 FS. Law Implemented 220.13, 220.15, 220.44 FS. History—New 5-17-94, Amended 3-18-96,_____.

12C-1.0222 Returns; Time and Place for Filing.

(1) through (2)(a)1. No change.

2. A corporation which has been granted an automatic extension of time for filing its federal income tax return pursuant to section 6081(b) of the Internal Revenue Code, or which has established reasonable cause pursuant to the second sentence of subparagraph 1., will be granted an extension of time to file its return provided the following requirements are satisfied:

a. No change.

b. The original of the application must be filed with the Process Manager for Taxpayer Services, Florida Department of Revenue, 5050 W. Tennessee Street, Tallahassee, Florida 32399-0135, on or before the due date prescribed for the filing of the return of the corporation. A copy of the federal extension must be attached to the Florida return when it is filed. For applications mailed on or before, but received after, the due date of the return, see Rule 12C-1.032, F.A.C. Except as provided in Rule Chapter 12-24, F.A.C., the corporation shall remit with the application an amount estimated to be the balance of its proper tax due for the taxable year after giving effect to payments and credits on its declaration of estimated income tax. Failure to make payment with an application when one is required will void an otherwise automatic extension of time to file. ~~Additionally, when the taxpayer underpays the required payment by the greater of \$500.00 or 10 percent of the tax shown on the return when filed, the extension of time to file shall be void.~~ In such a case, the taxpayer will be subjected to the penalty provided in s. 220.801, F.S., for failure to file a timely return, and interest will be assessed on any tax due from the due date of the return to the date of payment.

c. No change.

3. The parent company of an affiliated group qualified to file a Florida consolidated income tax return ~~pursuant to s. 220.131(4), F.S.~~, which has been granted an automatic extension of time for filing a federal consolidated return, or which has established reasonable cause ~~pursuant to the second sentence of subparagraph 1.~~, will be granted an extension of time to file its return, provided the following requirements are met:

a. No change.

b. The original of such application shall be filed with the Process Manager for Taxpayer Services, Florida Department of Revenue, 5050 W. Tennessee Street, Tallahassee, Florida 32399-0135, on or before the due date prescribed for the filing of the return of the parent corporation. A copy of the federal extension must be attached to the Florida return when it is

filed. For applications mailed on or before, but received after, the due date of the return, see Rule 12C-1.032, F.A.C. Except as provided in Rule Chapter 12-24, F.A.C., the parent corporation shall remit with the application an amount estimated to be the balance of the tax properly due from the affiliated group for the taxable year after giving effect to all payments and credits on declarations of estimated income tax. Failure to make payment with an application when one is required will void an otherwise automatic extension of time to file and will preclude the initial election to file a consolidated return under s. 220.131(1), F.S., which requires such election be made not later than the due date (including extensions) for filing the consolidated return for the taxable year. Additionally, ~~when the taxpayer underpays the required payment by the greater of \$500.00 or 10 percent of the tax shown on the return when filed,~~ the extension of time to file shall be void and the taxpayer will be subject to the penalty provided in s. 220.801, F.S., for failure to file a timely return, and interest will be assessed on any tax due from the due date of the return to the date of payment.

c. No change.

4. A partnership which has been granted an extension of time for filing its federal partnership return, Form 1065 ~~F-1065~~, or which has established reasonable cause ~~pursuant to subparagraph 1.~~, will be granted an extension of time to file its Florida partnership return, Form F-1065, provided the following requirements are met:

a. through (b) No change.

Specific Authority 213.06(1), 220.51 FS. Law Implemented 220.222, 220.32, 220.801 FS. History—New 10-20-73, Amended 10-8-74, 4-21-75, 3-5-80, 12-18-83, Formerly 12C-1.222, Amended 12-21-88, 12-19-89, 4-8-92, 3-18-96,_____.

12C-1.034 Special Rules Relating to Estimated Tax.

(1) through (2) No change.

(3) Reasonably Expect.

(a)1.through 2. No change.

3. A business may be required to make a declaration of estimated tax by the 1st day of the 5th month, even though income may not actually be earned until later in the taxable year. For example, a seasonal business that can reasonably expect before ~~by~~ the 1st day of the 4th month of a taxable year to owe \$2,500 for the taxable year will be required to make a declaration of estimated tax on the first day of the fifth month of the taxable year. Therefore, a Christmas shop that has a taxable year ending January 31 will be expected to make a declaration by June 1 (the first day of the fifth month following the end of the taxable year) if the corporation reasonably expects to owe \$2,500 for the tax year. It does not matter whether the corporation is making sales by that date or not.

(b) No change.

(c) When the tax due for the corporation's prior taxable year exceeded \$2,500, there will be a presumption that the taxpayer could reasonably expect to owe \$2,500 in estimated tax. However, a taxpayer may rebut this presumption ~~and show reasons to use an alternate date.~~

(d) No change.

(e) ~~In the first taxable year, or where the preceding taxable year was less than 12 months, the Department is authorized to make a factual determination which will relieve a corporation from filing the declaration of estimated tax on or before the first day of the 5th month of the taxable year. There~~ However, there is no automatic first year exception from filing the declaration by the first day of the fifth month of the taxable year and making payments of estimated tax in accordance with the time limitations set by s. 220.33(1), F.S.

(4) through (6) No change.

(7) Amended declarations.

(a) through (c) No change.

(d) If an amended declaration is filed, s. 220.33(6), F.S., provides that the remaining payments should also be increased or decreased.

(e) No change.

(8) No change.

(9) Underpayment of estimated tax.

(a) through (f) No change.

(g) Period of underpayment.

1. The period of the underpayment of any installment of estimated tax begins on the day following the date such installment is required to be paid and ends on the first day of the fourth month following the close of the taxable year, or the date such underpayment is paid, whichever is earlier.

2. through (j) No change.

(10) Affiliated groups. Consolidated return not filed in prior year.

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

2. If the members of a group are treated as separate taxpayers for the taxable year under subparagraph (b)1., then each member is entitled to a separate \$2,500 estimated tax threshold for purposes of determining requirements for making a declaration of estimated tax under s. 220.24(1), F.S., for such year, ~~unless whether or not~~ the group files a consolidated return for such year.

3. No change.

4. If the group files a consolidated return for such year, ~~then for purposes of determining~~ the amount of the installment ~~which would be required to be paid is if the estimated tax were~~ equal to 90 percent of the tax shown on the return for the taxable year (for s. 220.34(2)(b)1., F.S.). ~~The~~ the "tax shown on the return" ~~for any member shall be the portion of the tax shown on the consolidated return. The exception provided by s. 220.34(2)(d)1., F.S., will not apply in the year a group first files a consolidated return. allocable to such member in a~~

manner consistent with the group's election, for federal income tax purposes, under section 1552 of the Internal Revenue Code. For purposes of determining an amount equal to the tax computed at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the return for, and the law applicable to the preceding taxable year (for s. 220.34(2)(d)1., F.S.), the "facts shown on the return" shall be the facts shown on each member's separate return for the preceding year.

(11) Affiliated group. Consolidated tax return filed in prior year.

(a) through (b) No change.

(c) If a group is required to file a consolidated declaration of estimated tax for the taxable year, then:

1. No change.

2. If such group does not file a consolidated return for the taxable year, each member of the group shall be entitled to a separate \$2,500 estimated tax threshold for purposes of determining requirements for making a declaration of estimated tax under s. 220.24(1), F.S., for such year. For purposes of s. 220.34(2)(b)2., F.S., the "amount, if any of the installment paid" by any member shall be an amount apportioned to such member in any manner designated by the common parent. The exception provided by For purposes of s. 220.34(2)(d)1., F.S., will not apply to a group filing separate returns in a year immediately following a year in which a consolidated return was filed. the "facts shown on the return" shall be the facts shown on the consolidated return for the preceding year and the tax computed under such section shall be allocated in a manner consistent with the group's election for federal income tax purposes, under s. 1552, I.R.C., which is incorporated by reference in Rule 12C-1.0511, F.A.C.

(12) Short taxable years.

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

2. However, the declaration shall be filed on or before the first day of the next taxable year ~~first month succeeding the last month of the short taxable year~~ if the taxpayer can reasonably expect to owe more than \$2,500 in estimated tax before the first day of such last month and the date specified in subsections (5) and (6) as applicable is not within the short taxable year.

3. Any estimated tax payable in installments which is not paid before the first day of the next taxable year ~~first month succeeding the last month of the short taxable year~~, whether or not the date otherwise specified in s. 220.33, F.S., for payment has arrived, shall be paid on the first day of the first month succeeding the last month of the short taxable year.

(c) The application of the provisions of paragraphs (a) and (b) may be illustrated by the following examples:

1. Example (1): A taxpayer filing on a calendar year basis that changes to a fiscal year beginning September 1, 1993, will have a short taxable year beginning January 1, 1993, and ending August 31, 1993. If the corporation can reasonably

expect to owe more than \$2,500 in ~~estimated~~ tax before April 1, 1993, the first day of the 4th month of the taxable year, the declaration of estimated tax must be filed on or before May 1, 1993 (the first day of the 5th month).

2. Example (2): If, in the first example, the taxpayer could not reasonably expect to owe more than \$2,500 in ~~estimated~~ tax until July 1, 1993, then the requirements of s. 220.24, F.S., were met before the first day of the last month of the short taxable year, and a declaration of estimated tax is required to be filed on or before September 1, 1993, for the short taxable year. However, if the taxpayer does not reasonably expect to owe more than \$2,500 in ~~estimated~~ tax until August 1, 1993, then the requirements of s. 220.24, F.S., were not met before the first day of the last month of the short taxable year, and no declaration of estimated tax is required to be filed for the short taxable year.

3. Example (3): The taxable year for a corporation that has elected to be a calendar year taxpayer began June 1, 1993. The taxable year is, therefore, June 1, 1993, through December 31, 1993. The taxpayer can reasonably expect by August 31, 1993 (before the 1st day of the 4th month of the taxable year) to owe \$10,000 in ~~estimated~~ tax. The declaration of estimated tax must be filed by October 1 (the 1st day of the 5th month of the taxable year). Payments of estimated tax would be due October 1, December 1 (the 1st day of the 7th month), and January 1 (the 1st day of the succeeding taxable year). The taxpayer must pay at least 90 percent of the tax finally determined to be due. The tax finally determined to be due was \$10,000; therefore, the taxpayer must pay at least \$9,000 in estimated tax to avoid being underpaid. The provisions of s. 220.33, F.S., provide for four equal installments if the declaration is required to be filed on or before the 1st day of the 5th month of the taxable year. The taxpayer will not be underpaid if the payments due October 1 and December 1 are each ~~is~~ at least \$3,000 ~~\$2,250~~ (one-third ~~25 percent~~ of \$9,000). The payment made on January 1 must be the remaining balance of \$3,000 ~~\$4,500~~.

(d)1. In cases where the short taxable year results from a change of annual accounting period, for the purpose of determining whether the anticipated income for a short taxable year will result in an estimated tax liability requiring the filing of a declaration, such income shall be placed on an annual basis by multiplying such income by 12 and dividing the result by the number of months in the short period. If the tax computed on such annual ~~annualized~~ income exceeds \$2,500, the estimated tax shall be the same part of the excess so computed as the number of months in the short period is of 12 months.

2. For example, a taxpayer which changes from a calendar year basis to a fiscal year basis beginning October 1, 1988, will have a short taxable year beginning January 1, 1988, and ending September 30, 1988. If on or before August 31, 1988,

the taxpayer anticipates that it will have income of \$54,000 for the 9-month taxable year, the estimated tax is computed as follows:

Anticipated income for 9 months	\$54,000.00
Annual Annualized income (54,000 x 12/9)	72,000.00
Tax liability on	\$72,000
(\$72,000-5,000) x 5.5 percent)	3,685.00
Estimated tax for 9-month period	
(\$3,685 x 9/12)	\$2,763.75

Since the tax liability on the ~~annual~~ annualized income is in excess of \$2,500, a declaration is required to be filed, reporting an estimated tax of \$2,763.75 for the 9-month taxable period. This paragraph does not apply in any case where the short taxable year does not result from a change in the taxpayer's annual accounting period.

(e) No change.

(f) Where a declaration of estimated tax has been filed for a short taxable year, an amended declaration may be filed during any interval between installment dates. However, no amended declaration for a short taxable year may be filed until after the installment date on or before which the original declaration was filed, and only one amended declaration may be filed during each interval between installment dates. For purposes of this paragraph, the term "installment date" includes the first day of the next taxable year first month succeeding the last month of a short taxable year if such first day does not fall on a prescribed installment date.

(13) No change.

Specific Authority 213.06(1), 220.51 FS. Law Implemented 213.21, 220.131, 220.24, 220.241, 220.33, 220.34, 221.02, 221.04 FS. History—New 10-20-72, Amended 10-20-73, 7-27-80, 12-18-83, Formerly 12C-1.34, Amended 12-21-88, 4-8-92, 5-17-94, 3-18-96, _____.

