

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64B15-14.008 Standards for Telemedicine Practice.

(1) Prescribing medications based solely on an electronic medical questionnaire constitutes the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by reasonably prudent osteopathic physicians as being acceptable under similar conditions and circumstances, as well as prescribing legend drugs other than in the course of an osteopathic physician's professional practice. Such practice shall constitute grounds for disciplinary action pursuant to §§459.015(1)(x) and (t), F.S.

(2) Osteopathic Physicians shall not provide treatment recommendations, including issuing a prescription, via electronic or other means, unless the following elements have been met:

(a) A documented patient evaluation, including history and physical examination, adequate to establish the diagnosis for which any drug is prescribed.

(b) Sufficient dialogue between the osteopathic physician and the patient regarding treatment options and the risks and benefits of treatment.

(c) Maintenance of contemporaneous medical records meeting the requirements of Rule 64B15-15.004, F.A.C.

(3) The provisions of this rule are not applicable in an emergency situation. For purposes of this rule an emergency situation means those situations in which the prescribing physician determines that the immediate administration of the medication is necessary for the proper treatment of the patient, and that it is not reasonably possible for the prescribing physician to comply with the provision of this rule prior to providing such prescription.

(4) The provisions of this rule shall not be construed to prohibit patient care in consultation with another physician who has an ongoing relationship with the patient, and who has agreed to supervise the patient's treatment, including the use of any prescribed medications, nor on-call or cross-coverage situations in which the physician has access to patient records.

Specific Authority 459.005, 459.015(1)(z) FS. Law Implemented 459.015(1)(x), (t) FS. History-New

DEPARTMENT OF HEALTH
Division of Family Health Services

RULE CHAPTER TITLE: Eligibility and Fee Assessment for Services Offered by County Public Health Units
RULE CHAPTER NO.: 64F-16
RULE TITLE: Definitions
RULE NO.: 64F-16.001
PURPOSE AND EFFECT: To incorporate by reference specific poverty guidelines referenced in the rule.
SUBJECT AREAS TO BE ADDRESSED: Federal poverty guidelines used to determine eligibility.

SPECIFIC AUTHORITY: 154.011(5) FS.

LAW IMPLEMENTED: 154.011 FS.

IF REQUESTED WITHIN 14 DAYS OF THIS NOTICE AND NOT DEEMED UNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., May 14, 2001

PLACE: Department of Health, 4025 Esplanade Way, Room 125-N, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Bob Peck, Bin A-13 (HSFFM), 4052 Bald Cypress Way, Tallahassee, FL 32399-1723, (850)245-4444, Ext. 2965

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE BY CONTACTING: Bob Peck, Bin A-13 (HSFFM), 4052 Bald Cypress Way, Tallahassee, FL 32399-1723, (850)245-4444, Ext. 2965

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64F-16.001 Definitions.

For the purpose of this rule chapter, the following definitions will apply:

(1) through (6) No change.

(7) "Poverty guidelines" means the non-farm family poverty income scale adopted by the United States Department of Health and Human Services (HHS), as published in the Federal Register; February 16, 2001 edition (Volume 66, Number 33) pages 10695-10697, February 15, 2000 edition (Volume 65, Number 31) pages 7555-7557. A Copy of these guidelines can be obtained by writing to: the Office of Maternal and Child Health, Bin A-13 (HSFFM), 4052 Bald Cypress Way, Tallahassee, FL 32399-1723.

(8) through (12) No change.

Specific Authority 154.011(5) FS. Law Implemented 154.011 FS. History-New 10-14-93, Amended 4-29-96, Formerly 10D-121.002, Amended 1-9-01,

Section II
Proposed Rules

DEPARTMENT OF BANKING AND FINANCE

Division of Banking

RULE TITLE: Enterprise Zone Linked Deposit Program
RULE NO.: 3C-100.970
PURPOSE AND EFFECT: Section 290.0075, F.S., set a June 30, 2000 expiration date for the Enterprise Zone Linked Deposit Program and the program is no longer active.
SUMMARY: Rule 3C-100.970 is repealed since the program has expired by statute.

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

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

SPECIFIC AUTHORITY: 655.012(3) FS.

LAW IMPLEMENTED: 290.0075 FS.

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

TIME AND DATE: 10:00 a.m., May 21, 2001

PLACE: Room 624, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Alex Hager, Director, Division of Banking, Room 624, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9111

THE FULL TEXT OF THE PROPOSED RULE IS:

3C-100.970 Enterprise Zone Linked Deposit Program.

Specific Authority 655.012(3) FS. Law Implemented 290.0075 FS. History--New 6-1-95, Amended 9-9-96, 5-3-98, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Donald M. Kelly, Financial Control Analyst, Division of Banking

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Alex Hager, Director, Division of Banking

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 11, 2001

DEPARTMENT OF INSURANCE

RULE TITLES:	RULE NOS.:
Rights of Lender	4-124.003
Policy or Binder Must be Available	4-124.004
Replacement of Cancelled Policy	4-124.005
Transfer of Mortgage	4-124.006
Complaints of Coercion	4-124.007
Renewals; Delivery of Policy or Certificate	4-127.008
Change of Title	4-124.009
Authorization Required to Change Agents	4-124.012
Advertisements Shall be Truthful and Not Misleading	4-124.026

PURPOSE AND EFFECT: Rule 4-124.003 was identified for amendment in the 120.536(2)(b), F.S., rule review project. It has since been determined that the rule is unnecessary and should be repealed. Rules 4-124.004, .005, .006, .007, .008, .009, .012, and .026 were identified for repeal in the rules review project.

SUMMARY: Rules are being repealed pursuant to 120.536(2)(b), F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

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

SPECIFIC AUTHORITY: 624.308, 626.9611 FS.

LAW IMPLEMENTED: 624.307(1), 626.9551(1) 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: 10:00 a.m., May 22, 2001

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Phil Fountain, Bureau Chief, Bureau of Agent and Agency Investigations, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0319, phone (850)413-5600

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:

4-124.003 Rights of Lender.

Specific Authority 624.308, 626.9611 FS. Law Implemented 624.307(1), 626.9551(1) FS. History--Amended 5-20-64, Repromulgated 12-24-74, Formerly 4-3.03, 4-3.003, Repealed.

4-124.004 Policy or Binder Must be Available.

Specific Authority 624.308, 626.9611 FS. Law Implemented 624.307(1), 626.9551(1) FS. History--Repromulgated 12-24-74, Formerly 4-3.04, 4-3.004, Repealed.

4-124.005 Replacement of Cancelled Policy.

Specific Authority 624.308, 626.9611 FS. Law Implemented 624.307(1), 626.9551(1) FS. History--Repromulgated 12-24-74, Formerly 4-3.05, 4-3.005, Repealed.

4-124.006 Transfer of Mortgage.

Specific Authority 624.308, 626.9611 FS. Law Implemented 624.307(1), 626.9551(1) FS. History--Repromulgated 12-24-74, Formerly 4-3.06, 4-3.006, Repealed.

4-124.007 Complaints of Coercion.

Specific Authority 624.308, 626.9611 FS. Law Implemented 624.307(1), 626.9551(1) FS. History--Repromulgated 12-24-74, Formerly 4-3.07, 4-3.007, Repealed.

4-124.008 Renewals; Delivery of Policy or Certificate.

Specific Authority 624.308, 626.9611 FS. Law Implemented 624.307(1), 626.9551(1) FS. History-Repromulgated 12-24-74, Formerly 4-3.08, 4-3.008, Repealed.

4-124.009 Change of Title.

Specific Authority 624.308, 626.9611 FS. Law Implemented 624.307(1), 626.9551(1) FS. History-Repromulgated 12-24-74, Formerly 4-3.09, 4-3.009, Repealed.

4-124.012 Authorization Required to Change Agents.

Specific Authority 624.308, 626.9611 FS. Law Implemented 624.307(1), 626.9551(1) FS. History-Repromulgated 12-24-74, Formerly 4-3.12, 4-3.012, Repealed.

4-124.026 Advertisements Shall be Truthful and Not Misleading.

Specific Authority 624.308(1) FS. Law Implemented 624.307(1), 626.9541(1)(a), 626.9551(1)(a) FS. History-New 11-24-85, Formerly 4-64.06, 4-64.006, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Phil Fountain, Bureau Chief, Bureau of Agent & Agency Investigations, Department of Insurance
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: John Hale, Director, Division of Agent and Agency Services, Department of Insurance
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 12, 2001

DEPARTMENT OF INSURANCE

RULE TITLES:	RULE NOS.:
Misrepresentation of Policy Provisions	4-166.023
Standards for Prompt, Fair and Equitable Settlements Application to all Insurers	4-166.026
Standards for Prompt, Fair and Equitable Settlement Applicable to Automobile Insurance	4-166.027
Standards for Prompt, Fair and Equitable Settlements Applicable to Homeowners' and Personal and Commercial Fire and Extended Coverages Type Policies with Replacement Cost Coverages	4-166.028

PURPOSE AND EFFECT: Repeal Rules 4-166.023, .026, .027, .028, FAC. pursuant to section 120.536(2), F.S. review.

SUMMARY: These rules do not interpret or implement the statutes cited as "Law Implemented" [624.307(1), 624.3161, F.S.]. Therefore these rules should be repealed.

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

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

SPECIFIC AUTHORITY: 624.308 FS.

LAW IMPLEMENTED: 624.307(1), 624.3161 FS.

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

TIME AND DATE: 9:00 a.m., May 22, 2001

PLACE: Room 142, Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Cheryl Jones, Insurer Services, Department of Insurance, 200 E. Gaines Street, Tallahassee, FL 32399-0314, (850)922-3148

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)922-3100, Ext. 4214.

THE FULL TEXT OF THE PROPOSED RULES IS:

4-166.023 Misrepresentation of Policy Provisions.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 624.3161 FS. History-New 11-2-92, Repealed.

4-166.026 Standards for Prompt, Fair and Equitable Settlements Applicable to all Insurers.

Specific Authority 624.308 FS. Law Implemented 324.151(1)(c), 624.307(1), 624.3161, 627.4265, 627.736 FS. History-New 11-2-92, Repealed.

4-166.027 Standards for Prompt, Fair and Equitable Settlements Applicable to Automobile Insurance.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 624.3161, 626.877 FS. History-New 11-2-92, Repealed.

4-166.028 Standard for Prompt, Fair, and Equitable Settlements Applicable to Homeowners' and Personal and Commercial Fire and Extended Coverages Type Policies with Replacement Cost Coverages.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 624.3161, 627.702 FS. History-New 11-2-92, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Fred Whitson, Legal Services, and Wayne Johnson, Insurer Services, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michelle Newell, Director, Division of Insurer Services, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 9, 2001

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE:	RULE NO.:
Educational Program Audits	6A-1.0453

PURPOSE AND EFFECT: The purpose of this rule amendment is to clarify the timelines relating to preliminary full-time equivalent (FTE) and transportation audit reports and to ensure consistency with Section 11.45(7)(d), Florida Statutes. The effect will be a rule which reflects the timeline prescribed in statute and provides clarification of the process.

SUMMARY: This rule is amended to allow for a thirty day response time by the school district following the receipt of a preliminary FTE and transportation audit report from the Auditor General. In addition it affirms the independence of the auditing processing by removing language which may suggest the Department through rule can place specific requirements on the Office of the Auditor General.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 229.053(1) FS.

LAW IMPLEMENTED: 11.45, 229.565(2),(3), 236.081(9)(b) FS.

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

TIME AND DATE: 9:00 a.m., May 30, 2001

PLACE: Room LL03, The Capitol, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Wayne V. Pierson, Deputy Commissioner for Planning, Budgeting and Management

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.0453 Educational Program Audits.

Periodic examinations and audits of the accounts and programs of each school district shall be conducted by the Auditor General or the Commissioner. ~~The Commissioner may utilize utilizing~~ Department auditing staff as well as program staff in the Division of Public Schools and the Division of Workforce Development, in accordance with the provisions of Section 229.565, Florida Statutes.

(1) No change.

(2) The Auditor General is responsible for:

(a) Periodically examining and evaluating programs, records and procedures in each district which requests funding under the Florida Education Finance Program. ~~Determination of compliance will be based upon law and criteria established by rules of the State Board. Examinations will be conducted using statistical sampling techniques.~~

(b) Notifying the auditee of an upcoming audit and conducting an entrance briefing to explain the purpose, scope and schedule of the audit.

~~(e) Providing immediate written notification to the auditee and/or his representative(s) of any discrepancies and/or deficiencies found in the examination. The auditee and/or his representative(s) will provide a written response within fifteen (15) calendar days unless an extension is requested and approved in writing.~~

~~(c)(d) Scheduling an exit briefing with the auditee at the completion of the examination to discuss the findings. At the completion of the examination, preparing a report of preliminary and tentative findings which identifies the discrepancies and/or deficiencies found and submitting the report to the auditee. An exit briefing will be scheduled with the auditee within thirty (30) calendar days to discuss the findings. The auditee will provide a written response to the report of preliminary and tentative findings within sixty (60) calendar days following the issuance of the report.~~

~~(d) Submitting to the auditee a list of findings which may be included in the audit report. The auditee shall submit to the Auditor General, within thirty (30) days after the receipt of the list of findings, his or her written statement of explanation or rebuttal concerning all the findings, including corrective action to be taken to preclude a recurrence of all findings.~~

~~(e)(3) Preparing a written report, incorporating the response of the auditee. The audit report shall be, shall be prepared, signed by the person or persons responsible for the audit, and transmitted to the Commissioner with copies to the Deputy Commissioner for Planning, Budgeting and Management and the Deputy Commissioner for Educational Programs Directors of the Divisions of Public Schools and Workforce Development. The auditor report shall specifically identify instances of:~~

~~1.(a) Errors in the reported full-time equivalent membership by program category; and~~

~~2.(b) Improper classification or placement of individual students assigned to educational alternative or exceptional student programs; and~~

~~(c) Failure of classes or programs to meet criteria established by the State Board, pursuant to Sections 230.23(4)(m), 230.2315 and 33.0682, Florida Statutes, for basic or special programs.~~

(4) through (5) renumbered (3) through (4) No change.