12C-1.042 Methods of Accounting.

(1) Long-term Contracts.

(a) No change.

(b) An election to file the same as federal under s. 220.42(3), F.S., shall be made by filing a timely return on which the income from long-term contracts is reported on the percentage of completion method of accounting. The election must be made in the first year under the Florida Income Tax Code in which any portion of the taxpayer's gross income derived from long-term contracts would be required to be taken into account under the percentage of completion method for federal tax purposes. ~~An election under s. 220.42, F.S., is available to a partnership which reports income from long-term contracts for federal tax purposes under the completed contract method. An election by a partnership must be made in a timely filed return for its first year under the Florida Income Tax Code in which any portion of its gross income derived from long-term contracts would be required to be taken into account under the percentage of completion method. An election by a~~

~~partnership pursuant to this paragraph shall be applicable to all partners equally, but any such election by a partnership shall not apply to any partner's nonpartnership interests.~~

(c) No change.

(2) No change.

Specific Authority 213.06(1), 220.51 FS. Law Implemented 220.42 FS. History—New 10-8-74, Formerly 12C-1.42, Amended 12-21-88, 4-8-92, 3-18-96, _____.

12C-1.051 Forms.

The Department of Revenue adopts, and hereby incorporates by reference in this rule, the following forms and instructions:

Form Number	Title	Effective Date
(1) Form DR-703;	Dealer Questionnaire; (r. 12/92) dated 12/92;	3/96
(2) Form DR-835;	Power of Attorney; (r. 07/97) dated 06/95;	—
(3) Form F-851;	Affiliations Schedule; (r. 01/98) dated 01/95;	—
(4) Form F-1065;	Florida Partnership Information Return with Instructions; (r. 01/98) dated 12/94;	—
(5) Form F-1120;	Corporate Income/Franchise and Emergency Excise Tax Return with Instructions (Package); (r. 01/99) dated 12/94;	—
(6) F-1120A	Florida Corporate Short Form Income Tax Return (N. 01/99)	—
(7) F-1120A (Flats)	Florida Corporate Short Form Income Tax Return (N. 01/99)	—
(8)(6) Form F-1120FT;	Florida Corporate Income/Franchise and Emergency Excise Tax Return; (r. 1/99) dated 12/94;	—
(9)(7) Form F-1120FTN;	Instructions for Preparing Forms F-1120, F-1120ES, and F-7004; (r. 01/99) dated 01/95;	—
(10)(8) Form F-1120ES;	Declaration/Installment of Florida Estimated Income/Franchise and/or Emergency Excise Tax (Installment 1, 2, 3, 4); (r. 01/99) dated 12/94;	—
(11)(9) Form F-1120ES;	Declaration/Installment of Florida Estimated Income/Franchise and/or Emergency Excise Tax (Installment 1); (r. 01/99) dated 12/94;	—
(12)(10) Form F-1120ES;	Declaration/Installment of Florida Estimated Income/Franchise and/or Emergency Excise Tax (Installment 2, 3, 4); (r. 01/99) dated 12/94;	—
(13)(11) Form F-1120F;	Forms Requisition; (r. 01/99) dated 12/94;	—
(14)(12) Form F-1120P;	Payment Coupon; (r. 01/99) dated 12/94;	—
(15)(13) Form F-1120X;	Amended Florida Income Tax Return; (r. 01/99) dated 12/93;	—
(16)(14) Form F-1122;	Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income and Emergency Excise Tax Return; (r. 01/98) dated 12/94;	—
(17)(15) Form F-1150;	Computation of Installment Sales Income Adjustment; (r. 1/99) dated 12/94;	—
(18)(16) Form F-1155;	Computation of Long-Term Contract Adjustment; (r. 01/99) dated 12/94;	—
(19)(17) Form F-1156;	Gasohol Development Tax Incentive Credit; (r. 01/95)	3/96
(18) Form F-1157;	Enterprise Zone Jobs Credit, dated December 1992;	—
(20)(19) Form F-1157Z;	Florida Enterprise Zone Jobs Credit Certificate of Eligibility for Corporate Income Tax; (r. 07/95) dated July 1995;	1/96
(21)(20) Form F-1158;	Enterprise Zone Property Tax Credit; (r. 07/95) dated December 1992;	—
(22)(21) Form F-1158Z;	Enterprise Zone Property Tax Credit; (r. 07/95) dated July 1995;	1/96
(23) F-1159	Child Care Facility Credit Application (N. 01/99)	—
(24)(22) Form F-2220;	Underpayment of Estimated Tax on Florida Corporate Income, Franchise and Emergency Excise Tax; (r. 01/99) dated 12/94;	—
(25)(23) Form F-7004;	Tentative Income/Franchise and Emergency Excise x Return and Application for Extension of Time to File Return; (r. 01/99) dated 12/94;	—

Copies of these forms are available by: 1) writing the Florida Department of Revenue, Forms Distribution Center, 168 Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the Forms Distribution Center at (850)922-2208; or, 3) using a fax machine telephone handset to call the Department's

automated Fax On Demand system at (850)922-3676; or, 4) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 5) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 6) downloading selected forms from the Department's Internet site at the address shown inside the parentheses (<http://sun6.dms.state.fl.us/dor/>). Persons with hearing or speech impairments may call the Department's TDD at 1(800)367-8331.

Specific Authority 213.06(1), 220.51 FS. Law Implemented 120.55(1)(a)4., 220.21, 220.22, 220.221(3), 220.51, 221.04 FS. History—New 9-26-77, Amended 12-18-83, Formerly 12C-1.51, Amended 12-21-88, 12-31-89, 1-31-91, 4-8-92, 12-7-92, 1-3-96, 3-18-96.

PUBLIC SERVICE COMMISSION

DOCKET NO: 980643-EI

RULE TITLES:	RULE NOS.:
Annual Reports	25-6.135
Cost Allocation and Affiliate Transactions	25-6.1351
Depreciation	25-6.0436

PURPOSE AND EFFECT: The purpose of the amendments is to codify the procedure for electric investor-owned utilities to follow when accounting for affiliate transactions and nonregulated activities. The intent is to ensure that ratepayers do not subsidize nonregulated operations.

SUBJECT AREA TO BE ADDRESSED: The cost allocation of nonregulated activities and affiliate transactions to prevent cross-subsidization.

SPECIFIC AUTHORITY: 366.05(1), 350.127(2) FS.

LAW IMPLEMENTED: 350.115, 366.04(2)(f), 366.05(1),(2)(a), 366.06(1) FS.

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

TIME AND DATE: Tuesday, 10:00 a.m., August 24, 1999

PLACE: Betty Easley Conference Center, Room 148, 4075 Esplanade Way, Tallahassee, Florida 32399-0850

To facilitate discussion at the workshop, each investor-owned utility and other interested persons are requested to file with the Division of Records and Reporting pre-workshop comments to address the following subjects by Wednesday, August 11, 1999:

- (1) Any suggestions to improve the rule language, and, in particular, for the "regulated" and "nonregulated" definitions set out in the rule.
- (2) Any alternative measures that would also meet the objectives of the rule amendments.
- (3) Identification of areas of disagreement with staff's draft. If areas of disagreement are identified, a statement of the reasons for the disagreement should be provided along with an alternate suggestion that would also meet the objective of the rule.

Interested persons may obtain a copy of the workshop agenda by calling Jay Revell at (850)413-6425 on or after Thursday, August 19, 1999.

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of Records and Reporting at (850)413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Jay Revell, Division of Auditing and Financial Analysis, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

25-6.135 Annual Reports.

(1) Each investor-owned electric utility shall file annual reports with the Commission on Commission Form PSC/AFA 19 (~~xx/xx~~ 12/94) which is incorporated by reference into this rule. Form PSC/AFA 19, entitled "Annual Report of Major Electric Utilities", may be obtained from the Commission's Division of Auditing and Financial Analysis. These reports shall be verified by a responsible accounting officer of the utility making the report and shall be due on or before April 30 for the preceding calendar year. A utility may file a written request for an extension of time with the Division of Auditing and Financial Analysis no later than April 30. One extension of 31 days will be granted upon request. A request for a longer extension must be accompanied by a statement of good cause and shall specify the date by which the report will be filed.

(2) The utility shall also file with the original and each copy of the annual report form, or separately within 30 days, a letter or report, signed by an independent certified public accountant, attesting to the conformity in all material respects of the schedules and their applicable notes listed on the general information page of Form PSC/AFA 19 with the Commission's applicable uniform system of accounts and published accounting releases.

Specific Authority 366.05(1), 350.127(2) FS. Law Implemented 350.115, 366.04(2)(f), 366.05(1),(2)(a) FS. History—New 12-27-94, Amended.

25-6.1351 Cost Allocation and Affiliate Transactions Diversification Reports.

(1) Purpose. The purpose of this rule is to establish cost allocation guidelines and reporting requirements to ensure proper accounting for affiliate transactions and utility nonregulated activities so that these transactions and activities are not subsidized by utility ratepayers. Each investor-owned electric utility shall file information on its affiliates and affiliated transactions on Commission Form PSC/AFA 16

(12/94) which is incorporated into this rule by reference. Form PSC/AFA 16, entitled "Analysis of Diversification Activities", may be obtained from the Commission's Division of Auditing and Financial Analysis.

(2) Definitions

(a) Affiliate – Any entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a the utility. Ownership of ~~five~~ 5 percent or more of the voting securities of an entity shall be conclusively deemed to constitute the control thereof.

(b) ~~Affiliated~~ Transaction – Any transaction in which both a utility and an affiliate ~~thereof~~ are each participants, except other than transactions related solely to the filing of consolidated tax returns.

(c) Cost Allocation Manual (CAM) – The manual that sets out a utility's cost allocation policies and related procedures.

(d) Direct Costs – Costs that can be identified with a particular service or product.

(e) Indirect Costs – Costs, including all overheads, that cannot be identified with a particular service or product.

(f) Nonregulated – The components of a utility's financial statements that are not taken into account in determining fair, just, and reasonable rates for utility service.

(g) Regulated – The components of a utility's financial statements that are taken into account in determining fair, just, and reasonable rates for utility service.

(h) Subsidize – The act of utility ratepayers paying more than their share of costs associated with affiliate transactions and utility nonregulated activities.

(3) Non-Tariffed Affiliate Transactions

(a) The purpose of subsection (3) is to establish requirements for non-tariffed affiliate transactions.

(b) A utility must charge an affiliate fully allocated costs for all non-tariffed services and products purchased by the affiliate from the utility. Except, a utility may charge an affiliate less than fully allocated costs if the charge is above incremental cost and equivalent to market prices. If a utility charges less than fully allocated costs, the utility must maintain documentation to support doing so in accordance with the record retention requirements in Rule 25-6.014(3), F.A.C.

(c) A utility shall apportion to regulated operations the lesser of fully allocated costs or market price when purchasing services and products from an affiliate. Competitive bidding must be used when the utility projects to spend more than \$500,000 in a calendar year for a particular product or service.

(d) When an asset is transferred from a utility to a nonregulated affiliate, the utility must charge the affiliate the greater of market or net book value. When an asset is transferred from a nonregulated affiliate to a utility, the utility must record the asset at the lower of market or net book value. An independent appraiser must verify the market value of a transferred asset with a net book value greater than \$1,000,000.

(e) If an affiliate's accounts and records do not conform to the Uniform System of Accounts as prescribed by Rule 25-6.014, the utility must maintain a mapping system that reconciles the affiliate's accounts to the respective USOA accounts.

(f) Each affiliate involved in affiliate transactions must maintain all underlying data concerning the affiliate transaction for at least three years after the affiliate transaction is complete. This paragraph does not relieve a regulated affiliate from maintaining records under otherwise applicable record retention requirements.

(4) Cost Allocation Principles

(a) Each utility's accounting records must show whether the transaction involves a product or service that is regulated or nonregulated.

(b) Direct costs shall be classified for each service and product provided by the utility.

(c) Indirect costs shall be distributed on a fully allocated cost basis. Except, a utility may distribute indirect costs on an incremental or market basis if the utility can demonstrate that its ratepayers will benefit. If a utility distributes indirect costs on less than a fully allocated basis, the utility must maintain documentation to support doing so in accordance with the record retention requirements in Rule 25-6.014(3), F.A.C.

(d) Each utility must maintain a listing of revenues and expenses for all non-tariffed products and services.

(5) Reporting Requirements. Each utility shall file information concerning its affiliates, affiliate transactions, and nonregulated activities on Form PSC/AFA 19 (xx/xx) which is incorporated by reference into this rule. Form PSC/AFA 19, entitled "Annual Report of Major Electric Utilities," may be obtained from the Commission's Division of Auditing and Financial Analysis.