(a) through (c) No change.

(6) through (8) renumbered (5) through (7) No change.

Specific Authority 229.053(1),~~(2),(3),(4)~~ FS. Law Implemented 11.45, 229.565(2),(3),~~(4)~~, 236.081(9)(b),~~(12)~~ FS. History—New 2-25-76, Amended 10-30-78, 12-7-82, 6-28-83, 11-27-85, Formerly 6A-1.453, Amended 10-31-88, 3-15-90, 1-7-97, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Wayne V. Pierson, Deputy Commissioner for Planning, Budgeting and Management, Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charlie Crist, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 17, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 29, 2000

DEPARTMENT OF EDUCATION

Board of Regents

RULE TITLE: Tuition, Fee Schedule and Percentage of Cost RULE NO.: 6C-7.001

PURPOSE AND EFFECT: Section 240.209(3)(e), Florida Statutes, requires the Board of Regents to set the tuition and matriculation fees which will generate revenues as established in the General Appropriations Act. It further provides that the Board of Regents may set the Student Financial Aid Fee up to 5 percent of the tuition and matriculation fee.

SUMMARY: Rule 6C-7.001 implements the provisions of Section 240.209(3)(e), Florida Statutes, regarding the establishment of tuition and matriculation fees for students in the public universities. The proposed amendments implement a tuition increase estimated at this time to be 5 percent along with an increase of 50 cents each to the Capital Improvement Fee and the Building Fee. The actual increases will not be known until the General Appropriations Act for 2001-02 and pending legislation amending the building fees are signed by the Governor.

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

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

SPECIFIC AUTHORITY: 240.209(1),(3)(e) FS.

LAW IMPLEMENTED: 240.209(3)(e),(h), 230.235(1), 240.124, 240.117 FS., General Appropriations Act, 2001-02.

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

TIME AND DATE: 11:00 a.m., May 24, 2001

PLACE: Phyllis P. Marshall Center, University of South Florida, Tampa, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mary-Anne Bestebreurtje, Corporate Secretary and Associate General Counsel, Florida Board of Regents, 1520 Florida Education Center, 325 West Gaines Street, Tallahassee, Florida 32399-1950

THE FULL TEXT OF THE PROPOSED RULE IS:

6C-7.001 Tuition, Fee Schedule and Percentage of Cost.

(1) through (3) No change.

(4) The following tuition shall be levied and collected effective the fall semester indicated for each student regularly enrolled, unless provided otherwise in this chapter.

(a) Students enrolled in programs other than the MD, DMD or DVM in the University of Florida College of Medicine, College of Dentistry, or College of Veterinary Medicine, or in the MD program in the University of South Florida College of Medicine will be assessed the following fees per credit hour:

Fall 2001

Fee	Undergraduate		Graduate		Law	
	Resident	Non-Resident	Resident	Non-Resident	Resident	Non-Resident
Matriculation	\$51.79	\$51.79	\$124.61	\$124.61	\$141.62	\$141.62
Matriculation 5% Maximum Differential	\$2.58	\$2.58	\$6.23	\$6.23	\$7.08	\$7.08
Non-Resident		\$232.95		\$360.73		\$375.74
Non-Resident 5% Maximum Differential		\$11.64		\$18.03		\$18.78
Student Financial Aid	\$2.58	\$2.58	\$6.23	\$6.23	\$7.08	\$7.08
Student Financial Aid 5% Maximum Differential	\$0.12	\$0.12	\$0.31	\$0.31	\$0.35	\$0.35
Non-Resident Student Financial Aid		\$11.64		\$18.03		\$18.78
Non-Resident Student Financial Aid 5% Maximum Differential		\$0.58		\$0.90		\$0.93
Capital Improvement Trust Fund	\$2.94	\$2.94	\$2.94	\$2.94	\$2.94	\$2.94
Building	\$2.82	\$2.82	\$2.82	\$2.82	\$2.82	\$2.82
Activity and Service		Varies by University per Rule 6C-7.003				
Health		Varies by University per Rule 6C-7.003				
Athletic		Varies by University per Rule 6C-7.003				
Total ^a	\$60.13	\$304.72	\$136.60	\$515.36	\$154.46	\$548.98
Total ^{ab}	\$62.83	\$319.64	\$143.14	\$540.83	\$161.89	\$576.12

^a Excludes fees that vary by university per Rule 6C-7.003.

^b Total including the maximum differential charges.

Fall 2000

Fee	Undergraduate		Graduate		Law	
	Resident	Non-Resident	Resident	Non-Resident	Resident	Non-Resident
Matriculation	\$49.33	\$49.33	\$118.68	\$118.68	\$134.88	\$134.88
Matriculation 5% Maximum Differential	\$2.46	\$2.46	\$5.93	\$5.93	\$6.74	\$6.74
Non-Resident 5 % Maximum Differential		\$221.86		\$343.56		\$357.85
Student Financial Aid 5% Maximum Differential	\$0.12	\$0.12	\$0.30	\$0.30	\$0.34	\$0.34
Non-Resident Student Financial Aid 5% Maximum Differential		\$11.09		\$17.17		\$17.89
Capital Improvement Trust Fund Building	\$2.44	\$2.44	\$2.44	\$2.44	\$2.44	\$2.44
Activity and Service Health Athletic	\$2.32	\$2.32	\$2.32	\$2.32	\$2.32	\$2.32
Total ^a	\$56.55	\$289.50	\$129.37	\$490.10	\$146.38	\$522.12
Total ^{ab}	\$59.13	\$303.72	\$135.60	\$514.36	\$153.46	\$547.98

^a Excludes fees that vary by university per Rule 6C-7.003.

^b Total including the maximum differential charges.

Fall 1999 — includes the maximum university differential fee increase of 5%

Fee	Undergraduate		Graduate		Law	
	Resident	Non-Resident	Resident	Non-Resident	Resident	Non-Resident
Matriculation	\$49.33	\$49.33	\$118.68	\$118.68	\$134.88	\$134.88
Non-Resident Student — Financial Aid	\$2.46	\$2.46	\$5.93	\$5.93	\$6.74	\$6.74
Non-Resident Student Financial Aid		\$11.09		\$17.17		\$17.89
Capital Improvement Trust Fund	\$2.44	\$2.44	\$2.44	\$2.44	\$2.44	\$2.44
Building	\$2.32	\$2.32	\$2.32	\$2.32	\$2.32	\$2.32
Activity and Service			Varies by University per Rule 6C-7.003			
Health			Varies by University per Rule 6C-7.003			
Athletic			Varies by University per Rule 6C-7.003			
Total*	\$56.55	\$289.50	\$129.37	\$490.10	\$146.38	\$522.12

* Excludes fees that vary by university per Rule 6C-7.003

(b) Students enrolled in the MD, DMD or DVM programs in the University of Florida College of Medicine, College of Dentistry, or College of Veterinary Medicine, or in the MD

program in the University of South Florida College of Medicine will be assessed the following fees per student for the academic year as defined by each university:

Fall 2001

Fee	Medical		Dental		Veterinary	
	Resident	Non-Resident	Resident	Non-Resident	Resident	Non-Resident
Matriculation	\$10,168.16	\$10,168.16	\$8,841.90	\$8,841.90	\$7,427.14	\$7,427.14
Matriculation 5% Maximum Differential	\$508.40	\$508.40	\$442.08	\$442.08	\$371.34	\$371.34
Non-Resident Non-Resident 5% Maximum Differential		\$18,533.58		\$16,116.14		\$13,537.58
Student Financial Aid	\$508.40	\$508.40	\$442.08	\$442.08	\$371.34	\$371.34
Student Financial Aid 5% Maximum Differential	\$25.42	\$25.42	\$22.10	\$22.10	\$18.56	\$18.56
Non-Resident Student Financial Aid		\$926.66		\$805.80		\$676.86
Non-Resident Student Financial Aid 5% Maximum Differential		\$46.32		\$40.28		\$33.84
Capital Improvement Trust Fund	\$117.60	\$117.60	\$117.60	\$117.60	\$117.60	\$117.60
Building	\$112.80	\$112.80	\$112.80	\$112.80	\$112.80	\$112.80
Activity and Service	Varies by University per Rule 6C-7.003					
Health	Varies by University per Rule 6C-7.003					
Athletic	Varies by University per Rule 6C-7.003					
Total ^a	\$10,906.96	\$30,367.20	\$9,514.38	\$26,436.32	\$8,028.88	\$22,243.32
Total ^{ab}	\$11,440.78	\$31,874.00	\$9,978.56	\$27,746.58	\$8,418.78	\$23,343.92

^a Excludes fees that vary by university.

^b Total including the maximum differential charges.

Fall 2000

Fee	Medical		Dental		Veterinary	
	Resident	Non-Resident	Resident	Non-Resident	Resident	Non-Resident
Matriculation	\$9,683.98	\$9,683.98	\$8,420.86	\$8,420.86	\$7,073.48	\$7,073.48
Matriculation 5% Maximum Differential	\$484.18	\$484.18	\$421.04	\$421.04	\$353.66	\$353.66
Non-Resident Non-Resident 5% Maximum Differential		\$17,651.04		\$15,348.72		\$12,892.94
Student Financial Aid	\$484.18	\$484.18	\$421.04	\$421.04	\$353.66	\$353.66
Student Financial Aid 5% Maximum Differential	\$24.22	\$24.22	\$21.04	\$21.04	\$17.68	\$17.68
Non-Resident Student Financial Aid		\$882.54		\$767.42		\$644.64
Non-Resident Student Financial Aid 5% Maximum Differential		\$44.12		\$38.38		\$32.22
Capital Improvement Trust Fund	\$97.60	\$97.60	\$97.60	\$97.60	\$97.60	\$97.60
Building	\$92.80	\$92.80	\$92.80	\$92.80	\$92.80	\$92.80
Activity and Service Health Athletic		Varies by University per Rule 6C-7.003				
Total ^a	\$10,358.56	\$28,892.14	\$9,032.30	\$25,148.44	\$7,617.54	\$21,155.12
Total ^{ab}	\$10,866.95	\$30,327.20	\$9,474.38	\$26,396.32	\$7,988.88	\$22,203.32

^a Excludes fees that vary by university.

^b Total including the maximum differential charges.

Fall 1999 — includes the maximum university differential fee increase of 5%

Fee	Medical		Dental		Veterinary	
	Resident	Non-Resident	Resident	Non-Resident	Resident	Non-Resident
Matriculation	\$9,683.98	\$9,683.98	\$8,420.86	\$8,420.86	\$7,073.48	\$7,073.48
Non-Resident		\$17,651.04		\$15,348.72		\$12,892.94
Student Financial Aid	\$484.18	\$484.18	\$421.04	\$421.04	\$353.66	\$353.66
Non-Resident Student Financial Aid		\$882.54		\$767.42		\$644.64
Capital Improvement Trust Fund	\$97.60	\$97.60	\$97.60	\$97.60	\$97.60	\$97.60
Building	\$92.80	\$92.80	\$92.80	\$92.80	\$92.80	\$92.80
Activity and Service Health		Varies by University per Rule 6C-7.003				
Athletic		Varies by University per Rule 6C-7.003				
Total ^a	\$10,358.56	\$28,892.14	\$9,032.30	\$25,148.44	\$7,617.54	\$21,155.12

^a Excludes fees that vary by university per Rule 6C-7.003 (c) through (5) No change.

Specific Authority 240.209(1), (3)(e) FS. Law Implemented 240.209(3)(e), (h), 240.235(1), 240.124, 240.117 FS., General Appropriations Act, 2001-02, Conference Committee Report on Senate Bill 2500, 1999, Conference Committee Report on General Appropriations Act, 2000, CS/CS/HB 1567, 2000 Legislature, History—Adopted 4-8-79, Renumbered 12-16-74, Amended 6-28-76, 7-4-78, 8-6-79, 9-28-81, 12-14-83, 7-25-84, 10-2-84, 10-7-85, Formerly 6C-7.01, Amended 12-25-86, 11-16-87, 10-19-88, 10-17-89, 10-15-90, 9-15-91, 1-8-92, 11-9-92, 7-22-93, 8-1-94, 11-29-94, 4-16-96, 8-12-96, 9-30-97, 12-15-97, 8-11-98, 9-30-98, 8-12-99, 8-3-00, 8-28-00.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mary-Anne Bestebreurtje, Corporate Secretary and Associate General Counsel
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Judy G. Hample, Chancellor, State University System
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 18, 2001
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 13, 2001

DEPARTMENT OF EDUCATION

Board of Regents

RULE TITLE: Special Fees, Fines and Penalties
 RULE NO.: 6C-7.003
 PURPOSE AND EFFECT: Paragraph (9) of Rule 6C-7.003 authorized the university presidents to collect fees to finance chartered non-profit public interest research organizations.

SUMMARY: The rule paragraph is recommended for repeal on the basis of insufficient rule authority for the Board of Regents to keep this rule in effect.

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

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

SPECIFIC AUTHORITY: 240.209(1),(3) FS.
 LAW IMPLEMENTED: 240.209(1),(3) FS.
 A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:
 TIME AND DATE: 11:00 a.m., May 24, 2001
 PLACE: Phyllis P. Marshall Center, University of South Florida, Tampa, Florida
 THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mary-Anne Bestebreurtje, Corporate Secretary, Florida Board of Regents, 1520 Florida Education Center, 325 West Gaines Street, Tallahassee, Florida 32399-1950

THE FULL TEXT OF THE PROPOSED RULE IS:
 6C-7.003 Special Fees, Fines and Penalties.
 (1) through (8) No change.

(9) Each university president is empowered annually to authorize the collection of an additional fee for the financing of chartered non profit public interest research organizations, provided that at least a majority of the students sign a written petition requesting that such a fee be collected.

(a) An additional fee shall be structured only in the form of a positive checkoff system. A positive checkoff means the student must designate by initialing or marking a box on the registration or fee card that the student wishes to fund the public interest research group. If a student does not so designate, no fee will be assessed.

(b) Any such organizations must maintain a level of collection as set by the university. The university may recover its costs incurred in collecting the fee, provided such costs do not exceed 10 percent of the fees collected. The university is not responsible for the actions or non actions of such organizations for which it collects fees.

(10) through (39) renumbered (9) through (38) No change.

Specific Authority 240.209(1),(3)(e),(h),(r), 240.235, 240.531(3) FS. Law Implemented 240.209(1),(3)(e),(h), 240.2097, 240.227(20), 240.235(1), 240.264-.267, 240.531(3), 240.533(4)(a), 832.07(1) FS., CS/CS/HB 1567, 2000 Legislative Session. History-Derived from 6C-2.74 and 6C-2.76, Amended and Renumbered 12-17-74, Amended 2-22-76, 6-22-76, 6-28-76, 11-1-76, 9-8-77, 2-14-79, 9-28-81, 12-7-82, 12-13-83, 10-2-84, Formerly 6C-7.03, Amended 1-8-86, 8-11-86, 12-25-86, 6-2-87, 10-17-89, 4-10-90, 1-7-91, 7-2-91, 9-15-91, 8-4-92, 11-9-92, 4-12-93, 5-30-93, 9-23-93, 8-1-94, 1-24-96, 4-16-96, 12-15-97, 8-28-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mary-Anne Bestebreurtje, Corporate Secretary and Associate General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Judy G. Hample, Chancellor, State University System

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 18, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 30, 2001

DEPARTMENT OF LAW ENFORCEMENT

RULE CHAPTER TITLE: False Reports of Bombing, Etc.,

Reward for Information Relating Thereto

RULE TITLES: Form of Claim and Endorsements

Notification of Competing Claimants

Judicial Review

PURPOSE AND EFFECT: To update procedures and forms for a person to collect a reward pursuant to s. 790.164, F.S.

SUMMARY: Proposed revisions to Rule Chapter 11-2, F.A.C., establish procedures and forms for a person claiming the statutory reward for information leading to the arrest and conviction of persons making false reports of bombings or other violence to state owned property.

RULE CHAPTER NO.:

11-2

RULE NOS.:

11-2.002

11-2.003

11-2.004

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 790.164 FS.

LAW IMPLEMENTED: 790.164 FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS 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: 10:00 a.m., Tuesday, May 22, 2001

PLACE: Florida Department of Law Enforcement, 2331 Phillips Road, Conference Room, 3rd Floor, Quad C, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Persons needing an accommodation to participate in any proceeding should call (850)410-7900 (Voice) or (850)656-9597 (TDD), at least five working days before such proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Fern Rosenwasser, Assistant General Counsel, Office of General Counsel, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308

THE FULL TEXT OF THE PROPOSED RULES IS:

11-2.002 Form of Claim and Endorsements.

A person making claim for the \$5,000 reward provided for by Section 790.164, Florida Statutes, shall utilize the Claim of Reward form, FDLE-OGC Form #1, rev. January 2001 and incorporated by reference and; the Law Enforcement Endorsement form, FDLE-OGC Form #2, rev. January 2001 and incorporated by reference, both of which can be obtained from the arresting agency, and the Prosecutor's Endorsement form, FDLE-OGC Form #3, rev. January 2001 and incorporated by reference, form which can be obtained from the prosecuting office. FDLE has samples of these forms which may be requested obtained from the Department of Law Enforcement, Office of General Counsel, P. O. Box 1489, 408 North Adams Street, Tallahassee, Florida 32302-1489.

Specific Authority 790.164(2)(c) 943.03(4) FS. Law Implemented 790.164 FS. History-New 3-2-77, Formerly 11-2.02, Amended_____.

11-2.003 Notification of Competing Claimants.

The law enforcement agency receiving a claim for reward under this rule chapter shall promptly review its records of the case with the view of ascertaining whether any other informants may have any potential claim to the reward. The respective merits of the claims shall not be considered. If any other potential claimants can be identified and located without undue difficulty, they shall be notified that a reward in which

they may have an interest is being claimed. Thereafter it shall be the responsibility of the competing claimant(s) to pursue their own claims. In order to give all claimants an opportunity to present their claims, however, the prosecutor shall not endorse any claim until sixty days after the first claim in the case was presented to the law enforcement agency.

Specific Authority ~~790.164(2)(e)~~ 943.03(4) FS. Law Implemented 790.164 FS. History—New 3-2-77, Formerly 11-2.03, Amended _____.

11-2.004 Judicial Review.

After the prosecuting officer has completed his endorsement, the claim with endorsements shall be returned to the claimant. Thereafter, the claimant must file a civil action in the circuit court within whose jurisdiction the arrest or conviction occurred. The Claim of Reward, Law Enforcement Endorsement, and Prosecutor's Endorsement prescribed in Rule 11-2.002, or documents containing substantially the same information, shall be made exhibits and incorporated into the pleadings. The state attorney for that circuit will be served and shall, if appropriate, respond to the suit on behalf of the State of Florida. Competing claims should be consolidated. The courts' judgment or decree of eligibility for the reward, if any, shall be forwarded to the Florida Department of Law Enforcement, Office of General Counsel, P. O. Box 1489, Tallahassee, Florida 32302-1489.

Specific Authority ~~790.164(2)(e)~~ 943.03(4) FS. Law Implemented 790.164 FS. History—New 3-2-77, Formerly 11-2.04, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Fern Rosenwasser, Assistant General Counsel, Florida Department of Law Enforcement

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael A. Ramage, General Counsel, Florida Department of Law Enforcement

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 13, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 26, 2001

DEPARTMENT OF LAW ENFORCEMENT

Criminal Justice Standards and Training Commission

RULE CHAPTER TITLE: Salary Incentive Program

RULE CHAPTER NO.: 11B-14

RULE TITLE: General Program Provisions

RULE NO.: 11B-14.002

PURPOSE AND EFFECT: The proposed amendments to Rule 11B-14.002, F.A.C., are necessary to clarify who is authorized to submit training reports, clarify how to submit educational salary incentive reports, and to thoroughly denote which federal and private training programs are recognized by the Commission for salary incentive credit.

SUMMARY: To allow a training center director "designee" to sign for a training center director in his or her absence for consistency with existing rule language; to revise form CJSTC-63 by adding "or designee" on the signature line,

changing "attest" to "affirm" on line # 13, correcting capitalization, and adding "optional" on the line where the social security number is requested, and to revise form CJSTC-67 by adding "I hereby affirm..." verbiage above the signature line and adding "optional" on the line where the social security number is requested.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 943.03(4), 943.12(1), 943.22(2)(h) FS.

LAW IMPLEMENTED: 943.22 FS.

IF REQUESTED, IN WRITING, WITHIN 21 DAYS 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: 1:00 p.m., May 22, 2001

PLACE: 2331 Phillips Road, Elevator Conference Room, Quad C, 3rd Floor, Tallahassee, FL 32308-1489

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Persons needing an accommodation to participate in any proceeding should call (850)410-7900 (Voice) or (850)656-9597 (TDD), at least five working days before such proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Donna Hunt, Operations and Management Consultant, Florida Department of Law Enforcement, Criminal Justice Professionalism Program, 2331 Phillips Road, Tallahassee, FL 32308-1489, (850)410-8615

THE FULL TEXT OF THE PROPOSED RULE IS:

11B-14.002 General Program Provisions.

(1) through (2) No change.

(3) All Commission-approved Career Development Training Courses, effective on or after July 1, 1985, that are Commission-approved Advanced Training Courses, pursuant to Section 943.17 or 943.25, F.S., and have been successfully completed by eligible officers, shall be verified by the training center director or designee, defined in Rule 11B-21.005(3)(a), F.A.C., for submission to Commission staff by completing a Training Report form CJSTC-67, revised December 6, 2000, September 1, 1999, hereby incorporated by reference, pursuant to the Criminal Justice Standards and Training Commission Policies and Procedures Manual, revised January 1999 and October 13, 1999, hereby incorporated by reference. Effective September 1, 1998, the information on the CJSTC-67 form is required to be electronically transmitted via the Commission's Automated Training Management System (ATMS). A copy of the Training Report form showing successful completion of an

approved course ~~shall~~ may be used as the verifying document to authorize payment of appropriate training salary incentive monies.

(4) To avoid redundant training and to acknowledge training that is equal to training programs established pursuant to Section 943.17, F.S., Commission staff shall award 40 hours of advanced training credit for each 40-hour week of criminal justice executive or management training successfully completed and approved by the Commission, ~~for programs conducted at the Federal Bureau of Investigation's National Academy, the Federal Bureau of Investigation's National Executive Institute, the Southern Police Institute, the National Institute of Corrections, the Police Executive Institute, the National Sheriffs Institute, the Northwestern Traffic Institute (long course), the Federal Bureau of Prisons, the Institute for Police Technology Management, the Florida Criminal Justice Executive Institute (FDLE Senior Leadership Program), and the Senior Management Institute for Police.~~ Eligible officers who request to receive salary incentive credit for a program listed herein, shall submit to Commission staff a written request for salary incentive credit from the officer's agency administrator and a copy of the officer's certificate of course completion. Commission staff shall evaluate the request and determine whether the program in question qualifies for training salary incentive monies. The following programs have been approved by the Commission and are recognized for advanced training that enhances an officer's knowledge, skills, and abilities for the job performed. Individuals successfully completing the following programs may submit documentation to Commission staff for recognition of salary incentive credit:

Federal or Private Training Institutions	Program Code	Program Hours
(a) Federal Bureau of Investigation's National Academy	700	320
(b) S.P.I. Administrative Officers' Course	701	320
(c) National Institute of Corrections	702	320
(d) Police Executive Institute	703	320
(e) National Sheriff's Institute	704	320
(f) Northwestern Traffic Institute	705	320
(g) Federal Bureau of Prisons	706	320
(h) IPTM Principles of Police Management	707	80
(i) IPTM Police Traffic Management	708	80
(j) IPTM Supervising a Selective Traffic Law Enforcement Program	709	40
(k) IPTM Police Executive Development	710	40
(l) IPTM Electronic Spreadsheet for the Police Manager	711	40
(m) Federal Bureau of Investigation's National Executive Institute	712	80
(n) Senior Management Institute for Police	713	80
(o) S.P.I. Police Executive Development	714	80
(p) N.I.C. Planning of New Institutions	715	40
(q) N.I.C. ACM: Managing the Organization	716	80
(r) N.I.C. Correctional Management	717	80
(s) N.I.C. Training for Staff Trainers	718	40
(u) N.I.C. Legal Issues for Institutional Personnel	719	40
(v) FDLE Senior Leadership Program	720	320
(w) S.P.I. Command Officer Development	721	400

(5) All claimed eligibility for educational salary incentives shall be verified by the agency administrator or its designee for submission to Commission staff by completing a reported to Commission staff by the employing agency by submitting an official Higher Education for Salary Incentive Report form CJSTC-63, revised December 6, 2000, October 27, 1998, hereby incorporated by reference. The information on the CJSTC-63 form may be electronically transmitted ~~submitted~~ via the Commission's Automated Training Management System (ATMS). The employing agency shall obtain an official sealed transcript directly from the educational institution conferring the degree, or providing the academic credit for successful completion of courses. The employing agency shall not forward the transcript to Commission staff.

(6) through (16) No change.

Specific Authority 943.03(4), 943.12(1), 943.22(2)(h) FS. Law Implemented 943.22 FS. History-New 10-16-78, Amended 9-11-79, 1-13-81, 5-16-83, 1-7-85, Formerly 11B-14.02, Amended 7-13-87, 9-3-87, 5-23-88, 5-14-92, 12-13-92, 1-2-97, 7-7-99, 8-22-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ms. Donna Hunt, Operations and Management Consultant, Florida Department of Law Enforcement, Criminal Justice Professionalism Program

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Program Director, Rod Caswell, Florida Department of Law Enforcement, Criminal Justice Professionalism Program

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 13, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 26, 2001

DEPARTMENT OF LAW ENFORCEMENT

Criminal Justice Standards and Training Commission

RULE CHAPTER TITLE: Certification of Criminal Justice

RULE CHAPTER NO.:

Training Instructors 11B-20

RULE TITLES: Minimum Requirements for General

RULE NOS.:

Certification of Instructors 11B-20.001

Revocation of Instructor Certification 11B-20.002

Commission Instructor Certification Categories 11B-20.0013

Minimum Requirements for High-Liability and Specialized Topics Instructor Certification 11B-20.0014

Minimum Requirements to Instruct the CMS Application-Based Basic Recruit Training Programs 11B-20.0015

Inspection of Instructor Certification Applications 11B-20.0016

Duration and Renewal of Instructor Certifications 11B-20.0017

Commission Instructor Certification Application 11B-20.0018

PURPOSE AND EFFECT: The proposed amendments to Rule Chapter 11B-20, F.A.C., are necessary to clarify the instructor application process with the incorporation of the instructor requirements for the CMS Application-Based Basic Recruit Training Programs and to define "gross incompetence."