(6) Audit Requirements

(a) Each utility involved in affiliate transactions or in nonregulated activities must maintain a Cost Allocation Manual (CAM). The CAM must be organized and indexed so that the information contained therein can be easily accessed.

(b) Each utility shall file with the Commission an audit report issued by an independent auditor commenting on the utility's compliance with its CAM. Beginning January 1, 2001, the compliance audit shall be performed no less than once every three years. The audit report shall be filed with the annual report or within 30 days of filing the annual report.

(c) Each utility shall file, along with the audit report, a list of all incidents of non-compliance with the CAM. This list shall include all errors and irregularities detected by the independent auditor during the audit, regardless of materiality.

(d) All costs associated with the audit must be separately identified and shall not be chargeable to expense for ratemaking purposes.

~~(3) Within 45 days of coming under the jurisdiction of the Commission, each investor-owned electric utility shall file Schedules 1, 7, and 8 of Form PSC/AFA 16 with the Division of Auditing and Financial Analysis.~~

~~(4) Each investor-owned electric utility shall file Schedules 1-6 of Form PSC/AFA 16 as an attachment to its annual report.~~

~~(5) Each investor-owned electric utility shall keep a detailed backup report of the summary report to facilitate auditing and analysis. Each investor-owned electric utility shall maintain a clear audit trail from the summary report through the general ledger to the source documents supporting the transaction.~~

Specific Authority 366.05(1), 350.127(2) FS. Law Implemented 350.115, 366.04(2)(a),(f), 366.05(1),(2),(9), 366.093(1) FS. History—New 12-27-94, Amended.

25-6.0436 Depreciation.

(1) For the purposes of this part, the following definitions shall apply:

(a) Category or Category of Depreciable Plant – A grouping of plant for which a depreciation rate is prescribed. At a minimum it should include each plant account prescribed in Rule 25-6.014(1), F.A.C.

(b) Embedded Vintage – A vintage of plant in service as of the date of study or implementation of proposed rates.

(c) Mortality Data – Historical data by study category showing plant balances, additions, adjustments and retirements, used in analyses for life indications or calculations of realized life. Preferably, this is aged data in accord with the following:

1. The number of plant items or equivalent units (usually expressed in dollars) added each calendar year.
2. The number of plant items retired (usually expressed in dollars) each year and the distribution by years of placing of such retirements.
3. The net increase or decrease resulting from purchases, sales or adjustments and the distribution by years of placing of such amounts.
4. The number that remains in service (usually expressed in dollars) at the end of each year and the distribution by years of placing of such amounts.

(d) Net Book Value – The book cost of an asset or group of assets minus the accumulated depreciation or amortization reserve associated with those assets.

~~(e)(4)~~ Remaining Life Method – The method of calculating a depreciation rate based on the unrecovered plant balance, less average future net salvage and the average remaining life. The formula for calculating a Remaining Life Rate (RLR) is:

$$RLR = \frac{100\% - Reserve\% - Average\ Future\ Net\ Salvage\ \%}{Average\ Remaining\ Life\ in\ Years}$$

(f) Reserve (Accumulated Depreciation) – The amount of depreciation expense accumulated to date.

~~(g)(e)~~ Reserve Data – Historical data by study category showing reserve balances, debits and credits such as booked depreciation, expense, salvage and cost of removal and adjustments to the reserve utilized in monitoring reserve activity and position.

~~(h)(f)~~ Reserve Deficiency – An inadequacy in the reserve of a category as evidenced by a comparison of that reserve indicated as necessary under current projections of life and salvage with that reserve historically accrued. The latter figure may be available from the utility's records or may require retrospective calculation.

~~(i)(g)~~ Reserve Surplus – An excess in the reserve of a category as evidenced by a comparison of that reserve indicated as necessary under current projections of life and salvage with that reserve historically accrued. The latter figure may be available from the utility's records or may require retrospective calculation.

~~(j)(h)~~ Salvage Data – Historical data by study category showing bookings of retirements, gross salvage and cost of removal used in analysis of trends in gross salvage and cost of removal or for calculations of realized salvage.

~~(k)(4)~~ Theoretical Reserve or Prospective Theoretical Reserve – A calculated reserve based on components of the proposed rate using the formula:

$$\text{Theoretical Reserve} = \text{Book Investment} - \text{Future Accruals} - \text{Future Net Salvage}$$

~~(l)(j)~~ Vintage – The year of placement of a group of plant items or investment under study.

~~(m)(4)~~ Whole Life Method – The method of calculating a depreciation rate based on the Whole Life (Average Service Life) and the Average Net Salvage. Both life and salvage components are the estimated or calculated composite of realized experience and expected activity. The formula is:

$$\text{Whole Life Rate} = \frac{100\% - Average\ Net\ Salvage\ \%}{Average\ Service\ Life\ in\ Years}$$

(2)(a) No utility shall ~~may~~ change any existing depreciation rate or initiate any new depreciation rate without prior Commission approval.

(b) No utility shall ~~may~~ reallocate accumulated depreciation reserves among any primary accounts and sub-accounts without prior Commission approval.

(c) Plant investment transferred from one account to another or to an affiliated company shall have an appropriate reserve amount also transferred. Appropriate methods for determining the appropriate reserve amount to transfer are as follows:

1. Where vintage reserves are not maintained, synthesization using the currently prescribed curve shape may be required. The same reserve percent associated with the original placement vintage of the related investment shall then be used in determining the appropriate amount of reserve to transfer.

2. Where the original placement vintage of the investment being transferred is unknown, the reserve percent applicable to the account in which the investment being transferred resides may be assumed as appropriate for determining the reserve amount to transfer.

3. Where the age of the investment being transferred is known and a history of the prescribed depreciation rates is known, a reserve can be determined by multiplying the age times the investment times the applicable depreciation rate(s).

4. The Commission shall consider any additional methods submitted by the utilities for determining the appropriate reserve amounts to transfer.

(3)(a) Each utility shall maintain depreciation rates and accumulated depreciation reserves in accounts or subaccounts as prescribed by Rule 25-6.014(1), F.A.C. Utilities may maintain further sub-categorization.

(b) Upon establishing a new account or subaccount classification, each utility shall request Commission approval of a depreciation rate for the new plant category.

(4) A utility filing a depreciation study, regardless if a change in rates is being requested or not, shall submit to the Commission Clerk's office fifteen copies of the information required by paragraphs (6)(a) through (6)(f) and (6)(h) of this rule and at least three copies of the information required by paragraph (6)(g).

(5) Upon Commission approval by order establishing an effective date, the utility shall ~~may~~ reflect on its books and records the implementation of the proposed rates, subject to adjustment when final depreciation rates are approved.

(6) A depreciation study shall include:

(a) A comparison of current and proposed depreciation rates and components for each category of depreciable plant. Current rates shall be identified as to the effective date and proposed rates as to the proposed effective date.

(b) A comparison of annual depreciation expense as of the proposed effective date, resulting from current rates with those produced by the proposed rates for each category of depreciable plant. The plant balances may involve estimates. Submitted data including plant and reserve balances or company planning involving estimates shall be brought to the effective date of the proposed rates.

(c) Each recovery and amortization schedule currently in effect should be included with any new filing showing total amount amortized, effective date, length of schedule, annual amount amortized and reason for the schedule.

(d) A comparison of the accumulated book reserve to the prospective theoretical reserve based on proposed rates and components for each category of depreciable plant to which depreciation rates are to be applied.

(e) A general narrative describing the service environment of the applicant company and the factors, e.g., growth, technology, physical conditions, necessitating a revision in rates.

(f) An explanation and justification for each study category of depreciable plant defining the specific factors that justify the life and salvage components and rates being proposed. Each explanation and justification shall include substantiating factors utilized by the utility in the design of depreciation rates for the specific category, e.g., company planning, growth, technology, physical conditions, trends. The explanation and justification shall discuss any proposed transfers of reserve between categories or accounts intended to correct deficient or surplus reserve balances. It should also state any statistical or mathematical methods of analysis or calculation used in design of the category rate.

(g) The filing shall contain all calculations, analysis and numerical basic data used in the design of the depreciation rate for each category of depreciable plant. Numerical data shall include plant activity (gross additions, adjustments, retirements, and plant balance at end of year) as well as reserve activity (retirements, accruals for depreciation expense, salvage, cost of removal, adjustments, or transfers and reclassifications and reserve balance at end of year) for each year of activity from the date of the last submitted study to the date of the present study. To the degree possible, data involving retirements should be aged.

(h) The mortality and salvage data used by the company in the depreciation rate design must agree with activity booked by the utility. Unusual transactions not included in life or salvage studies, e.g., sales or extraordinary retirements, must be specifically enumerated and explained.

(7)(a) Utilities shall provide calculations of depreciation rates using both the whole life method and the remaining life method. The use of these methods is required for all depreciable categories. Utilities may submit additional studies or methods for consideration by the Commission.

(b) The possibility of corrective reserve transfers shall be investigated by the Commission prior to changing depreciation rates.

(8)(a) Each company shall file a study for each category of depreciable property for Commission review at least once every four years from the submission date of the previous study unless otherwise required by the Commission.

(b) A utility proposing an effective date of the beginning of its fiscal year shall submit its depreciation study no later than the mid-point of that fiscal year.

(c) A utility proposing an effective date coinciding with the expected date of additional revenues initiated through a rate case proceeding shall submit its depreciation study no later than the filing date of its Minimum Filing Requirements.

(9) As part of the filing of the annual report pursuant to Rule 25-6.014(3), F.A.C., each utility shall include an annual status report. The report shall include booked plant activity (plant balance at the beginning of the year, additions, adjustments, transfers, reclassifications, retirements and plant balance at year end) and reserve activity (reserve balance at the beginning of the year, retirements, accruals, salvage, cost of removal, adjustments, transfers, reclassifications and reserve balance at end of year) for each category of investment for which a depreciation rate, amortization, or capital recovery schedule has been approved. The report shall indicate for each category that:

(a) There has been no change of plans or utility experience requiring a revision of rates, amortization or capital recovery schedules; or

(b) There has been a change requiring a revision of rates, amortization or capital recovery schedules.

(10) For any category where current conditions indicate a need for revision of depreciation rates, amortization or capital recovery schedules and no revision is sought, the report shall explain why no revision is requested.

~~(10)~~(a) Prior to the date of retirement of major installations, the Commission shall ~~may~~ approve capital recovery schedules to correct associated calculated deficiencies where a utility demonstrates that (1) replacement of an installation or group of installations is prudent and (2) the associated investment will not be recovered by the time of retirement through the normal depreciation process.

(b) The Commission shall ~~may~~ approve a special capital recovery schedule when an installation is designed for a specific purpose or for a limited duration.

(c) Associated plant and reserve activity, balances and the annual capital recovery schedule expense must be maintained as subsidiary records.

Specific Authority 350.127(2), 366.05(1) FS. Law Implemented 350.115, 366.04(2)(f), 366.06(1) FS. History—New 11-11-82, 1-6-85, Formerly 25-6.436, Amended 4-27-88, 12-12-91,_____.

DEPARTMENT OF MANAGEMENT SERVICES

Division of Purchasing

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
General Regulations	60A-1
RULE TITLES:	RULE NOS.:
Definitions	60A-1.001
Purchase of Commodities and Contractual Services	60A-1.002
Vendors and Contractors	60A-1.006
Standards and Specifications	60A-1.007
Term Contracts and Price Agreements	60A-1.008
Emergency Purchases of Commodities or Contractual Services	60A-1.009
Single Source Purchases of Commodities or Contractual Services	60A-1.010
Insurance	60A-1.015
Contract Requirements for Contractual Services	60A-1.016

PURPOSE AND EFFECT: The purpose of these changes is to update rules to coincide with changes made by the Legislature in Chapter 287, F.S. Changes include updating of threshold categories as well as delegating additional authority to state agencies in making purchasing decisions.

SUBJECT AREA TO BE ADDRESSED: Procurement of commodities and services for state agencies.

SPECIFIC AUTHORITY: 15.18(7), 120.57(3)(d), 216.345, 287.017, 287.032, 287.042(4),(13) FS.

LAW IMPLEMENTED: 15.18, 20.19, 119.07(3), 120.53, 120.57(3) 216.311, 229.8331, 283.30(4), 283.31, 283.32, 283.33, 283.35, 283.56, 283.425, 287.001, 287.012(4), 287.017, 287.022, 287.042(1),(2),(4),(5),(6),(7),(8),(11),(14), 287.045(5), 287.055, 287.057(1),(3),(3)(a),(3)(c),(4), 287.058, 287.073, 287.133, 287.0595, 287.1345, 288.03, 288.121(5), 288.701, 288.703, 288.705, 601.10, 695.25 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 2:00 – 4:00 p.m., August 10, 1999

PLACE: 4050 Esplanade Way, Suite 301, Tallahassee, Florida 32399-0950

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: H. P. Barker, Jr., Chief, State Purchasing, (850)488-8131

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

60A-1.001 Definitions.