SUMMARY: 11B-20.001: (1): Clarifies the process for a training center director to receive and review an applicant's request for instructor certification. (2): Organizes the minimum requirements for General Instructor Certification; addresses the equivalency of training issue that requires courses to be "comparable in content"; requires that the training center director or designee, which is defined in Rule 11B-21.005(3)(a), F.A.C., be a Commission-certified criminal justice training instructor when supervising an instructor applicant's internship; requires that an internship course be at least 2-hours in length; requires the instructor to review student evaluations using Instructor Competency Checklist form CJSTC-81; "or designee" to the signature line of the Instructor Competency Checklist form CJSTC-81 and adds "optional" on the line where the social security number is requested; removes redundant rule language; clarifies rule language. (3): Revises the Inspector Exemption form CJSTC-82 by adding "or designee" to the signature line; revises the Instructor Certification Application form CJSTC-71 by adding additional instructor topics, adding "or designee" to the signature line, and adding "optional" on the line where the social security number is requested. 11B-20.0012: Makes rule revisions for clarification and continuity; adds the definition of "Gross Incompetence"; and establishes that an instructor whose certification has been revoked shall not be eligible to instruct Commission-approved courses; and disallows "exemption" or faculty status for an instructor whose certification has been revoked. 11B-20.0013: The proposed rule language outlines all instructor certifications recognized by the Commission. 11B-20.0014: This rule section was created to specifically address instructor certifications; removes rule language in Rule 11B-20.001, F.A.C., regarding work experience of 3 years, for insertion into Rule 11B-20.0014, F.A.C.; establishes that an applicant who requests to obtain instructor certification for the High-Liability and Specialized Topics of Instruction are required to meet all Commission requirements for a General Instructor Certification, and shall also require that the applicant successfully complete the Commission's instructor course unique to the specific high-liability and specialized topic. Removes rule language from Rule 11B-20.001, F.A.C., regarding law enforcement driving, firearms, defensive tactics, and medical first responder instructor certification requirements, for insertion into Rule 11B-20.0014, F.A.C.; establishes requirements to teach the Commission-approved Medical First Responder Course; establishes requirements to teach law topics, radar, laser, canine, and human diversity training for Commission-approved training courses. 11B-20.0015: Establishes a General Instructor Transition Course as a requirement to teach the new CMS

Application-Based Basic Recruit Training Programs; requires that currently certified instructors who wish to instruct vehicle operations, firearms, defensive tactics, and medical first responder shall also attend a "transition course" to be eligible to teach the new CMS Application-Based Basic Recruit Training Programs; and informs instructors that high-liability transition training shall be included in the new CMS Instructor Training Course, for the respective high-liability training requested. 11B-20.0018: Outlines the instructor application process, with training center directors verifying that applicants have met all training requirements (language taken from JAPC-approved CJSTC P&P G-1.1) and revises Instructor Certification Application form CJSTC-71 to allow a director's designee to sign the form. 11B-20.0016: Outlines Commission staff's process for the review and approval of instructor applications and revises the return address on Application for Instructor Certification Deficiency Notification form CJSTC-271. 11B-20.0017: Outlines the requirements and process for instructor certification renewals.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 943.03(4), 943.12(1), 943.14(3) FS.

LAW IMPLEMENTED: 943.12(3),(9), 943.14(3) 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 (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 1:00 p.m., May 22, 2001

PLACE: 2331 Phillips Rd., Elevator Conference Room, Quad C, 3rd Floor, Tallahassee, FL 32308-1489

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Donna Hunt, Florida Department of Law Enforcement, Criminal Justice Professionalism Program, 2331 Phillips Road, Tallahassee, Florida 32308-1489

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Pursuant with the provisions of the Americans with Disabilities Act, persons needing an accommodation to participate in any proceeding should call (850)410-7900 (Voice) or (850)656-9597 (TDD), at least five working days before such proceeding.

THE FULL TEXT OF THE PROPOSED RULES IS:

11B-20.001 Minimum Requirements for General Certification of Instructors.

(1) General Instructor Applicants shall meet the following requirements for instructor certification. Except as otherwise provided in this rule chapter or by law, individuals who

~~instruct Commission approved training courses, pursuant to Rule 11B 35.001(2), F.A.C., at or through a Commission certified criminal justice training school, shall be certified by the Commission. A training school shall submit to Commission staff a completed Instructor Certification Application form CJSTC-71, revised June 12, 1998, hereby incorporated by reference, for those applicants who have not been previously certified, and who have met all certification requirements pursuant to Section 943.12(9), F.S. The training center director shall maintain in the instructors file all documentation that verifies the instructor's qualifications, which shall be made available for review by Commission staff. The applicant shall comply with the following certification requirements:~~

~~(a) For the purposes of this rule section, the term "successful completion" of a course is defined as being denoted with a "Pass" on the completed Training Report form CJSTC-67, revised December 6, 2000, hereby incorporated by reference. The applicant shall demonstrate methods of instruction.~~

~~(b) Successful completion of The applicant shall have completed the Commission-approved 80-hour Instructor Techniques Course through a Commission-certified criminal justice training school or completion of an equivalent instructor training course within four (4) years of the date of application. The training center director shall evaluate an applicant's previously completed training other than the Commission-approved 80-hour Instructor Techniques course, provided that the previous training occurred within the last four (4) years. The training center director shall exempt an applicant from topics in the 80-hour authorize the applicant to complete only those portions of the current Commission-approved Instructor Techniques Course when the applicant has provided documentation of an equivalent instructor training course in which the applicant is deficient.~~

~~(c) Successful completion of an internship. The internship shall be supervised by the training center director or designee, defined in Rule 11B-21.005(3)(a), F.A.C., who is currently a Commission-certified criminal justice training school instructor. The training center director or designee shall evaluate the applicant's instructional abilities by completing an Instructor Competency Checklist form CJSTC-81, revised December 6, 2000, hereby incorporated by reference. The form CJSTC-81 shall be maintained in the instructor's file at the training school. The applicant shall demonstrate applicable competencies listed on form CJSTC-81. The applicant shall serve an internship under the supervision of a training center director or designee, who shall evaluate the applicant's instructional abilities by completing an Instructor Competency Checklist form CJSTC-81, revised July 2, 1998, hereby incorporated by reference, which shall be maintained in the instructor's file. The applicant shall demonstrate all applicable competencies listed on the Instructor Competency Checklist~~

~~form CJSTC-81. The internship shall not be included in the Commission-approved 80-hour Instructor Techniques Course. The training center director shall determine the length of the course to be used for internship, which shall be a minimum of two (2) hours, and the composition of the internship, which shall be based on the applicant's experience, and education, and other pertinent credentials. The length and composition of the internship shall be in written form and maintained as part of the applicant's instructor file at the training school. The instructor applicant shall be evaluated by the students taught by that instructor. A Commission-certified instructor shall review the student's evaluation with the instructor applicant and shall document the review on form CJSTC-81. The training center director shall maintain these evaluations in the instructor's file for a minimum of one (1) year or until the Trust Fund Administration Section reviews the evaluations.~~

~~(d) Each instructor shall be evaluated periodically by students taught by that instructor. The training center director shall maintain these evaluations in the instructor's file for one year.~~

~~(d)(e) Any applicant seeking a certificate as an instructor shall be affiliated with a Commission-certified criminal justice training school, or a school whose application for such certification is being processed by the Commission. The director of the training school shall make a recommendation for certification after reviewing the credentials and evaluating the instructional abilities of the applicant. The training center director or designee, shall sign the Instructor Certification Application form CJSTC-71, to certify to the Commission that each recommended applicant complies with (1)(g) herein.~~

~~(f) Documentation of sufficient knowledge of a subject matter. The applicant shall have completed three (3) years work experience in the field of instruction for which certification is sought, prior to signing the Instructor Certification Application. The applicant shall document their history based on training, education, experience, or professional credentials, and proficiency skills standards, suitable to the topic of instruction for which certification is being sought. The training center director shall document experience in the subject matter.~~

~~(e)(g) Possess good moral character as defined in Rule 11B-27.001(4), F.A.C., as applied to applicants and certified instructors. Applicants requesting instructor certification and instructors requesting renewal of certification shall: Good Moral Character. On or after the effective date of this rule section, any individual seeking certification or recertification as a Commission-certified criminal justice training instructor shall sign an Instructor Certification Application form CJSTC-71 that affirms the following qualifying factors to be true:~~

~~1. The individual has Not have been convicted of any felony or of a misdemeanor involving perjury or false statement, or has received a dishonorable discharge from any of the Armed Forces of the United States, and:~~

~~2. The individual has not, After July 1, 1981, any person who has pled guilty or nolo contendere to ~~or has been found guilty of~~ any felony or of a misdemeanor involving perjury or a false statement is not eligible for instructor certification, notwithstanding suspension of sentence or withholding of adjudication.~~

~~3. Notwithstanding paragraphs one (1) and two (2) of this rule section, any person who has pled nolo contendere to a misdemeanor involving a false statement, prior to December 1, 1985, and has had such record sealed or expunged shall not be deemed ineligible for instructor certification.~~

~~(2) Duration and Renewal of Instructor Certification:~~

~~(a) The renewal application shall be considered for renewal based on the submission of an updated Instructor Certification Application form CJSTC 71, and shall be submitted to Commission staff within six months prior to the instructor's certification expiration date. The date of submission shall be construed as the verified or documented date the Commission certified criminal justice training school received the updated application, including all necessary supporting documentation, provided the submission date is prior to the date of expiration. The documented date shall be permanently validated on the face of the renewal application.~~

~~(b) The certification expiration date shall be four (4) years following the date of the training center director's signature on the Instructor Certification Application form CJSTC 71. If the instructor's certification expires, the instructor shall make application for a new certification and shall meet the following guidelines:~~

~~1. The training center director or designee shall evaluate the applicant's proficiency as an instructor by completing the Instructor Competency Checklist form CJSTC 81, prior to signing the Instructor Certification Application form CJSTC 71 for certification. The new Instructor Competency Checklist shall be maintained in the instructor's file.~~

~~2. The applicant shall demonstrate proficiency in each specialized topic for which certification is being sought, pursuant to Rule 11B 35.0024, F.A.C., and shall be recorded on the following applicable proficiency checklist forms:~~

~~a. Firearms Basic Recruit Performance Evaluation form CJSTC 4, January 1, 1997, hereby incorporated by reference.~~

~~b. First Responder to Medical Emergencies Basic Recruit Performance Evaluation form CJSTC 5, August 1, 1993, hereby incorporated by reference.~~

~~c. Defensive Tactics Basic Recruit Performance Evaluation form CJSTC 6, revised November 18, 1998, hereby incorporated by reference.~~

~~d. Law Enforcement Driving Instructor Performance Evaluation form CJSTC 7A, November 18, 1998, hereby incorporated by reference.~~

~~e. Laser and Radar Speed Measurement Device Instructor Field Evaluation form CJSTC 10, July 1, 1995, hereby incorporated by reference.~~

~~f. General Duty K-9 Team Proficiency Demonstration form CJSTC 83, revised June 17, 1998, hereby incorporated by reference.~~

~~g. Firearms Chemical Agent Exposure Training Evaluation form CJSTC 4A, January 22, 1998, hereby incorporated by reference (Optional is not mandated evaluation form).~~

~~3. An Applicant who fails to demonstrate proficiency pursuant to (2)(b)1., herein, shall meet the requirements of (1)(a) (e), (e) and (f), herein.~~

~~4. An Applicant who fails to demonstrate proficiency, pursuant to (2)(b)2., herein, for any specialized topics in which certification is sought, shall meet the requirements established for certification in such specialized topics, pursuant to (4) herein.~~

~~(c) If a Commission certified criminal justice training school instructor adds a specialized topic of instruction to the current instructor certification, the expiration date shall be the same as the current instructor certification expiration date.~~

~~(2)(3) Exemption from general instructor certification: An applicant instructor shall be exempt from a Criminal Justice Standards and Training Commission general instructor certification under the following circumstances:~~

~~(a) The applicant instructor is a full-time instructor at an accredited community college, college, or university. The training center director shall document the applicant's instructor's full-time status and identify the name and location of the college, community college, or university, by completing an Instructor Exemption form CJSTC 82, revised December 6, 2000 ~~October 1, 1993~~, hereby incorporated by reference, which shall be maintained ~~on file~~ in the instructor's file at the training school. The instructor shall have specific knowledge of the subject matter to be taught, which shall be determined by the training center director, and the confirming documentation shall be maintained in the instructor's file.~~

~~(b) The applicant instructor is a full-time vocational-technical instructor. The training center director shall document the instructor's applicant's full-time status and identify the name and location of the vocational-technical institution by completing an Instructor Exemption form CJSTC 82, which shall be and maintained in the instructor's file at the training school. The instructor shall be qualified in the specific subject matter to be taught, and the confirming documentation shall be maintained in the instructor's file.~~

~~(c) The applicant ~~If an instructor~~ holds a current and valid instructor certification from another state or the military, and the applicant ~~shall~~ complete an internship outlined in~~

~~11B-20.001(1)(b), F.A.C. The training center director shall include a copy of the applicant's instructor's out-of-state or military certification, documentation describing the internship, completion of the Instructor Competency Checklist form CJSTC-81, and the Instructor Exemption form CJSTC-82, which and the confirming documentation shall be maintained in the instructor's file at the training school.~~

~~(d) The applicant shall have completed a minimum of forty (40) hours of training, above the Basic Recruit Training level, and one (1) year of work experience in the If an instructor is uniquely qualified in a specific subject matter to be instructed. The training center director shall document the instructor's applicant's unique qualifications by completing an Instructor Exemption form CJSTC-82, which and the confirming documentation shall be maintained in the instructor's file at the training school.~~