(1) A Purchase – A purchase is defined as an acquisition by contracting in any manner, whether by rent, lease, lease/purchase or installment sales contract which may provide for the payment of interest on unpaid portions of the purchase price, or outright purchase, from a source of supply for either

commodities or contractual services. All such contracts shall be in writing or through the state's Purchasing Card Program. Prior to making a purchase, purchasing offices shall review current surplus property certifications to utilize commodities listed therein to the maximum extent practicable.

(2) Invitation to Negotiate – Competitive solicitation used when an Invitation to Bid or Request for Proposal is not practicable. Agency shall document file as to conditions and circumstances resulting in this decision.

(4)(3) Agency Head – An agency head, within the meaning of Chapter 287, Part I, F.S., is defined as the person or in the case of a collegial body the executive director or chief administrative officer of the agency or other governmental unit who is statutorily responsible for final agency action, or his authorized designee. All designees authorized to sign on behalf of the agency head must have their signature on file with State Purchasing ~~the Division of Purchasing~~.

(5)(4) Contracts – Definite Quantity-Term-Contractual Service.

(a) Any contract which binds the state or its executive agencies for purchases for a period continuing beyond the fiscal year shall include the following statement: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature". Any contract between an agency and a private contract vendor shall contain the language provided in Section 946.515(6), F.S., if at the time the contract is entered into, any product or service which is the subject of, or required to carry out, the contract has been certified by Department of Management Services commodity number pursuant to that statute, as a correctional work program item.

(b) Definite Quantity Contract – Definite quantity contract whereby the contractor(s) agrees to furnish a specific quantity of an item or items at a specified price and time to specified locations. Delivery and acceptance of the specific quantity by the agency completes such contract.

(c) Term Contract – Indefinite quantity contract whereby the contractor(s) agrees to furnish commodity(ies) or contractual service(s) during a prescribed period of time (such as 3, 6, 9, 12 months or a specific date). The specified period of time or date completes such contract. A state term contract is defined as a term contract executed by State Purchasing ~~the Division of Purchasing~~ for use by all agencies and local governments. An agency term contract is defined as a term contract executed by an agency for use only by such agency, and not available for use by other agencies.

(d) Contractual Service Contract – A contract for a contractor's time and effort rather than the furnishing of specific commodities. Satisfactory completion of the service and/or a specified period of time or date completes such contract.

(6)(5) Identical (Tie) Bids – Identical Bids are two or more responsive bids which are equal in price.

(7)(6) Mutuality of Ownership – Only the low bidder of firms mutually owned may be considered in determining an award.

(8)(7) Notice of Decision – Agency notice of its decision or intended decision for a bid solicitation, invitation to negotiate or request for proposal shall be sent to vendors and other interested persons by United States mail or by hand delivery. All notices of decision or intended decisions shall contain the statement: "Failure to file a protest within the time prescribed in Section 120.57(3), F.S., shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. "Notice of intended awards, including rejection of some or all bids received, shall be given as provided in Rule 60A-1.001(8)(9)(a), F.A.C. Notice of all other decisions shall be given by certified mail, or other express delivery services, except that State Purchasing's ~~the Division of Purchasing's~~ notice of decision or intended decision concerning a request by an agency for approval of an exceptional purchase under Chapter 287, F.S., and the State Purchasing rules ~~of the division~~ shall be given by posting such notice in the office of State Purchasing ~~the Division of Purchasing~~.

(9)(8) Notice of Intended Award and Award

(a) Notice of the intended award, including rejection of some or all of bids or proposals received, or negotiations received shall be given by posting the bid, negotiation or proposal tabulations where the bids, negotiations or proposals were opened, or by certified United States mail, return receipt requested, or other express delivery service, whichever is specified in the bid solicitation or the request for proposals. All notices of decision or intended decisions shall contain the statement: "Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes", and show the beginning and ending posting time and dates for the bid or proposal or negotiation ~~bid/proposal~~ posting, or if noticed by certified mail, indicate such action must be taken within 72 hours after receipt of such notice.

(b) The contract shall be awarded by purchase order or other written notice to the responsive and responsible bidder with the lowest price or to the negotiator with the best and final offer or to the proposer with the highest ranking ~~with the lowest price~~ for the commodities or contractual services, except that every procurement of contractual services in excess of threshold Category Two shall be evidenced by a contract ~~written agreement~~ conforming to the provisions of Section 287.058, F.S. If the contract is terminated during the initial contract period, the award may be made to the next responsive offeror who agrees to hold the prices, terms, and conditions submitted in response to the original solicitation.

(c) Issuance of a written notice of award or a purchase order for the purchase of commodities shall establish a contract between the agency and the supplier on the terms, conditions

and prices specified in the invitation to bid/ ~~proposal or invitation to negotiate or request for proposals~~ and the bidder's/ or negotiator's or proposer's response.

~~(10)(9)~~ Purchasing Threshold Categories – The following threshold categories are established:

- (a) Category One: ~~\$5,500~~ \$15,000.
- (b) Category Two: ~~\$15,000~~ \$25,000.
- (c) Category Three: ~~\$23,000~~ \$50,000.
- (d) Category Four: ~~\$75,000~~ \$150,000.
- (e) Category Five: ~~\$150,000~~ \$250,000.

The dollar amount for these categories shall be adjusted by ~~State Purchasing the Division of Purchasing~~ after June 30 of each year, based on the April publication of the United States Department of Commerce Survey of Current Business Table 7.11B, using the price index for state and local government. The amounts for the threshold categories will be adjusted as follows:

1. The rate of adjustment applicable to the threshold amounts is the percent increase or decrease in the chain-type price index from the base year value for 1992, which is 97.9, through the year previous to the year of annual adjustment as shown in the United States Department of Commerce Survey of Current Business as referenced above.

2. This rate of adjustment is applied to the base threshold amount to calculate the threshold amount for the year of annual adjustment. The base threshold category amounts are: a) Category One: \$15,000 ~~\$5,000~~; b) Category Two: \$25,000 ~~\$10,000~~; c) Category Three: \$50,000 ~~\$20,000~~; d) Category Four: \$150,000 ~~\$65,000~~; e) Category Five: \$250,000 ~~\$130,000~~. The following formula illustrates this method:

Threshold for Year of Adjustment = Base Threshold x [Price Index in April Publication for the Year Prior to the Year of Adjustment divided by 97.9]

3. The resulting threshold amount is rounded as follows: Category One to the nearest \$500, Category Two to the nearest \$1,000, Category Three to the nearest \$1,000, Category Four to the nearest \$5,000 and Category Five to the nearest \$10,000. Notwithstanding the point in time in which payment is made for the commodities or services, for the purpose of applying the threshold categories to a purchase, the earliest of the following dates shall govern:

- a. The date on which the invitation to bid or invitation to negotiate or request ~~bid/request~~ for proposals is issued.
- b. The date the purchase order is issued.
- c. The date on which the contract is entered into.

~~(11)(10)~~ Requisition – A formal ~~written~~ request to procure commodities or services on behalf of a program area. ~~Requisitions must be signed by an authorized person, and must be filed with the purchasing office.~~

~~(12)(11)~~ Purchase Order – An agency's document to formalize a purchase transaction with a vendor. The purchase orders should be numbered consecutively and contain

statements regarding the quantity, description, and price of goods and services ordered; applicable terms as to payment, discount, date of performance, and transportation; and other factors or suitable references pertinent to the purchase such as bid number or contract number and should be signed by the purchaser.

~~(13)(12)~~ Blanket Purchase Order (Blanket Order) – An arrangement under which a purchaser contracts with a vendor to provide the agency's requirements for an item(s) or a group of items or a service, ordered on an as needed basis. It prescribes the contract term and the maximum amount of money, which may be spent. No purchase may be divided into two or more purchases for the purpose of evading the competitive bidding requirement, and each purchase made under a blanket purchase order must be of the kind that could be made without competitive bidding if there were no blanket purchase order.

~~(14)(13)~~ Field Purchase Order – A purchase order issued by an office or facility of an agency that is separate from the agency's purchasing office(s).

~~(15)(14)~~ Purchase Order Control and Accountability – It is the responsibility of the chief procurement officer of each agency to:

- (a) Provide for securing all unused purchase orders in a safe place and restricting access to these documents.
- (b) Provide for maintenance of a file and accounting for all consecutive purchase orders issued or voided.
- (c) Maintain a record of persons designated as authorized to issue and sign each type of purchase order.
- (d) Provide for a monitoring and review process for the use of blanket purchase orders and field purchase orders.

~~(16)(15)~~ Price Agreement – An agreement which ~~State Purchasing the Division of Purchasing~~ negotiates with a vendor to furnish items at a predetermined price. The agreement involves a minimum number of units, provides for orders to be placed directly with the vendor by the purchasing agency and runs for a limited period of time.

~~(17)(16)~~ Minor Irregularity – A variation from the invitation to bid or invitation to negotiate or request ~~bid/invitation to negotiate/request~~ for proposal terms and conditions which does not affect the price of the commodities or services ~~bid/proposal~~, or give the bidder or offeror an advantage or benefit not enjoyed by other bidders or offerors, and ~~or~~ does not adversely impact the interests of the agency.

~~(18)~~ State Purchasing – formerly the Division of Purchasing, now a part of the Support Program of the Department of Management Services pursuant to Section 20.22(2), F.S.

~~(19)~~ State's Purchasing Card Program – A public-private arrangement between the Department of Management Services and a bank under which designated agency employees make purchases by means of purchasing cards, similar to credit cards, without requisitions or purchase orders.

Specific Authority 287.042, 287.032 FS. Law Implemented 283.30(4), 287.012, 287.017, 287.042, 20.19, 229.8331, 287.073, 288.03, 287.057, 601.10, 15.18, 287.001, 287.055, 287.058, 287.133, ~~288.701~~, 216.345 FS. History—New 5-20-64, Revised 2-6-68, 5-20-71, Amended 5-19-72, 7-31-75, 10-1-78, Revised 11-14-79, Amended 8-6-81, 10-11-81, 4-29-82, 11-4-82, 10-13-83, 3-1-84, 11-12-84, 2-28-85, 12-17-85, Formerly 13A-1.01, Amended 2-9-87, 11-3-88, 1-18-90, 4-10-91, 9-1-92, Formerly 13A-1.001, Amended 8-24-93, 4-24-94, 1-9-95, 1-1-96, 9-23-96, 7-6-98.

60A-1.002 Purchase of Commodities and Contractual Services.

(1) Purchases with value below ~~\$2,500~~ \$1,000 shall be carried out using good purchasing practices which may include but not be limited to quotations or written records of telephone quotations. Purchases which meet or exceed ~~\$2,500~~ \$1,000, but less than the threshold for Category ~~Two~~ One ~~may be made using written quotations or written records of telephone quotations or informal bids to be opened upon receipt. Will be made on two or more written quotations~~ whenever practical. Should verbal quotations be received, name and address of company and amount quoted shall be a part of the written documentation. If at least two quotations are not received, a statement as to why they were not received must be shown. ~~Purchases with a dollar value of the threshold for Category One but less than the threshold for Category Two shall be carried out using written quotations or written records of telephone quotations or informal bids to be opened upon receipt.~~ If the agency determines that commodities/ or contractual services are available only from a single source, or that conditions warrant negotiation on the best terms and conditions, the agency may proceed with the procurement. The agency shall document the conditions and circumstances used to determine the procurement method.

(2) Competitive Sealed Bids or Negotiations or Proposals – ~~Bids/proposals~~ Required on Purchases Exceeding the Threshold Amount for Category Two –

(a) In accordance with Chapter 287, Florida Statutes, all purchases for which the total contract value is in excess of the threshold amount for Category Two for a commodity or group of commodities or contractual service shall be made by first securing formal competitive sealed bids, negotiations or proposals except as provided in Section 287.057(2), F.S. or Rules 60A-1.008, 60A-1.009, and 60A-1.010, FAC. In accordance with chapter 287, Florida Statutes, all purchases for which the total contract value is in excess of the threshold amount for Category Two for a commodity or group of commodities or contractual service shall be made by first securing formal competitive sealed bids except as provided in Section 287.057(2), F.S., Rules 60A-1.008, 60A-1.009, and 60A-1.010, F.A.C. Vendors registered with the Division of Purchasing should be given consideration when issuing bids or other solicitations. When determining the amount or amounts of purchases for the purpose of applying the threshold categories, agencies shall follow the definitions and classes and groups of commodities/contractual services established by the Division of Purchasing. Acquisitions shall be viewed and

~~considered on an agency wide basis, except that acquisitions by agencies with decentralized purchasing functions shall be considered and reviewed on the basis of each purchasing office that maintains full time purchasing staff. An agency shall not divide its purchases or its purchasing operations to circumvent these requirements. A formal invitation to bid shall be mailed at least 10 days prior to the date set for submittal of bids, unless waived, in writing, by the Division. Determination of the threshold amount for Category Two for lease or rental is based on a twelve (12) month period of time. Extension of a contract for an additional period of time is not subject to this provision. In any procurement which exceeds the threshold amount for Category Two that is accomplished without competition, the individuals taking part in the development or selection criteria for evaluation, the evaluation process, or the award process shall attest in writing that they are independent of, and have no conflict of interest in, the entities evaluated and selected. The attestation shall be placed in the agency file.~~

(b) When determining the amount or amounts of purchases for the purpose of applying the threshold categories, agencies shall follow the definitions and classes and groups of commodities or contractual services established by State Purchasing. Acquisitions shall be reviewed and considered on an agency-wide basis, except that acquisitions by agencies with decentralized purchasing functions shall be considered and reviewed on the basis of each purchasing office that maintains full-time purchasing staff. A purchasing office shall not divide its purchases or its purchasing operations to circumvent these requirements. Determination of the threshold amount for Category Two for lease or rental is based on a twelve (12) month period of time. Extension of a contract for an additional period of time is not subject to this provision. In any procurement which exceeds the threshold amount for Category Two that is accomplished without competition, the individuals taking part in the development or selection criteria for evaluation, the evaluation process, or the award process shall attest in writing that they are independent of, and have no conflict of interest in, the entities evaluated and selected. The attestation shall be placed in the agency file.

(c)(b) The following purchases are not subject to the competitive sealed bid or negotiation or proposal bid/negotiation/proposal requirements of Rule 60A-1.002(2), F.A.C. Purchases described in Section 287.057(3)(f) as well as those described below do not require approval from State Purchasing the Division of Purchasing.

1. Regulated Utilities and government franchised services.
2. Regulated Public communications, except long distance telecommunications services or facilities.
3. Artistic services, academic program reviews, lectures by individuals. Artistic services include any artistic work performed by an artist, as defined in Section 287.012(3), F.S., including cases in which the acquisition requires that the artist furnish a commodity created through the artistic work. An

academic program review is a structured evaluation of the relative merits of an established university or secondary educational program or program component conducted by recognized experts in the field of study and resulting in a written report with specific recommendations. A lecture is a formal or methodical reading or presentation on any subject, but it is not intended to be used for the purpose of, or in connection with, training of personnel.

4. Auditing services, which are services provided by a licensee under Chapter 473, F.S., in which the licensee attests as an expert in accountancy to the reliability or fairness of presentation of financial information or utilizes any form of disclaimer of opinion which is intended or conventionally understood to convey an assurance of reliability as to matters not specifically disclaimed.

5. Promotional Services and Events purchased from donated funds by the Secretary of State for purposes provided in Section 15.18(7), F.S.

6. Payments for membership dues pursuant to Section 216.345, F.S.

7. Examinations approved in accordance with Section 455.217(1)(c), F.S.

8. Adoption placement services licensed by the Department of Children and Families Health and Rehabilitative Services.

~~(d)~~ Agencies are delegated the conditional authority to purchase commodities ~~or~~ contractual services (except insurance). The conditions of this delegation are (i) that the agencies comply with the requirements of subsection 287.042(13), F.S.; (ii) that State Purchasing the Division retains the full supervisory authority provided by that subsection; and (iii) that State Purchasing the Division reserves the right to rescind the authority delegated to all agencies by amendment to this rule and reserves the right to rescind the authority delegated to an agency for failure to comply with that subsection. If State Purchasing the Division proposes to rescind an agency's authority, it shall give the agency notice pursuant to Rule 60-4.013(2).

~~(e)~~ Except for those contracts initially procured pursuant to Section 287.057(3)(a) or (3)(c) F.S., contracts for commodities or contractual services may be renewed for an additional term not to exceed the original contract period unless the original contract period is 24 months or less, in which case the contract may be renewed up to 2 one year periods. Renewal of the contract shall be by mutual agreement in writing and shall be subject to the same terms and conditions set forth in the initial contract. Vendors shall include the cost of any contemplated renewals in bids and proposals and responses to invitations to negotiate. If the commodity or contractual service is purchased as a result of the solicitation of bids or proposals, the cost of any contemplated renewals shall

~~be included in the invitation to bid or request for proposals.~~ Renewals shall be contingent upon satisfactory performance evaluations by the agency.

(3)(a) Legal Advertisements – All purchases of commodities ~~or~~ contractual services in excess of the threshold amount for Category Two shall be advertised in the Florida Administrative Weekly or the Florida Communities Network no less than ten (10) calendar days prior to the bid opening for invitations to bid ~~or (28) calendar days prior to the proposal opening for requests for proposals or invitations to negotiate.~~ ~~This is only a minimal requirement and does not limit frequency, lapse time, or number of newspapers in which the advertisement may appear.~~ If the head of an agency or his or her ~~his/her~~ designee determines that an unusual problem exists, and to delay the bidding to provide an opportunity for advertising would be detrimental to the interest of the agency, then, and in such event, the head of such agency or the his/her designee shall document agency file post the intended decision including with particularity the conditions and circumstances requiring waiver of advertising prior to the opening of the bids ~~or~~ proposals or responses to invitations to negotiate in accordance with the provisions of Section 120.57(3), Florida Statutes, and applicable rule.

(b) Advertisement in the Florida Administrative Weekly or Florida Communities Network is not required for the reissuance of an invitation to bid, invitation to negotiate or request for proposals if the agency advertised the original bid, negotiation or proposal solicitation in the Florida Administrative Weekly or Florida Communities Network and the agency mails notice of the reissuance of the bid, negotiation or proposal solicitation to all vendors that were mailed notice of the original solicitation and to all bidders or offerors that responded to the original solicitation, excluding any vendor that responded with an indication of no interest ~~in bidding or offering.~~

(4) Receipt of No Competitive Sealed Bids or Proposals or Offers to Negotiate Bids/Proposals in the First Invitation to Bid ~~or~~ Request for Proposal or Invitation to Negotiate on Commodities ~~or~~ Contractual Services – When no competitive sealed bids ~~or~~ proposals or offers to negotiate are received for the purchase of a commodity or group of commodities ~~or~~ contractual services in response to the sealed bid ~~or~~ proposal or negotiation solicitation, the agency shall review the situation in order to determine the reasons, if any, why none was ~~no competitive sealed bids/proposals were~~ received before issuing a second invitation ~~to bid/request for proposals~~; provided, however, if the agency determines that commodities ~~or~~ contractual services are available only from a single source, or that conditions and circumstances warrant negotiation on the best terms and conditions ~~in accordance with 60A-1.018(1),~~ the agency's intended decision shall be posted in accordance with Section 120.57(3), Florida Statutes, ~~and applicable rule,~~ before the agency may proceed with procurement. The agency

shall document the agency file as to the conditions and circumstances used to determine the decision to proceed without a second call for competition bids. ~~All such actions shall be reported to the division on a quarterly basis.~~

(5) Copy of Invitation To Bid, Invitation to Negotiate or Request for Proposal of Commodities ~~or~~ Contractual Services to be forwarded to the Florida Small Business Development Center Procurement System. Agencies shall comply with Section 288.705, Florida Statutes, and shall upon request, furnish to State Purchasing ~~the Division of Purchasing~~ a copy of any or all invitations to bid, invitations to negotiate or requests for proposals. ~~In addition a copy of all formal solicitations for contractual services and commodities shall be furnished in a timely manner by all State agencies to the Florida Small Business Development Center Procurement System.~~ The agency's providing of copies of invitations to bid, invitations to negotiate or requests for proposals to State Purchasing ~~the Division~~, or anything else herein, will not relieve the agency of its responsibilities or serve as State Purchasing's ~~the Division's~~ approval of the invitation to bid, invitation to negotiate or request for proposals.

(6) Conditions to be Included in Formal Invitations to Bid, Invitations to Negotiate and Requests for Proposal for Commodities and Contractual Services – All formal invitations to bid issued by an agency shall include the standard "State of Florida Invitation to Bid Bidder Acknowledgment" Form PUR 7028 (Rev. 6-1-98), for commodities, "State of Florida Invitation to Bid Bidder Acknowledgment Contractual Services", Form PUR 7031 (Rev. 6-1-98) for contractual services ~~available through the Division of Purchasing and~~ which is hereby incorporated by reference and shall contain a statement informing persons of the provisions of paragraph (2)(a) of Section 287.133, Florida Statutes. An invitation to bid must describe the commodities or services and require prices to be stated. If an agency contemplates a renewal of the commodities or contractual service contract, the Invitation to Bid shall so state with sufficient information, including the contract period(s) of renewal, to enable each bidder to bid on the contract including renewal(s), and in such case the contract award shall be made based upon an evaluation of bids for the entire contract period including renewal(s). A formal invitation to bid shall be mailed at least 10 days prior to the date set for submittal of bids ~~unless waived in writing, by the Division.~~ Contracts that limit the liability of a vendor shall be consistent with Section 672.719, F.S. The purchase order or contract shall be awarded with reasonable promptness by written notice to the responsive and responsible qualified bidder who submits the lowest responsive bid. The bid evaluation must be determined in writing to meet the requirements and criteria set forth in the Invitation to Bid.

(b) All invitations to negotiate issued by an agency shall include the standard "State of Florida Invitation to Negotiate Acknowledgment" Form PUR 7105 (Rev 6-1-98) which is

hereby incorporated by reference and shall contain a statement informing persons of the provisions of paragraph (2)(a) of Section 287.133, Florida Statutes. Invitations to negotiate shall include a statement of commodities or services sought, contractual terms and conditions applicable and the date and time for submittal of response. If the agency contemplates a renewal of the commodity or contractual services contract, the invitation to negotiate shall so state and shall also provide sufficient information, including the contract period(s) of renewal, to enable each proposer's submittal to cover the entire contract period including renewal(s). To assure full understanding and responsiveness of submittal of response to invitation to negotiate, discussions may be conducted with qualified proposers. Invitation to negotiate shall be mailed at least 10 days prior to the date set for submittal of responses. Contracts that limit the liability of a vendor shall be consistent with Section 672.719, F.S.

~~(c)(b)~~ All formal requests for proposal issued by an agency shall include the standard "State of Florida Request for Proposal Commodities Acknowledgment" Form PUR 7051 (Rev. 6-1-98) or "State of Florida Request for Proposal Contractual Services Acknowledgment" Form PUR 7033 (Rev. 6-1-98) ~~available through the Division of Purchasing and~~ which is hereby incorporated by reference and shall contain a statement informing persons of the provisions of paragraph (2)(a) of Section 287.133, Florida Statutes. Request for proposal shall include a statement of commodities or services sought, all contractual terms and conditions applicable, and the date and time for submittal of proposals. If the agency contemplates a renewal of the commodity or contractual services agreement, the request for proposal shall so state and shall also provide sufficient information, including the contract period(s) of renewal, to enable each offeror to submit an offer on the contract including renewal(s), and in such case the contract award shall be made based on an evaluation of proposals for the entire contract period including renewal(s). To assure full understanding of and responsiveness to the solicitation requirements, discussions may be conducted with qualified offerors. Notice of Request for Proposal shall be mailed at least 10 days prior to the date set for submittal of proposals. Contracts that limit the liability of a vendor shall be consistent with Section 672.719, F.S.

~~(d)(e)~~ All bid, negotiation or proposal solicitations for contracts which require payment for more than one (1) year and include unequal payment streams or unequal time payment periods shall include a condition stating that the evaluation will use present value methodology with the present value discount rate as supplied by the Department of Management Services upon request, which shall be the rates identified in the Interest Rates: Money and Capital Markets Section published in the Federal Reserve Bulletin for the last published month at the time of issuance of the invitation to bid, invitation to negotiate or request for proposals. If the bid, negotiation or proposal requires the use of present value methodology in the

evaluation, the invitation to bid, invitation to negotiate or request for proposals shall state the present value discount rate which will be used in the computations and evaluation.

(7) Request to Withdraw Bid or Negotiation ~~or~~ Proposal for Commodities or Contractual Services – Requests for withdrawal may be considered if received by the agency, in writing, within 72 hours after the bid or negotiation or proposal opening time and date. Requests received in accordance with this provision may be granted by the agency upon proof of the impossibility to perform based upon an obvious error on the part of the bidder or offeror.

(8) Right to Reject Bids or Negotiations ~~or~~ Proposals for Commodities or Contractual Services – The agency shall reserve the right to reject any or all bids or negotiations ~~or~~ proposals and such reservation shall be indicated in all advertising and invitations to bid, invitations to negotiate and requests for proposal.

(9) Right to Waive Minor Irregularities for Commodities or Contractual Services – The agency shall reserve the right to waive any minor irregularities in an otherwise valid bid or proposal or offer to negotiate ~~bid/proposal~~. Variations which are not minor cannot be waived.