~~(e) Notwithstanding the above exemptions, an individual who has had any certification issued by the Commission revoked or who has voluntarily relinquished any certification issued by the Commission shall not instruct Commission-approved training courses. If an instructor is teaching as a result of exceptional circumstances, the instructor shall be qualified in the specific subject matter to be taught regardless of the exceptional circumstance. The training center director shall document the qualifications of the instructor by completing an Instructor Exemption form CJSTC 82, shall document the exceptional circumstance for which the instructor is teaching, and the confirming documentation shall be maintained in the instructor's file.~~

~~(4) Specialized topics of instruction. Specific additional education or training beyond the general certification shall be required to obtain Criminal Justice Standards and Training Commission instructor certification for specialized topics of instruction. The applicant shall hold, or be eligible for a current and valid general Criminal Justice Standards and Training Commission instructor certification, pursuant to (1) herein, or maintain in the instructor's file, a completed Instructor Exemption form CJSTC 82, prior to applying for certification in a specialized topic of instruction. To be certified to instruct in a specialized topic, the applicant shall successfully complete the requirements for that topic in Section (4)(a)-(h) herein.~~

~~(a) Law Topics Instructor Certification. An applicant shall be a graduate of a law school and possess experience in criminal justice, or possess substantial law training and experience in the practical application of law, to be certified to instruct the specified law topics of probable cause, court structure, court rules, trial procedures, and burden of proof. The specific topics and course numbers are listed in the Criminal Justice Standards and Training Commission Policies and Procedures Manual, revised October 13, 1999, hereby incorporated by reference.~~

~~(b) Firearms Instructor Certification. An applicant shall have successfully completed the Commission approved Firearms Instructor course through a Commission certified criminal justice training school, to include a comprehensive examination and demonstration of proficiency recorded on a Firearms Basic Recruit Performance Evaluation form CJSTC-4, to be certified to instruct specific firearms topics.~~

~~(e) Law Enforcement Driving Instructor Certification. An applicant shall have successfully completed the Commission approved Law Enforcement Driving Instructor course through a Commission certified criminal justice training school, which shall include a comprehensive examination and demonstration of proficiency by successful completion of four out of five runs (80%) for each exercise, and recorded on a Law Enforcement Driving Instructor Performance Evaluation form CJSTC 7A, to be certified to instruct specific law enforcement driving topics.~~

~~(d) Medical First Responder Instructor Certification.~~

~~1. An applicant shall be a certified emergency medical technician, certified paramedic, licensed physician, registered nurse, or a member of the Armed Forces of the United States on active duty, who at the time they became a member was entitled to practice as an Emergency Medical Technician (EMT) or paramedic in Florida, pursuant to Chapter 401, Part III, F.S., or~~

~~2. An applicant shall have successfully completed the Commission approved Medical First Responder course effective July 1998, which shall include a comprehensive examination and demonstration of proficiency, recorded on a First Responder to Medical Emergencies Basic Recruit Performance Evaluation form CJSTC 5; and~~

~~3. An applicant shall possess a valid CPR instructor certification from the American Red Cross, the American Heart Association, or the National Safety Council, to be certified to instruct Medical First Responder procedures.~~

~~(e) Defensive Tactics Instructor Certification. An applicant shall have successfully completed the Commission approved Defensive Tactics Instructor course through a Commission certified criminal justice training school, which shall include a comprehensive examination and demonstration of proficiency, recorded on a Defensive Tactics Basic Recruit Performance Evaluation form CJSTC-6, to be certified to instruct specific defensive tactics topics.~~

~~(f) Canine Team Instructor Certification. An applicant shall have successfully completed the Commission approved Canine Team Instructor course through a Commission certified criminal justice training school, and fulfilled training and experience criteria pursuant to the Criminal Justice Standards and Training Commission Policies and Procedures Manual, to be certified to instruct canine team training.~~

~~(g) Human Diversity Instructor Certification. An applicant shall have successfully completed the Commission approved 24 hour Human Diversity Program included in the Commission's Basic Recruit Training Program, and the 20-hour Human Diversity Train-the-Trainer course through a Commission-certified criminal justice training school, to be certified to instruct human diversity topics.~~

~~(h) Radar and Laser Instructor Certifications:~~

~~1. An applicant shall have successfully completed the Commission approved Radar Instructor course through a Commission certified criminal justice training school, to be certified to instruct the Radar Speed Measurement Training Course for Law Enforcement Officers.~~

~~2. An applicant shall have successfully completed the Commission approved Radar Instructor course and the Laser Instructor course through a Commission-certified criminal justice training school, to be certified to instruct the Laser Speed Measurement Operators Training Course for Law Enforcement Officers.~~

~~(5) An Application for Instructor Certification Deficiency Notification form CJSTC 271, January 21, 1999, hereby incorporated by reference, shall be completed by Commission staff upon an unfavorable inspection of required documents. The CJSTC 271 form shall indicate any deficiencies in the Instructor Certification Application form CJSTC 71, including any missing or incorrect documentation required for instructor certification.~~

~~(6) Denial of Certification. An application for certification as a Commission certified criminal justice training school instructor shall be denied by the Commission if the applicant fails to meet the qualifications pursuant to this rule chapter. Commission staff shall forward to the applicant a "notice of intent to deny certification" which shall specify the grounds for denial. A denial of application shall be processed pursuant to Chapter 120, F.S.~~

~~(7) All forms and the Criminal Justice Standards and Training Commission Policies and Procedures Manual referenced in this rule chapter, may be obtained by contacting the Florida Department of Law Enforcement, Criminal Justice Professionalism Program, Post Office Box 1489, Tallahassee, Florida 32302-1489, Attention: Bureau of Standards, Forms and Manual Liaison.~~

~~Specific Authority 943.03(4), 943.12(1), 943.14(3) FS. Law Implemented 943.12(3),(9), 943.14(3) FS. History--New 7-21-82, Formerly 11B-20.01, Amended 10-26-88, 5-14-92, 12-8-92, 1-10-94, 1-2-97, 7-7-99, 8-22-00,~~

11B-20.0012 Revocation of Instructor Certification.

(1) The Criminal Justice Standards and Training Commission has the authority to revoke an instructor's certification when the following circumstances exist ~~The certification of a criminal justice training instructor shall be revoked if an instructor fails to maintain the requirements pursuant to Rule 11B-20.001(1)(g), F.A.C., or, who:~~

(a) The instructor w~~illfully~~ compromises the security and confidentiality of examinations or grading keys developed and used in Commission-approved criminal justice training courses, or engages in any other conduct that subverts or attempts to subvert the Criminal Justice Standards and Training Commission State Officer Certification Examination process, or-

(b) The instructor w~~illfully~~ compromises or circumvents the trainee attendance requirements set forth in Rule 11B-35.001(8)-(9) ~~(7)-(8)~~, F.A.C.; or

(c) The instructor w~~illfully~~ compromises or circumvents the trainee performance requirements pursuant to Rule 11B-35.0022, F.A.C.; or

(d) The instructor i~~ntentionally~~ and materially falsifies criminal justice documentation; or-

(e) The instructor c~~ommits~~ an act or acts establishing gross incompetence as determined by the Commission. Gross incompetence is the lack of ability or fitness to perform as an instructor as a result of emotional instability, or physical incapacitation, or inadequate technical knowledge of subject matter, or reckless disregard for the safety of trainees or the public.

(f) The instructor c~~ommits~~ an act or acts establishing a "lack of good moral character," as defined in Rule 11B-27.001(4), F.A.C., and pursuant to 11B-20.001(1)(g); F.A.C.

(2) through (3) No change.

(4) Notwithstanding Rule 11B-20.001(2), F.A.C., an individual whose instructor certification is revoked or is voluntarily relinquished shall not instruct Commission-approved training courses.

~~Specific Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12(3), 943.14(3), FS. History--New 10-26-88, Amended 1-2-97, 7-7-99, 8-22-00,~~

11B-20.0013 Commission Instructor Certification Categories.

Except as otherwise provided in this rule section or by law, individuals who instruct Commission-approved training courses pursuant to Rule Chapter 11B-35, F.A.C., at or through a Commission-certified criminal justice training school, shall be certified by the Commission. Instructor applicants who request to be certified by the Criminal Justice Standards and Training Commission may request certification in the following categories of certification:

(1) General Instructor Certification.

(2) High-Liability Instructor Certifications.

(a) Law Enforcement Driving Instructor Certification.

(b) Firearms Instructor Certification.

(c) Defensive Tactics Instructor Certification.

(d) Medical First Responder Instructor Certification.

(3) Specialized Topics Instructor Certifications.

(a) Law Topics Instructor Certification.

- (b) Speed Measurement Instructor Certification.
- (c) Canine Team Instructor Certification.
- (d) Human Diversity Instructor Certification.

Specific Authority 943.03(4), 943.12(1), 943.14(3) FS. Law Implemented 943.12(3), (9), 943.14(3) FS. History—New

11B-20.0014 Minimum Requirements for High-Liability and Specialized Topics Instructor Certification.

(1) High-Liability and Specialized Topics Instructor Certification. Applicants shall meet the following requirements for certification:

(a) Hold or be eligible for a Criminal Justice Standards and Training Commission General Instructor Certification, pursuant to Rule 11B-20.001, F.A.C., or have on file at the training school a completed Instructor Exemption form CJSTC-82.

(b) Complete three (3) years work experience in the field of instruction for which certification is sought. The instructor applicant shall document his or her instructor qualifications based on training, education, experience, or professional credentials, and proficiency skill standards suitable to the topic of instruction for which certification is sought. The training center director shall review and maintain all documentation in the instructor's file at the training school. In addition, the instructor applicant shall successfully complete the current Commission-approved instructor training course for the high-liability and specialized topics of instruction for which the applicant is seeking certification, if applicable.

(c) For the purposes of this rule section, the term "successfully complete" is defined as being denoted with a "Pass" on the completed Training Report form CJSTC-67.

(2) High-Liability Instructor Certifications. Applicants shall meet the following requirements for high-liability certification:

(a) Law Enforcement Driving Instructor Certification. To obtain certification to instruct law enforcement vehicle operations, the instructor applicant shall successfully complete the Commission-approved Law Enforcement Driving Instructor Course through a Commission-certified criminal justice training school, successfully demonstrate all proficiencies, and successfully complete four (4) out of five (5) runs (80%) for each exercise, and record the results on a Law Enforcement Driving Instructor Performance Evaluation form CJSTC-7A, November 18, 1998, hereby incorporated by reference.

(b) Firearms Instructor Certification. To obtain certification to instruct firearms topics, the instructor applicant shall successfully complete the Commission-approved Firearms Instructor Course through a Commission-certified criminal justice training school, successfully demonstrate all proficiencies in firearms training, and record the results on a Firearms Basic Recruit Performance Evaluation form

CJSTC-4, January 1, 1997, hereby incorporated by reference. Demonstration of proficiency shall include a handgun and shotgun using the Commission-approved course of fire.

(c) Defensive Tactics Instructor Certification. To obtain certification to instruct in criminal justice defensive tactics, the instructor applicant shall obtain certification as a Commission-approved General Instructor, successfully complete the Commission-approved Criminal Justice Defensive Tactics Instructor Course through a Commission-certified criminal justice training school, successfully demonstrate all proficiencies in the area of criminal justice defensive tactics, and record the results on a Defensive Tactics Basic Recruit Performance Evaluation form CJSTC-6, November 18, 1998, hereby incorporated by reference.

(d) Medical First Responder Instructor Certification. To obtain certification to instruct high-liability topic medical first responder the applicant shall:

1. Successfully complete the Commission-approved Medical First Responder Course, successfully demonstrated all proficiencies in the medical first responder skills with the results recorded on the Medical First Responder Basic Recruit Performance Evaluation form CJSTC-5, August 1, 1993, hereby incorporated by reference, and hold a current CPR Instructor Certification recognized by the Commission; or.

2. Be a certified emergency medical technician, certified paramedic, licensed physician, licensed physician assistant, registered nurse, or is a member of the Armed Forces of the United States on active duty who was entitled to practice as an Emergency Medical Technician (EMT), or a paramedic in Florida as described in Chapter 401, F.S., Part III, and holds a current CPR Instructor Certification recognized by the Commission.

(3) Specialized Topics Instructor Certifications.

(a) Law Topics Instructor Certification. To obtain certification to instruct Commission-approved law topics of Arrest Laws, Attempt, Conspiracy and Solicitation, Burden of Proof, Civil and Criminal Liability, Classification of Offenses, Constitutional Law, Constitutional Law Overview, Court Rules and Trial Procedures, Court Structure, Elements of a Crime, Evidence Concepts, Evidence Rules, Intent, Legal Defense, Legal Show-up, Legal Line-up, Parties to a Crime, Probable Cause, Search and Seizure Concepts, Stop and Frisk Laws, and Use of Force, the applicant shall possess substantial law training and experience of a minimum of fifteen (15) semester hours or college credit law courses, to include constitutional law and criminal law with a grade of "C" or above, and possesses six (6) months of criminal justice experience.

(b) Speed Measurement Instructor Certification. To be certified to instruct speed measurement training courses an instructor applicant is required to complete the following training:

1. Radar Instructor. An instructor applicant shall successfully complete the Commission-approved 40-hour Radar Speed Measurement Instructors Training Course for Law Enforcement Officers at a Commission-certified criminal justice training school. A certified radar instructor is certified by the Commission to instruct the Radar Operator's Course and the Radar Instructor Course.

2. Laser Instructor. An instructor applicant shall successfully complete the Commission-approved 40-hour Radar Speed Measurement Instructor Training Course and the 24-hour Laser Speed Measurement Device Transition Instructor Course at a Commission-certified criminal justice training school. A certified laser instructor is certified by the Commission to instruct the 12-hour Laser Speed Measurement Device Transition Operator's Training Course, the 40-hour Laser Speed Measurement Operator's Training Course for law enforcement officers, and the 24-hour Laser Speed Measurement Device Instructor Transition Course.