(10) Bid Modification for Commodities or Contractual Services – A bidder or offeror may not modify its bid or proposal after bid or proposal opening. Mistakes in an arithmetic extension of pricing may be corrected by the agency.

(11) Bid Borrowing Commodities or Contractual Services – The practice of Bid or proposal or negotiation submittal borrowing (the use of a bid or proposal or submittal received in response to another invitation to bid or request for proposals or invitation to negotiate) does not satisfy the requirement of Section 287.057, F.S., and is prohibited.

(12) Inspection or Examination of Sealed Bids, Responses to Invitations to Negotiate and Proposals for Commodities and Contractual Services – Sealed bids, proposals and negotiation submittals are not public records, subject to the provisions of Section 119.07(1), F.S., until such time as the agency provides notice of a decision or intended decision pursuant to Section 120.57(3)(a), F.S., or within 10 days after bid or negotiation or proposal opening, whichever is earlier. The 10-day period does not include the date of the notice or opening. When the invitation to bid, invitation to negotiate or request for proposal requires the bid, negotiation or proposal to be placed in two separately sealed envelopes to be submitted simultaneously and not opened on the same date, the 10-day period begins the day after the opening of the second envelope. Bid or negotiation or proposal opening shall be public at the date and time and at the place specified in the solicitation. Openings and negotiations shall be conducted in a manner to comply with confidentiality and exemption requirements of Section 815.045, F.S. or other applicable statutes. Pollution response action contracts as provided in Section 287.0595, F.S., are

confidential and exempt from the provisions of Section 119.07(1) until selection is made and a contract signed, or until bid negotiations or proposals are no longer under active consideration. This exemption is subject to Section 119.14, F.S. The opening shall be conducted by an employee of the agency and witnessed by at least one other employee of the agency. Bid or negotiation or proposal tabulation sheets shall be completed simultaneously with the public reading of prices whenever appropriate. Upon completion of the tabulation, a copy shall be made accessible for inspection by any interested party.

(13) No change.

(14) Installment Sale and Purchase Contracts – Installment sale and purchase contracts shall be accomplished on the State of Florida Contract for "Installment Sale and Purchase", Form PUR 7057 (Rev. 11-15-86), ~~available through the Division of Purchasing~~ which is hereby incorporated and published by reference and is approved for use by all State agencies. The use of such contracts by State agencies shall be subject in each instance to preaudit review and prior approval of the Comptroller of the State and shall contain the statement, "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature". Refinancing Installment Sale and Purchase contracts are permitted only to take advantage of a lower interest rate than that of the initial transaction or other instances of lower overall cost to the State. Refinancing for a longer period than the term of the original financing is prohibited. Payment schedules shall provide for either quarterly or semi-annual payment in advance to minimize amount of interest paid. Initial payment may be made on a pro rata basis to accommodate fiscal year funding. Any exception to the provisions of this section requires justification to and prior approval of State Purchasing ~~the Division~~.

(15) No change.

(16) District Bidding – State Purchasing ~~The Division~~ has divided the State into four principal districts, as follows:

(a) Western District, consisting of counties of Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Gulf, Liberty, Franklin, Gadsden, Wakulla, Leon, Jefferson, Taylor, Madison, Lafayette, Dixie.

(b) Northern District, consisting of the counties of Gilchrist, Alachua, Union, Bradford, Baker, Nassau, Duval, Clay, Putnam, St. Johns, Flagler, Volusia, Marion, Levy, Hamilton, Suwannee, Columbia.

(c) Central District, consisting of the counties of Citrus, Sumter, Lake, Hernando, Seminole, Orange, Pasco, Pinellas, Hillsborough, Polk, Osceola, Brevard, Indian River, Manatee, Hardee, Highlands, Okeechobee, St. Lucie, Sarasota, DeSoto, Charlotte, Lee.

(d) Southern District, consisting of the counties of Glades, Martin, Hendry, Palm Beach, Collier, Broward, Monroe, Dade. State Purchasing The Division may modify the composition of these districts when deemed necessary for bidding purposes.

Specific Authority 15.18(7), 287.042(4),(13), 287.017 FS. Law Implemented 216.311, 287.012, 287.042(1),(4),(14), 287.057(1),(3),(4), 287.0595, 119.07(3), 287.133, 288.121(5), 288.703, 288.705, 695.25 FS. History—New 5-20-64, Amended 4-4-67, Revised 2-6-68, Amended 2-8-69, Revised 5-20-71, Amended 7-31-75, 10-1-78, Revised 11-14-79, Amended 8-18-80, 2-81, Amended 8-6-81, 10-13-83, 3-1-84, 3-14-84, 11-12-84, 2-28-85, 12-17-85, Formerly 13A-1.02, Amended 6-5-86, 2-9-87, 11-3-88, 1-18-90, 4-10-91, 9-1-92, Formerly 13A-1.002, Amended 4-24-94, 1-9-95, 1-1-96, 3-21-96, 9-23-96, 7-6-98, _____.

60A-1.006 Vendors and Contractors.

(1) Registration of All Vendors Doing Repetitive Business with the State – All vendors doing business with the State on a repetitive basis for the sale of commodities or contractual services defined in Section 287.012, Florida Statutes, and desiring to register with State Purchasing the Division of Purchasing are required to submit to State Purchasing the Division a properly completed "Vendor Registration Application", Form PUR 7054 (Rev. 8-96) (~~Rev. 9-1-92~~), hereby incorporated by reference. When a firm is registered, a Vendor Registration Number will be issued to the applicant for retention until further notice by State Purchasing the Division. The Vendor Number shall thereafter appear on all bid or negotiation or proposal bid/proposal documents submitted to any State agency for identification purposes. The integrity, reliability and qualifications of a bidder or offeror, with regard to the capability in all respects to perform fully the contract requirements, shall be determined by the agency prior to the award of the contract.

(2) State Purchasing Division of Purchasing Authorized to Remove Vendors and Suppliers From Mailing Lists – State Purchasing The Division of Purchasing shall be authorized to remove from the mailing list any vendor or supplier for failure to respond to a procurement solicitation without giving justifiable reasons for such failure or non-conformance to contract conditions. Any unlawful attempt to influence an award shall be a primary justification for removal from the approved vendor list.

(3) Default – Contractors who fail to perform to contract terms and conditions shall be notified, in writing, stating the nature of the failure to perform and providing time certain for correcting the failure (reasonable time should not generally be less than 10 days after receipt of such notice). The notification will also provide that, should it fail to perform within the time provided, the contractor will be found in default and removed from the agency's approved vendor list. Unless the contractor corrects its failure to perform within the time provided, or unless the agency determines on its own investigation that the contractor's failure is legally excusable, the contractor shall be found in default and issued a second notice stating the reasons the contractor is considered in default and stating that the agency will reprocure or has reprocured the commodities or

services and the amount of the reprocurement if known. The defaulting contractor will not be eligible for award of a contract by the State until such time as the State is reimbursed by the defaulting contractor for all reprocurement costs. To satisfy State Purchasing the Division that further instances will not occur, the defaulting contractor shall provide a written corrective action plan addressing grounds for default. The defaulting contractor will also be advised of the right to petition for an administrative hearing on the intended decision to remove the contractor from the list pursuant to Section 120.57, F.S., and shall be given a time certain within which to submit the petition. The defaulting contractor shall reimburse the agency for all reprocurement costs and for costs of cover, that is the difference between the cost of substitute commodities or contractual services and the contract price for such commodities or contractual services. Reprocurement of substitute commodities or contractual services may be accomplished by first attempting to contract with the second lowest bidder under the Invitation to Bid or second ranked offeror under an Invitation to Negotiate or/ the offeror of the second best proposal under the Request for Proposal. If the agency fails to contract with the second lowest bidder/offeror of second best proposal it may attempt to contract with the next lowest bidder/offeror of the next best proposal sequentially, until a bidder willing to perform at acceptable pricing under the bid or/ proposal conditions is found. An agency may elect to rebid or to purchase on the open market, as may be in the best interest of the State. Until such time as it reimburses the agency for all reprocurement and cover costs and State Purchasing the Division is satisfied that further instances of default will not occur, the defaulting contractor shall not be reinstated on the vendor list and not be eligible for award of a contract by the State. All correspondence to contractors respecting failure to perform shall be sent Certified U.S. Mail, Return Receipt Requested. The foregoing provisions do not limit, waive or exclude the State's remedies against the defaulting contractor at law or in equity.

(4) A copy of all agency default actions shall be provided to State Purchasing the Division of Purchasing. Any source of supply which fails to fulfill any of its duties specified in a contract may result in State Purchasing the Division removing such contractor from the mailing list and directing all agencies to cease doing business with those firms until the contractor reimburses all reprocurement ~~and cover~~ costs and provides State Purchasing the Division with sufficient corrective action so as to satisfy State Purchasing the Division that further instances of default will not occur. The foregoing provisions do not limit, waive or exclude the State's remedies against the defaulting contractor at law or in equity.

(5) Convicted Vendor List – State Purchasing The Division of Purchasing shall maintain a convicted vendor list, consisting of the names and addresses of those who have been disqualified from the public contracting and purchasing process under Section 287.133, F.S. State Purchasing The

~~Division~~ shall publish an initial list on January 1, 1990, and shall publish an updated version of the list quarterly thereafter. The initial list and revised quarterly lists shall be published in the Florida Administrative Weekly or the Florida Communities Network. If good cause exists, State Purchasing the Division shall notify the person or affiliate in writing of its intent to place the name of that person or affiliate on the convicted vendor list, and of the person's or affiliate's right to a hearing, the procedure that must be followed, and the applicable time requirements. No person or affiliate may be placed on the convicted vendor list without receiving an individual notice of intent from State Purchasing the Division. Section 287.133, F.S., does not apply to any activities regulated by the Florida Public Service Commission or to the purchase of goods or services made by any public entity from the other government agencies, from the nonprofit corporation organized under Chapter 946, F.S., or from any accredited nonprofit workshop certified under Sections 413.032-413.037, F.S.

Specific Authority 287.042, 120.57(3)(d) FS. Law Implemented 287.042, 287.017, 287.133, 120.57(3) FS. History--New 5-20-64, Revised 2-6-68, 5-20-71, Amended 7-31-75, 10-1-78, 12-11-79, 2-26-80, 8-6-81, 10-11-81, 11-10-81, 2-11-82, 8-10-82, 10-13-83, 11-12-84, 12-17-85, Formerly 13A-1.06, Amended 2-9-87, 11-3-88, 1-18-90, 4-10-91, 9-1-92, Formerly 13A-1.006, Amended 4-24-94, 1-9-95, 7-6-98.

60A-1.007 Standards and Specifications.

(1) Duties – It shall be the duty of State Purchasing the Division of Purchasing to formulate, adopt, establish ~~or and/or~~ modify standards and specifications applying to all State purchases of commodities or contractual services, except for standards and specifications applicable to commodities purchased by agencies under authority delegated pursuant to Rule 60A-1.002(2)(e), F.A.C. State Purchasing The Division may rescind the delegated authority at any time, including the delegation for preparation of standards and specifications for commodities.

(2) Receipt and Inspection of Goods shall be in accordance with the latest revision of the Standards Guide revised October 15, 1996, published by State Purchasing the Division of Purchasing. That publication is incorporated into this section, by reference, as rules of the department. Copies may be obtained from the division at room 335.01, 4050 Esplanade Way, Tallahassee, Florida 32399-0950.

(3) No change.

(4) State Purchasing The Division of Purchasing may assist agencies in the writing of standards and specifications for invitations to bid or requests for proposals. Agencies shall incorporate changes to the standards and specifications recommended by State Purchasing the Division.

Specific Authority 287.042(13) FS. Law Implemented 287.001, 287.042(2),(6),(7),(8),(11), 287.045(5) FS. History--New 2-6-68, Revised 5-20-71, Amended 7-31-75, 10-1-78, 8-6-81, 10-13-83, Formerly 13A-1.07, Amended 11-3-88, 1-18-90, 4-10-91, Formerly 13A-1.007, Amended 1-1-96, 7-6-98.

60A-1.008 Term Contracts and Price Agreements.

(1) Agencies to Furnish Tabulated Estimates of All Supplies, Materials, Equipment, Services Needed – All agencies shall furnish to State Purchasing the Division of Purchasing when requested and on forms provided by State Purchasing the Division, tabulated estimates of all supplies, materials, equipment, and services needed and required by the agencies for such periods in advance as may be designated by State Purchasing the Division of Purchasing.

(2)(a) Bid Conditions, Evaluations, and Award of State Term Contracts and Price Agreements – All State term contract bid solicitations established by State Purchasing the Division will include the standard "State of Florida Invitation to Bid/ State Term Contract Bidder Acknowledgment", Form PUR 7027, (Rev. 6-1-98), incorporated herein by reference. All State term contract negotiations will include the standard "State of Florida Invitation to Negotiate Acknowledgement" Form PUR 7105 (effective 6-1-98), incorporated herein by reference. All agency term contract bid solicitations will include "State of Florida Invitation to Bid/ Agency Term Contract Bidder Acknowledgment Form", PUR 7050, (Rev. 6-1-98), or "State of Florida Invitation to Bid Contractual Services Bidder Acknowledgment", Form PUR 7031 (Rev. 6-1-98), as indicated both available through the Division of Purchasing which are hereby incorporated by reference, and shall contain a statement informing persons of the provisions of paragraph (2)(a), of Section 287.133, Florida Statutes. All State contract requests for proposals will include either the standard "State of Florida Request for Proposal Commodities Acknowledgment", Form PUR 7051 (Rev. 6-1-98), or "State of Florida Request for Proposal Contractual Services Acknowledgment", Form PUR 7033 (Rev. 6-1-98), and which are hereby incorporated by reference, and shall contain a statement informing persons of the provisions of paragraph(2)(a), of Section 287.133, Florida Statutes. State Purchasing The Division will analyze the price history, market trends and available governmental guidelines to establish an acceptable pricing level. If the lowest responsive bid, negotiation or proposal exceeds the determined acceptable pricing level, then State Purchasing the Division shall accept or reject any and all valid bids, negotiations or proposals based on a comparison of prices with current market pricing, consequences of varying the length of the contract term, or other variables favorable to lower pricing, and the impact of not contracting until more favorable market conditions exist, thereby assuring that such decision is clearly in the best interest of the State. Awards may be made to one or more contractors on a Statewide or regional basis.

(b) State Negotiated Agreement Price Schedule (SNAPS) – State Purchasing The Division may establish price schedules for the purchase of commodities or services through negotiation with one or more suppliers for a term not to exceed one (1) year with option to renew. Annual total purchases from

any one supplier by a purchasing office must be less than the Threshold for Category ~~Four~~ Five. Use of SNAPS agreements price schedules is ~~are~~ not mandatory. A vendor desiring to obtain a SNAPS agreement shall submit a "State Negotiated Agreement Price Schedule" Form PUR 7061 (Rev. 4/96), incorporated herein by reference.

(3)(a) Sources of Supply to be Certified to the Agencies – After sources of supply have been established by contract or price agreement for commodities ~~or~~ contractual services, they shall be certified to the agencies which shall issue purchase orders for all supplies, contractual services, materials, and equipment required by them from the sources of supply so certified. ~~One copy of the purchase order, only when requested shall be forwarded to the Division of Purchasing.~~ It shall be unlawful to purchase any supplies, contractual services, materials or equipment on term contract from sources other than those certified on term contracts by State Purchasing ~~the Division of Purchasing~~.

(b) Alternate ~~Optional~~ Sources of Supplies and Contractual Services – Contracts established by other governmental entities which have been determined and certified by State Purchasing ~~the Division of Purchasing~~ to be cost effective may be considered for use by agencies.

(4) Exceptions

(a) ~~Authority to Purchase of~~ commodities or contractual services from other than the term contract contractor shall be ~~documented by the agency requested by the agency from the Division of Purchasing using "Exceptional Purchase Request" Form PUR 7006 (Rev. 6-1-98), hereby incorporated by reference.~~ The agency shall ~~determine~~ describe the conditions and circumstances justifying the purchase. ~~Upon receipt of justification, the Division shall respond, in writing, and approve or disapprove the request for exception. The Division purchase is justified if the agency determines shall determine whether the agency has prescribed justification showing that the contract item cannot meet an agency need because of one of these utilizing factors: such as critical delivery schedules, the need for compatibility with existing equipment, non-availability of service, and applications of unique technical requirements, product quality, or specifications that differ from those of the contract commodities or services. Notices of exceptions for purchases which meet or exceed the threshold amount for Category Two shall be posted. For example, an existing microcomputer, not on contract, utilizing formatted floppy discs (diskettes) with a need for expansion which requires the same media and software would be sufficient justification for a contract exception. All approved exceptions for acquisitions exceeding the threshold amount for Category Two are subject to provisions of Rule 60A-1.002, F.A.C.~~

(b) ~~The Division of Purchasing, within 10 working days upon receipt of an exception request shall either request additional information or approve or deny the request to~~

~~acquire a commodity not on contract, stating with particularity its reasons for granting or denying the request. The Division of Purchasing shall maintain a separate record of its decisions regarding exception requests. The Division of Purchasing's decision on an exception request shall be delivered to the requesting agency and to vendors who request copies thereof.~~

(c) ~~Upon written request by an agency head, the Division shall delegate authority to make purchases for less than the threshold amount for Category One for commodities or contractual services from sources other than state term contracts. Each delegation will specify the particular conditions and requirements for such purchases. If an agency does not participate in the automated State Purchasing System, it shall report to State Purchasing on a quarterly basis on form PUR 7006 (Rev. 6-1-98) its activity in this area, including notice if there were no exceptions.~~

(5) Agency Contracts – When there is a State Term Contract in effect an agency shall not issue invitations to bid or requests for proposals for an agency term contract for commodities, or enter into an agency term contract for commodities, without requesting and receiving the prior approval of State Purchasing ~~the Division of Purchasing~~.

(a) ~~A copy of all agency term contracts for commodities when requested shall be forwarded to~~ State Purchasing ~~the Division of Purchasing~~ upon execution.

Specific Authority 287.042 FS. Law Implemented 287.001, 287.042, 287.057, 287.017, 287.133, 695.25, 287.1345 FS. History–New 2-6-68, Amended 2-8-69, Revised 5-20-71, Amended 7-31-75, 10-1-78, 5-17-79, 8-6-81, 10-12-81, 6-7-82, 11-4-82, 10-13-83, 11-12-84, 12-17-85, Formerly 13A-1.08, Amended 6-5-86, 2-9-87, 11-3-88, 1-18-90, 4-10-91, 9-1-92, Formerly 13A-1.008, Amended 8-24-93, 4-24-94, 1-9-95, 1-1-96, 9-23-96, 7-6-98,

60A-1.009 Emergency Purchases of Commodities or Contractual Services.

(1) Statement Under Oath – Section 287.057(3)(a), F.S., requires that the agency head shall file with State Purchasing ~~the Division of Purchasing~~ a statement under oath certifying the conditions and circumstances requiring an emergency purchase of commodities or contractual services in excess of the threshold amount for Category Two. However, such emergency purchase shall be made with such competition as is practicable under the circumstances. Statement shall be submitted, using "Exceptional Purchase Request" Form PUR 7006 (Rev. 6-1-98) hereby incorporated by reference, within thirty (30) days after date of issuance of purchase order or contract and shall include complete details surrounding the event(s) meeting the criteria as defined in Section 287.057(3)(a), F.S., which created the emergency. A copy of the purchase order or contract shall accompany the statements.

(2) Responsibilities – State Purchasing ~~The Division of Purchasing~~ will not approve any purchase under this regulation as the burden of proof rests with the certifying officer; however, all statements will be reviewed by State Purchasing

~~the Division of Purchasing~~, and should there be any reasonable doubt that an emergency did exist, an opinion will be filed with the Auditor General with a copy to the agency.

Specific Authority 287.042(13) FS. Law Implemented 287.001, 287.057(3)(a) FS. History--New 2-6-68, Revised 5-20-71, Amended 7-31-75, 10-1-78, 8-6-81, 11-12-84, 12-17-85, Formerly 13A-1.09, Amended 11-3-88, 1-18-90, 4-10-91, Formerly 13A-1.009, Amended 1-9-95, 7-6-98, _____.

60A-1.010 Single Source Purchases of Commodities or Contractual Services.

(1) Authorization of Single Source Purchases – If an agency determines that a commodity or contractual service is available from a single source and total cost is in excess of the threshold for Category Two, but not in excess of the threshold for Category Four, the agency shall document the circumstances and conditions of the determination and post for 72 hours the intended agency action in accordance with the provisions of Section 120.57(3), F.S. This information shall be maintained in the agency file. Purchases in excess of the threshold for Category Four of commodities or contractual services from a single source may be excepted from bid requirements by State Purchasing ~~the Division of Purchasing~~, in writing, upon the filing of a certification, using “Exceptional Purchase Request” Form PUR 7006 (Rev. 6-1-98) hereby incorporated by reference, by the agency head stating the conditions and circumstances requiring the purchase meeting the provisions as defined in Section 287.053(7)(c), F.S. and Rule 60A-1.002(4), F.A.C. This certification shall set forth the purpose and need, and why the commodity or contractual service is the only one that will produce the desired results. State Purchasing’s ~~The Division’s~~ intended decision shall be posted in accordance with the provisions of Section 120.57(3), Florida Statutes, within 21 days after receipt or within 14 days after receipt of additional materials, if requested. Failure of State Purchasing ~~the Division~~ to approve or disapprove the request promptly after expiration of the time periods provided for protests by the statute or within the 21 day period (as extended by the 14 day period), whichever is later, shall constitute prior approval unless a protest is filed. If a protest is filed, the running of the 21 day and 14 day periods ~~is are~~ stopped until the protest is resolved by final agency action, subject to the provisions of Section 120.57(3), F.S.

(2) Annual Certification of Purchases – State Purchasing ~~The Division~~ may, in writing, approve annual certifications for those commodities/contractual services purchased on a regular or continuing basis and which have been proven to be available from a single source.

(3) When an agency solicits bids for a commodity or/ contractual service and receives no competitive sealed bid or/ proposal, the agency should not request authorization of a single source purchase of the commodity or/ contractual service until after the lapse of time during which protests arising from the contract bidding process can be filed, or until after resolution of any protest, whichever is later. When State ~~the Division of~~ Purchasing authorizes a single source purchase

of a commodity or/ contractual service that was the subject of an invitation to bid or request for proposals, its authorization is conditional upon the agency’s compliance with all purchasing laws and rules.

Specific Authority 287.042(13) FS. Law Implemented 287.001, 287.057(3)(c) FS. History--New 2-6-68, Revised 5-20-71, Amended 2-81, 8-6-81, 2-28-85, 12-17-85, Formerly 13A-1.10, Amended 11-3-88, 1-18-90, 4-10-91, Formerly 13A-1.010, Amended 1-9-95, 1-1-96, 9-23-96, 7-6-98, _____.

60A-1.015 Insurance.

(1) Insurance shall be purchased for all agencies by State Purchasing the Division whenever any part of the premium is paid by the State with the exception of title insurance for land acquisition, the State Group Health, and Life Programs, administered by the Department of Administration and Self-Insurance Trust Fund administered by the Department of Insurance, Division of Risk Management. Agencies may make emergency purchases of insurance pursuant to Section 287.057(3)(a), F.S. All invitations to bid for the purchase of insurance coverage shall include the standard "State of Florida Invitation to Bid Insurance Coverage" Form PUR 7109 (Rev. 6-1-98), which is incorporated herein by reference. Requests for the purchase, renewal or endorsement of insurance and bonds shall be initiated in writing by authorized personnel of the requesting agency and submitted to State Purchasing the Division of Purchasing. No agency shall contact the agent of record representing the insurance carrier with the exception of reporting a claim.

(2) No change.

(3) Invoices will be forwarded by State Purchasing ~~the Division~~ to the Department of Insurance for the initial rate approval. The Department of Insurance will transmit the invoice and rate approval to the State agency for payment. All renewals and endorsements with the same rate as previously approved by the Department of Insurance will be transmitted to the State agency by State Purchasing ~~the Division~~. Covered agencies shall submit all premium payments directly to the agent of record representing the insurance carrier. Payments are to be made in accordance with Section 215.422, F.S.

Specific Authority 287.042 FS. Law Implemented 287.022 FS. History--New 8-6-81, Amended 11-4-82, Formerly 13A-1.15, Amended 11-3-88, 1-18-90, 4-10-91, 9-1-92, Formerly 13A-1.015, Amended 8-24-93, 1-9-95, 7-6-98, _____.

60A-1.016 Contract Requirements for Contractual Services.

Contract Terms – A written agreement in excess of the threshold amount of Category Two shall be signed by the agency head and the contractor prior to the rendering of the contractual services, except in the case of a valid emergency as certified by the agency head. If the agency chooses to procure contractual services by purchase order in lieu of a written agreement, then the purchase order shall be signed by the authorized purchasing or contracting personnel. When there is no emergency and the agency fails to have the written agreement signed as required prior to rendering of the service,

the agency head, no later than 30 days after contractor begins rendering the service, shall certify the conditions and circumstances as well as action taken to prevent reoccurrence, to ~~State Purchasing the Division~~ using "Exceptional Purchase Request" Form PUR 7006 (Rev. 6-1-98).