(c) Canine Team Instructor Certification. An instructor applicant shall successfully complete the Commission-approved Canine Team Instructor Course through a criminal justice agency or a Commission-certified criminal justice training school, demonstrate proficiency, and record the results on a General K-9 Team Proficiency Demonstration form CJSTC-83, revised June 17, 1998, hereby incorporated by reference. An instructor applicant who applies for a Canine Team Instructor Certification shall receive a letter of recommendation from an agency administrator verifying that the instructor applicant does not have a sustained complaint(s) of excessive force. Additionally, an instructor applicant who applies for a 400-hour Canine Team Instructor Certification shall be required to possess the following minimum training and experience:

1. A minimum of five (5) years experience as a law enforcement, military law enforcement, or correctional officer and a minimum of three (3) years canine experience which shall be documented.

2. Successful completion of the Commission-approved 400-hour Canine Team Training Course or the 400-hour United States Police Canine Association Canine Team Course.

(d) Human Diversity Instructor Certification. An instructor applicant shall successfully complete the following training courses through a Commission-certified criminal justice training school to be certified to teach Human Diversity Topics of Instruction:

1. The Commission-approved 24-hour Human Diversity Awareness Course, which is the same course taught in the Commission's Basic Recruit Training Program, and

2. The Commission-approved 20-hour Human Diversity Train-the-Trainer Course.

Specific Authority 943.03(4), 943.12(1), 943.14(3) FS. Law Implemented 943.12(3),(9), 943.14(3) FS. History--New

11B-20.0015 Minimum Requirements to Instruct the CMS Application-Based Basic Recruit Training Programs.

(1) General Instructor Certification. Commission-certified General Instructors who instruct the Commission's Curricula Maintenance System (CMS) Application-Based Basic Recruit Training Programs shall successfully complete the CMS General Instructor Transition Course. For the purposes of this rule section, the term "successfully complete" is defined as being denoted with a "Pass" on the completed Training Report form CJSTC-67.

(2) High-Liability Instructor Certifications. Commission-certified high-liability instructors who instruct Commission-approved high-liability training courses for vehicle operations, firearms, defensive tactics, and medical first responder in the CMS Application-Based Basic Recruit Training Programs, shall successfully complete the CMS General Instructor Transition Course and the CMS transition course specific to the high-liability topic of instruction.

(3) An individual, who possesses a general instructor certification and intends to instruct the CMS Application-Based Basic Recruit Training Programs in the high-liability training areas, and does not currently possess a high-liability instructor certification, shall complete the CMS General Instructor Transition Course (course # 803) and the respective Commission-approved high-liability training course. Training courses that include transition learning are:

Course Name	Course Number
(a) CMS Law Enforcement Vehicle Operations Instructor Course	800
(b) CMS Firearms Instructor Course	801
(c) CMS Defensive Tactics Instructor Course	802
(d) CMS Medical First Responder Course	804

Specific Authority 943.03(4), 943.12(1), 943.14(3) FS. Law Implemented 943.12(3),(9), 943.14(3) FS. History--New

11B-20.0016 Inspection of Instructor Certification Applications.

(1) Commission staff shall, upon receipt of an Instructor Certification Application form CJSTC-71, revised December 6, 2000, hereby incorporated by reference, inspect an applicant's file within 30 days. The form CJSTC-71 shall be inspected for any apparent errors or omissions and additional information shall be requested, if needed, pursuant to Section 120.60, F.S.

(2) Upon approval of form CJSTC-71, the effective date of the instructor certification shall be the date the form is signed by Commission staff. The certification shall be forwarded to the requesting training school.

(3) Upon noting any apparent errors or omissions, Commission staff shall complete an Application for Instructor Certification Deficiency Notification form CJSTC-271, revised December 6, 2000, hereby incorporated by reference, and forward a copy to the submitting training school. Within 90 days of receipt of form CJSTC-271, the applicant shall satisfy

participate in any proceeding should call (850)410-7900 (Voice) or (850)656-9597 (TDD), at least five working days before such proceeding.

THE FULL TEXT OF THE PROPOSED RULE IS:

11B-21.005 Criminal Justice Training School Requirements for Certification.

All criminal justice training schools certified by the Commission on or after July 1, 1990, shall meet the following requirements:

(1) Training School Facilities and Equipment. All Commission-certified criminal justice training schools shall meet Commission requirements. Commission staff shall document on the Training School Classroom Facility Requirement form CJSTC 205, October 1, 1999, hereby incorporated by reference, compliance with the following:

(a) No change.

(b) If a Commission-certified criminal justice training school conducts training in law enforcement basic recruit driving, each driving range constructed after July 1, 1988, shall include the following specifications documented by Commission staff on the Driving Range Facility Requirements form CJSTC-202, October 1, 1999, hereby incorporated:

1. through 7. No change.

8. Restrooms, drinking water, and a rain-resistant shelter shall be provided when the range is in use for Criminal Justice Standards and Training Commission training purposes for personnel engaged in training on the driving range.

(c) If a Commission-certified criminal justice training school conducts training in basic law enforcement, correctional, or correctional probation, there shall be a suitable area designated for criminal justice defensive tactics instruction. A Defensive Tactics Requirements form CJSTC-203, October 1, 1999, hereby incorporated, shall be completed by Commission staff specifying that each defensive tactics area shall include the following training equipment:

1. Cushioned floor matting that is at least 80 square feet in size for every two (2) students actively and physically engaged in defensive tactics instruction.

2. through 3. No change.

(d) If a Commission-certified criminal justice training school conducts training in basic law enforcement, correctional, or correctional probation, there shall be at least one (1) firearms firing range designed for criminal justice firearms instruction that shall meet Commission requirements documented by Commission staff on a Firing Range Facility Requirements form CJSTC-201, October 1, 1999, hereby incorporated by reference, documenting the following:

1. through 9. No change.

10. Restrooms, drinking water, and a rain-resistant shelter shall be provided when the range is in use for Criminal Justice Standards and Training Commission training purposes for personnel engaged in firearms training on the range.

11. through 13. No change.

(2) No change.

(3) Employed Personnel. All Commission-certified criminal justice training schools shall employ personnel who meet Commission requirements documented on a Staffing Requirements form CJSTC-204, October 1, 1999, hereby incorporated by reference. The following specifications shall be met:

(a) One full-time salaried criminal justice training center director designated by the Commission-certified criminal justice training school, and employed on a 12 month calendar with faculty or administrative status, whose responsibilities are the management and quality control of the criminal justice training school program, and do not include a teaching assignment. Any additional administrative responsibilities or any instructional responsibilities shall not be undertaken by the director, unless approved by the Commission, upon a finding that such additional responsibilities would not interfere with the director's effective management of the training school. A director initially employed on or after July 1, 1990, shall at minimum, hold a bachelor's degree from an accredited college or university, and possess no less than two (2) years experience in the criminal justice field. Training center directors shall be responsible for the scheduling, presentation, and general local management of the criminal justice training programs, which shall include preparation of required reports and records, assuring quality of instruction, administration, and security of examinations. A training center director's designee shall be employed full-time with faculty or administrative status, whose responsibilities are the management and quality control of the criminal justice training program.

(b) through (d) No change.

(4) through (8) No change.

(9) Basic Abilities Testing Requirements. Effective January 1, 2002, all criminal justice training schools certified by the Commission that provide Basic Recruit Training Programs shall:

(a) Adopt a Commission-approved basic abilities test as an entry requirement into a basic recruit training program.

(b) Require, for admission into a Basic Recruit Training Program, a passing score from a Commission-approved basic abilities test which shall be accepted by any Commission-certified criminal justice training school. A passing score is valid one (1) year from the date of the test.

(c) Not exempt a student from taking a Commission-approved basic abilities test.

(d) Not enter into a contract with any testing vendor for a period longer than the Commission's testing cycle of three (3) years.

Specific Authority 943.03(4), 943.12(1),(2) FS. Law Implemented 943.12(3),(7), 943.14, 943.17(1)(g) FS. History—New 7-21-82, Formerly 11B-21.05, Amended 1-28-86, 8-30-89, 12-24-89, 6-3-91, 12-13-92, 1-2-97, 7-7-99, 8-22-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ms. Donna Hunt, Operations and Management Consultant, Florida Department of Law Enforcement, Criminal Justice Professionalism Program

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Program Director, Rod Caswell, Florida Department of Law Enforcement, Criminal Justice Professionalism Program

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 13, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN THE FAW: January 26, 2001

DEPARTMENT OF LAW ENFORCEMENT

Criminal Justice Standards and Training Commission

RULE CHAPTER TITLE: Certification and Employment or Appointment

RULE CHAPTER NO.: 11B-27

RULE TITLES: Certification, Employment or Appointment, and Terminating Employment or Appointment of Officers

RULE NOS.: 11B-27.002

High School Graduation or Equivalent

11B-27.0021

Revocation or Disciplinary Actions;

Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances

11B-27.005

Canine Team Certification

11B-27.013

PURPOSE AND EFFECT: The proposed amendments to Rule Chapter 11B-27, F.A.C., are necessary to update the acceptable passing score required to issue a GED to be used in the lieu of a high school diploma for meeting the minimum qualifications for becoming a certified criminal justice officer in Florida.

SUMMARY: 11B-27.002 , 27.0021, and 27.013: To revise the Physician’s Assessment form CJSTC-75 requiring that a physician approve an officer capable or not capable of performing the essential functions of a job for which he or she has been selected, to add “designee” to the signature block of the Equivalency of Foreign and Non-Public High School Curriculum form CJSTC-35 and the General Duty K-9 Team Application form CJSTC-70, to update the acceptable passing score for the General Education Development (GED) Tests, and to make grammatical and clarification revisions.

11B-27.005: (1)(a): Changed “and” to “or” because the disciplinary action is one or the other, not both.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 943.03(4), 943.12(1) FS.

LAW IMPLEMENTED: 943.12(3), 943.13, 943.13(3), 943.133, 943.139, 943.1395, 943.17 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 (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 1:00 p.m., May 22, 2001

PLACE: 2331 Phillips Rd., Elevator Conference Room, Quad C, 3rd Floor, Tallahassee, FL 32308-1489

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Donna Hunt, Florida Department of Law Enforcement, Criminal Justice Professionalism Program, 2331 Phillips Road, Tallahassee, Florida 32308-1489

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Pursuant with the provisions of the Americans with Disabilities Act, persons needing an accommodation to participate in any proceeding should call (850)410-7900, (Voice) or (850)656-9597 (TDD), at least five working days before such proceeding.

THE FULL TEXT OF THE PROPOSED RULES IS:

11B-27.002 Certification, Employment or Appointment, and Terminating Employment or Appointment of Officers.

(1) Prior to submitting an application for certification or reactivation of certification, the employing agency shall collect, verify, and have on record, documents establishing that an applicant has met the requirements of Sections 943.13(1) through ~~(11)(10)~~, F.S., to include the following requirements:

(a) through (c) No change.

(d) A Physician’s Assessment form CJSTC-75, revised ~~December 6, 2000, April 11, 1999~~ and Patient Information form CJSTC-75A, revised March 11, 1999, hereby incorporated by reference, or an equivalent form signed by a physician licensed in the United States or its territories, showing that the applicant has met the medical standards required by the Commission. A Physician’s Assessment and Patient Information form CJSTC-75 or equivalent, shall be signed by a physician licensed in the United States in conjunction with an officer’s employment or appointment, regardless of the existence of a signed Physician’s Assessment and Patient Information form CJSTC-75 or equivalent, from a previous employment or appointment of that officer.

(e) through (i) No change.

(2) through (5) No change.

Specific Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12(3), 943.13, 943.133, 943.139, 943.1395 FS. History--New 10-6-82, Amended 4-26-84, 1-7-85, Formerly 11B-27.02, Amended 9-3-87, 3-29-89, 5-14-92, 12-13-92, 9-5-93, 1-19-94, 1-2-97, 7-7-99, 8-22-00,_____.

11B-27.0021 High School Graduation or Equivalent.

(1) No change.

(2) A Commission-certified criminal justice training school or a Regional Criminal Justice Selection Center, established pursuant to Section 943.256, F.S., shall evaluate non-public high school and foreign high school curricula, and shall complete an Equivalency of Foreign and Non-Public High School Curriculum form CJSTC-35, revised December 6, 2000, August 5, 1998, hereby incorporated by reference. Form CJSTC-35 shall be maintained in the officer's employing agency file.

(3) The successful completion of the General Education Development (G.E.D.) Tests, in accordance with the Florida Department of Education Rule 6A-6.021, F.A.C. with an aggregate score of 225 on all five sections of the test, and no score below 40 on any single section, shall be considered the equivalent of a high school graduation, and may be used in lieu of the requirement established in paragraph (1) of this rule section.

(4) No change.

Specific Authority 943.03(4), 943.12(1) FS. Law Implemented 943.13(3) FS. History--New 10-6-82, Amended 1-7-85, Formerly 11B-27.021, Amended 7-7-99,_____.

11B-27.005 Revocation or Disciplinary Actions; Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances.

(1) For the purpose of implementing the provisions of Rule 11B-27.004(7), F.A.C. "significant agency action" is defined as follows:

(a) For an offense that would be sanctioned by suspension of certification under these guidelines herein: Suspension from duty without pay for at least one (1) day, ~~or and~~ any change in assignment or duties that results in reduction in compensation, or termination from employment.

(b) No change.

(2) through (9) No change.

Specific Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12(3), 943.1395(8) FS. History--New 10-6-82, Amended 1-7-85, Formerly 11B-27.05, Amended 3-29-89, 12-13-92, 2-17-93, 1-19-94, 8-7-94, 11-5-95, 1-2-97, 7-7-99, 8-22-00,_____.

11B-27.013 Canine Team Certification.

(1) through (2) No change.

(3) For those applicants who are seeking initial certification or recertification, and who have met all certification requirements pursuant to paragraph (4) of this rule section, Section 943.12 (17), F.S., an employing agency shall file with Commission staff a General Duty K-9 Team Application form CJSTC-70, revised December 6, 2000, June

~~16, 1998~~, hereby incorporated by reference, which shall certify that the applicant is eligible for certification by the Commission.

(4) through (6) No change.

Specific Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12(17) FS. History--New 3-29-89, Amended 12-13-92, 1-2-97, 7-7-99, 8-22-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ms. Donna Hunt, Operations and Management Consultant, Florida Department of Law Enforcement, Criminal Justice Professionalism Program

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Program Director, Rod Caswell, Florida Department of Law Enforcement, Criminal Justice Professionalism Program

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 13, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN THE FAW: January 26, 2001

DEPARTMENT OF LAW ENFORCEMENT

Criminal Justice Standards and Training Commission

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Officer Certification Examination	11B-30
RULE TITLES:	RULE NOS.:
State Officer Certification Examination	
General Eligibility Requirements	11B-30.006
State Officer Certification Examination and Retake Eligibility Requirements for Individuals Completing the Traditional Basic Recruit Training Program Prior to September 1, 2001	11B-30.0061
State Officer Certification Examination and Retake Eligibility Requirements for Individuals Completing a Basic Recruit Training Program on or after September 1, 2001	11B-30.0062
CMS Application-Based State Officer Certification Examination and Retake Eligibility Requirements	11B-30.0063
Application for the State Officer Certification Examination and Notification Process	11B-30.007
Examination Accommodations for Applicants with Disabilities	11B-30.0071
State Officer Certification Examination Site Administration	11B-30.008
Applicant Conduct at Test Site and Notice of Protection of Program Privileges	11B-30.009
Applicants Charged with Violations; Right of Hearing	11B-30.010
Examination Scoring and Grade Notification	11B-30.011
Post Review of Examination Questions, Answers, Papers, Grades, and Grading Key	11B-30.012

Challenge to Examination Results; Right of Hearing	11B-30.013
Application-Based Officer Certification Examination	11B-30.014

PURPOSE AND EFFECT: The proposed amendments to Rule Chapter 11B-30, F.A.C., are necessary to distinguish between the requirements relating to the 5-section examination, the 1-section examination, and the CMS Application-Based examination, and to clarify the process associated with the examinations.

SUMMARY: Revision of the following forms: Application for Officer Certification Examination form CJSTC-500 has been revised to accommodate the CMS Application-Based State Officer Certification Examination, Application for Individuals Requesting Special Testing Accommodations form CJSTC-502 is a new form to comply with the Americans with Disabilities Act; State Officer Certification Examination Grade Review Request form CJSTC-510 was revised to reflect rule revisions in Rule 11B-30.006(2), F.A.C.; State Officer Certification Examination Review form CJSTC-511 was revised to change the title; State Officer Certification Examination Test Results form CJSTC-515 was revised to change the title; and State Officer Certification Examination CJSTC-516 is a new form. 11B-30.006: Clarification of existing rule language. 11B-30.0061: Removed rule language from 11B-30.006(3)-(7), F.A.C., and moved it into Rule 11B-30.0061, F.A.C., to reorganize for clarification of the Traditional Basic Recruit Training Curriculum versus the Application-Based Basic Recruit Training Curriculum in place prior to September 1, 2001. 11B-30.0062: Removed rule language from Rule 11B-30.006(3)-(7), F.A.C., and moved it into Rule 11B-30.0062, F.A.C., to reorganize for clarification of the Traditional Basic Recruit Training Curriculum versus the Application-Based Basic Recruit Training Curriculum in place after September 1, 2001, and to change the previous testing criteria from 5-section testing to 1-section testing. 11B-30.0063: New rule language for the CMS Application-Based State Officer Certification Examination process. 11B-30.007: Removed rule language from Rule 11B-30.006(8)-(10), F.A.C., for insertion into Rule 11B-30.007, F.A.C., to list the examination notification process separately. 11B-30.0071: New rule language for examination accommodations for applicants with disabilities. 11B-30.008, and .009: Housekeeping and clarification revisions. 11B-30.010: Rewrote this rule section and removed the 21-day requirement for filing a written request for a hearing. 11B-30.011: Identifies and clarifies the examination scoring and grade notification process for the certification examination prior to and after September 1, 2001. 11B-30.012: Clarified and reorganized existing rule language for the examination review process. 11B-30.013: Clarified existing language. 11B-30.014: Repealed this rule language for insertion into Rule 11B-30.0063, F.A.C.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 943.03(4), 943.12(1) FS.

LAW IMPLEMENTED: 943.10, 943.12(18), 943.1397, 943.173 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 (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 1:00 p.m., May 22, 2001

PLACE: 2331 Phillips Rd., Elevator Conference Room, Quad C, 3rd Floor, Tallahassee, FL 32308-1489

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Donna Hunt, Florida Department of Law Enforcement, Criminal Justice Professionalism Program, 2331 Phillips Road, Tallahassee, Florida 32308-1489

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Pursuant with 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 days prior to the workshop by contacting Donna Hunt, (850)656-9597 (TDD).

THE FULL TEXT OF THE PROPOSED RULE IS:

11B-30.006 ~~Application for State Officer Certification Examination~~ General; Eligibility Requirements.

(1) For the purposes of this rule chapter, the terms “successfully completed” and “successfully complete” are defined as being denoted with a “Pass” on the completed Training Report form CJSTC-67, revised December 6, 2000, hereby incorporated by reference.

~~(2)(4)~~ The following individuals are eligible to take sit for the State Officer Certification Examination (SOCE) for the requested criminal justice discipline:

(a) Individuals who have successfully completed a Commission-approved Traditional Basic Recruit Training Program, pursuant to Rule 11B-35.002(4), F.A.C., or Cross-Over Training Program, pursuant to 11B-35.004(3), F.A.C., or the CMS Application-Based Basic Recruit Training Program, pursuant to Rule 11B-35.002(5), F.A.C., within the past four (4) years.

(b) Inactive Commission-certified Non-active Florida certified officers who have a break-in-service of more than four (4) years and have successfully completed a ~~Prior to sitting for the State Officer Certification Examination, these officers shall complete either the Law Enforcement,~~

Correctional, or Correctional Probation Officer Certification Examination Qualification Course, pursuant to Rule 11B-35.008, F.A.C., or a Commission-approved Basic Recruit Training Program, pursuant to paragraph (a) of this rule section, at a Commission-certified criminal justice training school pursuant to Rule 11B-35.008, F.A.C.

(c) Individuals who have successfully completed a comparable Basic Recruit Training Program in another state, or for the Federal Government, and have served as a full-time sworn officers in another state or for the Federal Government for at least one (1) year, in the requested criminal justice discipline, and are approved for an exemption from completing a Commission-approved Basic Recruit Training Program, pursuant to Rules 11B-35.009 and 11B-35.010, F.A.C., and have Prior to sitting for the State Officer Certification Examination, these individuals shall successfully completed the Officer Certification Examination Qualification Course, in the requested criminal justice discipline appropriate for the discipline for which the individual is seeking certification, at a Commission-certified criminal justice training school pursuant to Rule 11B-35.008, F. A. C.

(3)(2) Commission-certified criminal justice training schools may order officer certification examination applicant handbooks and an Application for Officer Certification Examination form CJSTC-500, revised December 6, 2000, hereby incorporated by reference, by completing a Training School Examination Supplies Request form CJSTC-514, revised January 21, 1999, hereby incorporated by reference. The request form shall be submitted to the Florida Department of Law Enforcement, Criminal Justice Professionalism Program, Attn: Certification Examination Section. Students successfully pass the State Officer Certification Examination within four (4) years of graduation from one of the Commission's Basic Recruit Training Programs.

(3) The application form CJSTC 500, may be obtained from a Commission-certified criminal justice training school or the Florida Department of Law Enforcement, Criminal Justice Professionalism Program. Applications to sit for the State Officer Certification Examination shall be received by Commission staff by the established deadline date, which shall not exceed 21 days prior to the published scheduled examination date, pursuant to the Criminal Justice Standards and Training Commission Policies and Procedures Manual, October 13, 1999, hereby incorporated by reference. The application shall be accompanied by a \$75 application fee that shall be a cashier's check, money order, or a public agency's instrument made payable to the Criminal Justice Standards and Training Trust Fund.

(4) Should an applicant fail all or part of the examination, the applicant shall be allowed to make application for re-examination. Applications for a first re-examination shall be received by Commission staff by the established deadline date, which shall not exceed 21 days prior to the published

scheduled examination date. The application shall be accompanied by a \$75 application fee that shall be a cashier's check, money order, or a public agency's instrument made payable to the Criminal Justice Standards and Training Trust Fund.

(5) Should an applicant fail all or part of the first re-examination, the re-take applicant shall be allowed to make application for a second re-examination. Prior to sitting for the second re-examination, the applicant shall re-take and successfully complete the Basic Recruit Training Course(s) that correspond to the examination section(s) failed. Students re-taking the High-Liability Training Courses are required to complete only the academic portions of the courses.

(6) Applications for a second re-examination shall be received by Commission staff by the established deadline date, which shall not exceed 21 days prior to the published scheduled examination date. The application shall be accompanied by a \$75 application fee that shall be a cashier's check, money order, or a public agency's instrument made payable to the Criminal Justice Standards and Training Trust Fund. Additionally, applicants requesting a second re-examination shall submit one of the following with the completed application:

(a) A Certificate of Completion that includes the name of the Commission-certified criminal justice training school, the applicant's name, the discipline for which certification is being sought, the name(s) and common course number(s) of the remedial course(s) completed and completion date of each individual course, and the signature of the training center director; or

(b) If the remedial training has not been completed at the time of application, an original letter on the training school's letterhead signed by the training center director, which shall specifically identify the discipline and original training program completed, name(s) and common course number(s) of the remedial course(s) taken, and expected completion date of each individual course.

(7) If an applicant fails to pass the State Officer Certification Examination after three attempts, the applicant may not sit for the examination again until the applicant has enrolled in and successfully completed the full Basic Recruit Training Program, within the discipline for which the applicant is seeking certification.

(8) The applicant may request rescheduling to sit for the examination if either of the following conditions exist:

(a) The applicant is unable to sit for the State Officer Certification Examination by reason of military service, and provides a copy of military orders or a letter from the applicant's commanding officer to Commission staff; or

(b) The applicant can demonstrate to the satisfaction of Commission staff that serious injury, illness, or other physical impairment to the applicant or a member of the applicant's immediate family, or the death of a member of the applicant's

immediate family, made it impossible to sit for the State Officer Certification Examination. Requests shall be substantiated by the following:

1. A statement on official letterhead from the treating physician describing the injury, illness, or physical impairment, and lists the dates of treatment or confinement, and affirms that such injury, illness, or physical impairment made it impossible for the applicant to sit for the State Officer Certification Examination, or

2. A copy of the immediate family member's death certificate, or

3. A statement on official letterhead from the funeral home that was responsible for funeral arrangements for the deceased family member.

(e) If the applicant has been issued a subpoena to appear in court, the applicant shall provide Commission staff with a copy of the subpoenas substantiating the court dates for their appearance in court, and the date the subpoena(s) was issued to the applicant.

(9) Any requests for applicant rescheduling authorized pursuant to paragraph (8) of this rule section, shall be submitted in writing to Commission staff. Unless otherwise stated, rescheduling granted in this rule section remains subject to all requirements for eligibility, pursuant to paragraphs (1)-(6) of this rule section, however, no additional application fee shall be charged.

(10) If a mechanical fault, natural event, or other problem associated with the administration or grading of the examination occurs, Commission staff shall permit rescheduling of all or part of the examination without further application by, or cost to the applicant. The applicant shall receive a letter of rescheduling within 30 working days of discovery of the problem associated with the administration or grading of the examination. Re-scheduling of the examination, pursuant to this rule section, does not constitute a re-examination pursuant to Section 943.1397(2), F.S.

(11) Commission certified criminal justice training schools may order officer certification examination supplies by completing a Training School Examination Supplies Request form CJSTC 514, revised January 21, 1999, hereby incorporated by reference, and submit to the Florida Department of Law Enforcement, Criminal Justice Professionalism Program, Certification Examination Section.

(12) All forms and the Criminal Justice Standards and Training Commission Policies and Procedures Manual referenced in this rule chapter, may be obtained by contacting the Florida Department of Law Enforcement, Criminal Justice Professionalism Program, Post Office Box 1489, Tallahassee, Florida 32302-1489, Attention: Director's Office, Forms and Manual Liaison.

Specific Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12(18), 943.1397 FS. History—New 1-10-94, Amended 8-7-94, 1-2-97, 7-7-99, 8-22-00, _____.

11B-30.0061 State Officer Certification Examination and Retake Eligibility Requirements for Individuals Completing the Traditional Basic Recruit Training Program Prior to September 1, 2001.

(1) Individuals who have successfully completed a Commission-approved Traditional Basic Recruit Training Program or Cross-Over Training Program, or Officer Certification Examination Qualification Course Requirements prior to September 1, 2001, shall be allowed to take the State Officer Certification Examination (SOCE).

(2) Should an individual fail all or part of the SOCE, the individual shall be permitted to reapply and retake the SOCE. The re-examination shall include only those section(s) failed in the initial examination.

(3) Should an individual fail all or part of the first re-examination, the individual shall be permitted to reapply and take a second re-examination pursuant to the following:

(a) Enroll in and successfully complete training that corresponds to the examination section(s) failed. However, students who retake Commission-approved High-Liability Training Courses shall be required to successfully pass only the academic portions of the High-Liability Training Course(s) failed.

(b) Submit an Application for Officer Certification Examination form CJSTC-500, which includes submission of a Certificate of Completion from the criminal justice training school the individual attended. The Certificate of Completion shall include: the name of the training school, the applicant's name, the requested criminal justice discipline, the name(s) and common course number(s) of the remedial courses completed, the training center director's signature, and the completion date of each course.

(c) If remedial training has not been completed at the time an individual submits form CJSTC-500, the individual shall submit a signed letter from the training center director, which shall be written on the training school's letterhead. The letter shall identify all information required on the Certificate of Completion and shall identify the expected completion date of the remedial training. Remedial training shall be completed prior to the date the second re-examination is scheduled.

(d) Applicants who have not completed the required remedial training at the time form CJSTC-500 is submitted, shall submit the documents listed in paragraph (b) of this rule section to the examination administrator on the scheduled test day.

Specific Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12(18), 943.13(10), 943.1397 FS. History—New _____.

11B-30.0062 State Officer Certification Examination and Retake Eligibility Requirements for Individuals Completing a Basic Recruit Training Program on or after September 1, 2001.

(1) Individuals who have successfully completed a Commission-approved Basic Recruit Training Program on or after September 1, 2001, shall be allowed to apply for and take the State Officer Certification Examination (SOCE).

(2) Should an individual fail to achieve an overall passing score for the SOCE, the individual shall be permitted two (2) opportunities to reapply and retake the examination.

Specific Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12(18), 943.13(10), 943.1397 FS. History—New _____.

11B-30.0063 CMS Application-Based State Officer Certification Examination and Retake Eligibility Requirements.

(1) Individuals who have successfully completed the Curriculum Maintenance System (CMS) Application-Based Basic Recruit Training Programs for use as a basic recruit training program for criminal justice officers, pursuant to Rule 11B-35.004(5), F.A.C., shall be allowed to apply for and take the CMS Application-Based State Officer Certification Examination for the discipline in which certification is sought.

(2) Should an individual fail to achieve a passing score on the CMS Application-Based State Officer Certification Examination, the individual shall be permitted two (2) opportunities to reapply and retake the certification examination.

(3) Should an individual fail to achieve a passing score on the CMS Application-Based State Officer Certification Examination after three (3) attempts, the individual shall not be permitted to take the certification examination until the applicant has re-enrolled in and successfully completed the CMS Application-Based Basic Recruit Training Programs for the discipline in which certification is sought.

Specific Authority 943.03(4), 943.12(1),(18) FS. Law Implemented 943.12(18), 943.1397(8), 943.173 FS. History—New _____.

11B-30.007 Application for the State Officer Certification Examination and Notification Process of Applicants.

(1) If an applicant meets the requirements to sit for the State Officer Certification Examination, Commission staff shall schedule the applicant for the requested examination site and date.

(1)(2) Application to take the State Officer Certification Examination (SOCE) may be made by submitting a completed Application for Officer Certification Examination form CJSTC-500, to the Florida Department of Law Enforcement, Office of Finance and Accounting, Post Office Box 1489, Tallahassee, Florida 32302-1489, and shall be accompanied by a cashiers check, money order, or public agency instrument in the amount of \$100 made payable to the Criminal Justice Standards and Training Trust Fund. A completed application form CJSTC-500 shall be submitted according to the established deadline date. Form CJSTC-500 and the established examination dates may be obtained from a Commission-certified criminal justice training school, or from

the Florida Department of Law Enforcement, Criminal Justice Professionalism Program, Attn: Certification Examination Section, Post Office Box 1489, Tallahassee, Florida 32302-1489. If an applicant cannot be scheduled for the examination site and date requested, the applicant shall be scheduled for the first available site and date in the geographical area of the requested site.

(2)(3) Commission staff shall notify the applicant applicants of the testing site and the date and time the SOCE will be administered, of the State Officer Certification Examination, by mail, prior to the date of the examination.

(3) If a mechanical fault, natural event, or other problem associated with the administration of the SOCE occurs, Commission staff shall permit rescheduling of all or part of the examination without further application or cost to the applicant. Commission staff shall notify the applicant when the SOCE is to be rescheduled via the address provided on the applicant form CJSTC-500, within 30 working days of discovery that a problem exists with the administration of the certification examination. Re-scheduling of the SOCE does not constitute a re-examination.

(4) An applicant who has been scheduled to take the State Officer Certification Examination (SOCE) and is unable to take the certification examination on the date scheduled, shall be given the opportunity to submit a request to Commission staff to reschedule the certification examination within sixty days of the missed examination date. Rescheduling that is granted by Commission staff shall be subject to all requirements for eligibility, pursuant to Rule 11B-30.006, F.A.C. An additional application fee shall not be charged. The following conditions shall exist and shall be documented in the applicant's request to reschedule a certification examination date:

(a) Due to military service, an applicant shall provide a copy of military orders, or provide a letter from his or her commanding officer to Commission staff; or

(b) Due to injury, illness, or physical impairment, an applicant shall provide a statement on official letterhead from the treating physician that provides a lists and dates of treatment or confinement affirming that such injury, illness, or physical impairment made it impossible for the applicant to take the SOCE; or

(c) Due to the death of an immediate family member, an applicant shall provide a copy of the death certificate or a statement on official letterhead from the funeral home responsible for the funeral arrangements; or

(d) Due to a subpoena to appear in court, an applicant shall provide to Commission staff a copy of the subpoena substantiating the court date(s) for the applicant's appearance in court, and the date the subpoena was issued.

Specific Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12(18), 943.1397(3) FS. History—New 1-10-94, Amended 1-2-97, 7-7-99, 8-22-00, _____.

11B-30.0071 Examination Accommodations for Applicants with Disabilities.

(1) In compliance with the Americans with Disabilities Act (ADA) of 1990, the Department shall provide reasonable and appropriate accommodations to individuals with physical, mental, or specific learning disabilities to the extent such accommodations do not create an undue cost, administration restraints, security considerations, and availability of resources. Accommodations made will vary depending upon the nature and the severity of the disability. Each case shall be dealt with on an individual basis with the limits prescribed herein. Reference information and guidelines regarding the process for documenting disabilities are contained in the document, "Request for Test Accommodations for Examinees with Disabilities," which may be obtained by writing to the Florida Department of Law Enforcement, Criminal Justice Professionalism Program, Certification Examination Section, Post Office Box 1489, Tallahassee, FL. 32302-1489, Attention: ADA Coordinator, or by calling 850-410-8600, TDD#: 850-656-9597.

(2) An applicant requesting special accommodations shall submit an Application for Individual Requesting Special Testing Accommodations form CJSTC-502, December 6, 2000, hereby incorporated by reference, which shall be submitted 45 days prior to the requested State Officer Certification Examination (SOCE) date. The Application for Officer Certification Examination form CJSTC-500 shall be submitted according to the established deadline date for the requested SOCE. The individual shall provide documentation of the disability by an appropriate professional, pursuant to paragraph (6)(e) of this rule section, when the disability and the requested accommodations are not obvious. Forms CJSTC-500 and CJSTC-502 may be obtained by writing to the Florida Department of Law Enforcement, Criminal Justice Professionalism Program, Certification Examination Section, Post Office Box 1489, Tallahassee, FL. 32302-1489, Attention: ADA Coordinator, or by calling 850-410-8600, TDD#: 850-656-9597.

(3) Reasonable and appropriate accommodations to take the State Officer Certification Examination (SOCE) shall be provided for qualifying individuals. All accommodations shall be directly linked to the amelioration of the identified functional limitations caused by the asserted disability and must be reasonable and effective. Permissible accommodations include:

(a) Flexible Time. Individuals requiring extra time to take the SOCE shall submit a recommendation of such from an appropriate professional, pursuant to paragraph (6)(e) of this rule section. The Commission recognizes that using a live reader takes longer than reading regular print. Untimed certification examinations shall not be provided.

(b) Flexible Setting. Individual and small group settings for administration of the SOCE shall be made available to individuals when such a service is recommended by an appropriate professional.

(c) Flexible Recording of Responses. The individual's responses may be recorded by a proctor or marked on the test booklet. The proctor may transcribe the individual's responses into a machine scannable answer sheet. In these instances, the individual will verify that the answers he or she indicated were marked.

(d) Flexible Format. The test booklet may be produced in large print, high quality regular print, or read aloud.

(e) Assistive Devices. Upon approval by the Commission and based on documented need, the individual shall be allowed to use lights and magnifiers.

(4) The Commission shall request further evidence for the necessity of the accommodation when the evidence substantiating the need for the accommodation is not complete. The Commission shall request that the individual receive another professional evaluation to verify the disability, which shall be paid by the Florida Department of Law Enforcement, Criminal Justice Professionalism Program, or to determine what accommodations are most appropriate and effective when the initial evaluation is inconclusive, unclear, or does not substantiate the need for the requested accommodation, which shall be paid for by the individual.

(5) In no case shall any modifications authorized herein be interpreted or construed as an authorization to provide an individual with assistance in determining the answer to any test item. No accommodation or modification shall be made that adversely affects the integrity of the SOCE.

(6) Definition of Terms.

(a) Person with disabilities means any person who:

1. Has a physical, mental, or specific learning disability, which presently substantially limits one or more major life activities;

2. Has a record of such disability; or

3. Is regarded as having such disability.

(b) Major life activities are activities that an average person can perform with little or no difficulty, for example walking, talking, hearing, breathing, learning, working, caring for one's self, and performing manual tasks.

(c) A person with a physical disability means any person who has a permanent or temporary physical or psychomotor disability. Examples of such a disability under this section include those disabilities that require the use of a wheelchair, braces, or crutches. It also includes individuals with a hearing or sight disability, or those who may need special accommodation to move about.

(d) A person with a learning disability means any person who has a permanent or temporary mental disability, such as brain damage, brain dysfunction, dyslexia, or a perceptual disorder.

(e) For purposes of this rule, "an appropriate professional" is a person licensed, pursuant to Chapters 460 (Chiropractic), 490 (Psychological Services), 458 (Medical Practice), 459 (Osteopathy), 461 (Podiatric Medicine), 463 (Optometry), 468, Part I (Speech-Language Pathology and Audiology), or 490 (Psychological Services), Florida Statutes, or is licensed in the state in which the certification of disability was performed. Any certification, documentation, or recommendation relating to the individual's disability provided by an appropriate professional, and, pursuant to the requirements of this rule, shall not be extended beyond the scope permitted by the law for that professional or that which the professional knows or has reason to know that he or she is not competent to perform.

Specific Authority 943.03(4), 943.12(1), 943.1397 FS. Law Implemented 943.12(18), 943.1397 FS. History—New _____.

11B-30.008 State Officer Certification Examination Site Administration.

(1) Commission staff examination administrators and proctors are responsible for maintaining secure and proper administration of the State Officer Certification Examination (SOCE). During the administration of the SOCE, applicants shall follow the instructions of the examination administrator and proctors, and shall be permitted to ask questions of the examination administrator relating to the test administration instructions. Commission staff shall refuse admission of applicants to sit for the examination for any individual who does not present a valid driver's license, a criminal justice agency photo I.D., or a Florida Identification Card issued by the Department of Highway Safety and Motor Vehicles.

(2) An applicant who has been scheduled to take the State Officer Certification Examination (SOCE) shall arrive at the scheduled examination site on the designated date and time, and shall present the following documentation to the examination administrator: Applicants sitting for the initial examination shall bring to the test administration site proof of successful completion of a Commission-approved Basic Recruit Training Program or Officer Certification Examination Qualification Course appropriate for the discipline for which the individual is seeking certification. The following documentation shall be acceptable:

(a) Valid photo identification. Each time an applicant applies to take the SOCE, the applicant shall present a valid driver's license, state identification card issued by the Florida Department of Highway Safety and Motor Vehicles, a valid military identification, or a state agency identification card. The identification cards shall contain the applicant's first and last name, which shall correspond with the name on the SOCE roster. A Certificate of Completion that shall contain the name of the Commission-certified criminal justice training school, applicant's name, discipline and training program completed, training completion date, number of hours completed, and signature of the training center director; or

(b) A record of completed training, if required, pursuant to Rules 11B-30.006 and 11B-30.0061(2), (3), F.A.C. The record of completed training shall be in the form of a Certificate of Completion or a Letter of Completion on the Commission-certified criminal justice training school's letterhead and shall include the applicant's name, the discipline, the completed training, the training completion date, the number of hours completed, and the signature of the training center director. Documentation of completed training may be submitted prior to the SOCE date pursuant to Rule 11B-30.007, F.A.C., or presented to the examination administrator on the day of testing. A Letter of Completion submitted in lieu of a Certificate of Completion, which shall be an original letter, on the training school's letterhead, signed by the training center director. The letter of completion shall include the discipline and training program completed, the completion date, and number of hours completed.

(3) Applicants sitting for the first re-examination are only required to show identification pursuant to paragraph (1) of this rule section.

(4) Applicants sitting for the second re-examination shall additionally show proof of successfully completing the required remedial course(s). One of the following may be accepted:

(a) A Certificate of Completion that includes the name of the Commission-certified criminal justice training school, the applicant's name, the discipline for which certification is being sought, the name(s) and common course number(s) of the remedial course(s) completed and completion date of each individual course, and the signature of the training center director; or

(b) An original letter on the training school's letterhead signed by the training center director, which shall specifically identify the discipline and training program completed, name(s) and common course number(s) of the remedial course(s) taken, and completion date of each individual course.

(5) During all examinations, applicants shall follow the instructions of the examination administrator. Failure to comply with the administrator's