Specific Authority 287.032, 287.042 FS. Law Implemented 287.042, 287.057, 287.058, 287.017, 287.133 FS. History—New 8-6-81, Amended 11-4-82, 2-13-83, 5-26-83, 10-13-83, 5-10-84, 11-12-84, 12-17-85, Formerly 13A-1.16, Amended 6-5-86, 2-9-87, 11-3-88, 1-18-90, 4-10-91, Formerly 13A-1.016, Amended 4-24-94, 1-9-95, 1-1-96, 3-24-96, 7-6-98, _____.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Architecture and Interior Design

RULE CHAPTER TITLE: Continuing Education for Architects
 RULE NO.: 61G1-24
 PURPOSE AND EFFECT: The Board proposes to review the rules within this rule chapter to determine if amendments are necessary.

SUBJECT AREA TO BE ADDRESSED: Continuing education for architects; continuing education approval of subjects and providers; definition of a complete application.

SPECIFIC AUTHORITY: 481.215, 481.2055 FS.

LAW IMPLEMENTED: 455.271(6), 481.215, 481.217 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 11:00 a.m., or shortly thereafter on August 4, 1999

PLACE: The Registry Resort, 475 Seagate Drive, Naples, Florida 34103

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Dee O’Conner, Executive Director, Board of Architecture and Interior Design, 1940 North Monroe Street, Northwood Centre, Tallahassee, Florida 32399-0750

THE PRELIMINARY TEXT OF THE PROPOSED RULE IS NOT AVAILABLE.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Construction Industry Licensing Board

RULE TITLE: Probable Cause Panel
 RULE NO.: 61G4-12.010
 PURPOSE AND EFFECT: Rule 61G4-12.010 is being amended to add new subsection (8) in order to delegate to the Department of Business and Professional Regulation the determination of probable cause in cases of unsatisfied judgments.

SUBJECT AREA TO BE ADDRESSED: Probable Cause Panel.

SPECIFIC AUTHORITY: 455.225 FS.

LAW IMPLEMENTED: 455.225(3),(4) FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., August 12, 1999

PLACE: Sheraton World Resort, 10100 International Drive, Orlando, Florida 32821

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Rodney Hurst, Executive Director, Construction Industry Licensing Board, 7960 Arlington Expressway, Suite 300, Jacksonville, Florida 32211-7467

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

61G4-12.010 Probable Cause Panel.

(1) through (7) No change.

(8) Notwithstanding the provisions of subparagraphs (1) and (7) above, the Board hereby delegates to the Department the determination of probable cause when the only charge that otherwise would go before the probable cause panel is that of failure to satisfy a judgment pursuant to Section 489.129(1)(q), F.S. (1998 Supp.) Should the Department’s investigation support charges in addition to the failure to satisfy a judgment pursuant to Section 489.129(1)(q), F.S. (1998 Supp.), the case shall be presented to the probable cause panel for a determination of probable cause.

Specific Authority 455.225 FS. Law Implemented 455.225(3), (4) FS. History—New 10-18-79, Formerly 21E-1.41, Amended 1-6-80, 5-11-80, Formerly 21E-12.10, Amended 4-12-88, 12-21-92, Formerly 21E-12.010, Amended 11-25-97, _____.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Construction Industry Licensing Board

RULE TITLE: Continuing Education Requirements for Certificateholders and Registrants
 RULE NO.: 61G4-18.001
 PURPOSE AND EFFECT: The proposed amendment shall grant a maximum of four hours of continuing education credit to any licensee who serves as a member of a technical advisory committee to the Florida Building Code Commission
 SUBJECT AREA TO BE ADDRESSED: Continuing Education.
 SPECIFIC AUTHORITY: 455.213(7), 489.108 FS.
 LAW IMPLEMENTED: 489.105(14), 489.115, 489.116 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., August 12, 1999

PLACE: Sheraton World Resort, 10100 International Drive, Orlando, Florida 32821

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Rodney Hurst, Executive Director, Construction Industry Licensing Board, 7960 Arlington Expressway, Suite 300, Jacksonville, Florida 32211-7467

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

61G4-18.001 Continuing Education Requirements for Certificateholders and Registrants.

(1) through (3) No change.

(4) The Board shall grant a maximum of four (4) hours of continuing education credit, on an hour for hour basis, to any licensee who participates as member of any technical advisory committee to the Florida Building Code Commission within the Department of Community Affairs.

~~(4)~~(5) No change.

Specific Authority 455.213(7), 489.108 FS. Law Implemented 489.105(14), 489.115, 489.116 FS. History--New 12-2-93, Amended 5-19-94, 8-16-94, 10-12-94, 1-18-95, 2-4-98,_____.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida Real Estate Appraisal Board

RULE CHAPTER TITLE: Internal Organization and Operation RULE CHAPTER NO.: 61J1-1

PURPOSE AND EFFECT: The Florida Real Estate Appraisal Board proposes to review and consider possible revisions to the rules in Chapter 61J1-1, pursuant to 120.536(2)(b), F.S. (1999) and 120.74, F.S. (1997).

SUBJECT AREA TO BE ADDRESSED: Membership; Chairperson; Minutes; Internal; Principal Office; Board Member Compensation; Authorized Signatures on Final Orders; Probable Cause Panel; and Designation of Official Reporter.

SPECIFIC AUTHORITY: 120.53, 455.207, 455.225, 475.614 FS.

LAW IMPLEMENTED: 120.52, 120.53, 120.53(4), 120.569, 455.205, 455.207, 455.207(3), 455.225, 475.613 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: As soon after the regular meeting of the Board adjourns on August 3, 1999. The regular meeting begins at 9:00 a.m., August 3, 1999

PLACE: Office of Florida Real Estate Appraisal Board, 400 West Robinson Street, Suite 301, North Tower, Orlando, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Herbert S. Fecker, Jr., Director, Division of Real Estate, Suite 308, North Tower, 400 West Robinson Street, Orlando, Florida 32801

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

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida Real Estate Appraisal Board

RULE CHAPTER TITLE: Registration Details and Fee Structure RULE CHAPTER NO.: 61J1-2

PURPOSE AND EFFECT: The Florida Real Estate Appraisal Board proposes to review and consider possible revisions to the rules in Chapter 61J1-2, pursuant to 120.536(2)(b), F.S. (1999) and 120.74, F.S. (1997).

SUBJECT AREA TO BE ADDRESSED: Fees; Renewal Period; Inactive Renewal; Exemption of Spouses of Members of Armed Forces from Renewal Provisions; Inactive Registration; and Refund of Applicant License Fees.

SPECIFIC AUTHORITY: 455.02, 475.614, 475.619 FS.

LAW IMPLEMENTED: 215.34, 215.405, 455.02, 455.217, 455.2281, 475.613(2), 475.6147, 475.615, 475.618, 475.619, 475.630 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: As soon after the regular meeting of the Board adjourns on August 3, 1999. The regular meeting begins at 9:00 a.m., August 3, 1999

PLACE: Office of Florida Real Estate Appraisal Board, 400 West Robinson Street, Suite 301, North Tower, Orlando, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Herbert S. Fecker, Jr., Director, Division of Real Estate, Suite 308, North Tower, 400 West Robinson Street, Orlando, Florida 32801

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

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**Florida Real Estate Appraisal Board**

RULE CHAPTER TITLE: RULE CHAPTER NO.:

Application Requirements 61J1-3

PURPOSE AND EFFECT: The Florida Real Estate Appraisal Board proposes to review and consider possible revisions to the rules in Chapter 61J1-3, pursuant to 120.536(2)(b), F.S. (1999) and 120.74, F.S. (1997).

SUBJECT AREA TO BE ADDRESSED: Application by Individuals; Where to Apply; and Notice of Denial.

SPECIFIC AUTHORITY: 475.614 FS.

LAW IMPLEMENTED: 120.57, 120.60, 475.613, 475.615, 475.617, 475.624 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: As soon after the regular meeting of the Board adjourns on August 3, 1999. The regular meeting begins at 9:00 a.m., August 3, 1999

PLACE: Office of Florida Real Estate Appraisal Board, 400 West Robinson Street, Suite 301, North Tower, Orlando, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Herbert S. Fecker, Jr., Director, Division of Real Estate, Suite 308, North Tower, 400 West Robinson Street, Orlando, Florida 32801

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

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**Florida Real Estate Appraisal Board**

RULE CHAPTER TITLE: RULE CHAPTER NO.:

Minimum Educational Requirements 61J1-4

PURPOSE AND EFFECT: The Florida Real Estate Appraisal Board proposes to review and consider possible revisions to the rules in Chapter 61J1-4, pursuant to 120.536(2)(b), F.S. (1999) and 120.74, F.S. (1997).

SUBJECT AREA TO BE ADDRESSED: Education Requirements; Equivalency Education; Continuing Education; Application for Courses; Notice of Satisfactory Course Completion; Correspondence Courses for Hardship Cases; Renewal of Inactive Registrations, Licenses and Certifications; and Continuing Education for School Instructors.

SPECIFIC AUTHORITY: 475.614, 475.619 FS.

LAW IMPLEMENTED: 475.613, 475.615, 475.615(2), 475.617, 475.618, 475.619 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: As soon after the regular meeting of the Board adjourns on August 3, 1999. The regular meeting begins at 9:00 a.m., August 3, 1999

PLACE: Office of Florida Real Estate Appraisal Board, 400 West Robinson Street, Suite 301, North Tower, Orlando, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Herbert S. Fecker, Jr., Director, Division of Real Estate, Suite 308, North Tower, 400 West Robinson Street, Orlando, Florida 32801

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

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**Florida Real Estate Appraisal Board**

RULE CHAPTER TITLE: RULE CHAPTER NO.:

Examination Details 61J1-5

PURPOSE AND EFFECT: The Florida Real Estate Appraisal Board proposes to review and consider possible revisions to the rules in Chapter 61J1-5, pursuant to 120.536(2)(b), F.S. (1999) and 120.74, F.S. (1997).

SUBJECT AREA TO BE ADDRESSED: Appraisal Examination Areas of Competency.

SPECIFIC AUTHORITY: 455.217, 475.614 FS.

LAW IMPLEMENTED: 455.217, 475.616 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: As soon after the regular meeting of the Board adjourns on August 3, 1999. The regular meeting begins at 9:00 a.m., August 3, 1999

PLACE: Office of Florida Real Estate Appraisal Board, 400 West Robinson Street, Suite 301, North Tower, Orlando, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Herbert S. Fecker, Jr., Director, Division of Real Estate, Suite 308, North Tower, 400 West Robinson Street, Orlando, Florida 32801

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

S. Fecker, Jr., Director, Division of Real Estate, Suite 308, North Tower, 400 West Robinson Street, Orlando, Florida 32801

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

DEPARTMENT OF HEALTH

Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling

RULE TITLE: Citations
 RULE NO.: 64B4-5.007

PURPOSE AND EFFECT: The purpose is to amend this rule by adding an additional offense for which a citation may be issued and the appropriate penalty to be charged.

SUBJECT AREA TO BE ADDRESSED: Citations.

SPECIFIC AUTHORITY: 455.617, 491.004(5) FS.

LAW IMPLEMENTED: 455.617, 455.621 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Sue Foster, Executive Director, Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling/MQA, 2020 Capital Circle, S. E., Bin #C08, Tallahassee, Florida 32399-3258

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64B4-5.007 Citations.

(1) through (2) No change.

(3) The Board hereby designates as offenses for citations and the appropriate penalties the following:

(a) through (c) No change.

(d) violation of Rule 64B4-6.001(2)(a) – \$500.

Specific Authority 455.617, 491.004(5) FS. Law Implemented 455.617, 455.621 FS. History–New 1-7-92, Formerly 21CC-5.007, 61F4-5.007, 59P-5.007, Amended 12-11-97, 2-9-99,_____.

**Section II
 Proposed Rules**

DEPARTMENT OF INSURANCE

RULE TITLES:	RULE NOS.:
Definitions	4-150.003
Definitions	4-150.103
Definitions	4-150.203

PURPOSE AND EFFECT: The proposed amendment makes it clear that the standards in the definition of “invitation to inquire” are part of the definition and that failure to meet those standards does not constitute a violation. The result of failure to meet the definition of an invitation to inquire is to fall within the catchall definition of “invitation to contract” and thus subject to more stringent disclosure requirements imposed on ads which meet the definition of “invitation to contract”.

SUMMARY: This amendment adds language to explicitly state, “If an advertisement which would otherwise be considered an invitation to inquire does refer to cost, it shall be considered an invitation to contract pursuant to this rule chapter”.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No SERC has been prepared.

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

SPECIFIC AUTHORITY: 624.308(l), 626.9611, 627.805, 627.6699(12) FS.

LAW IMPLEMENTED: 624.307(l), 626.9541(l)(a),(b), (e),(g),(k),(1), 626.9641(l), 626.99, 627.460, 627.6699(9)(d)4. FS.

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

TIME AND DATE: 9:30 a.m., August 17, 1999

PLACE: Room 143, Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Bill Pace, Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0330, (850)413-5224

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting Yvonne White, (850)413-4214.

THE FULL TEXT OF THE PROPOSED RULES IS: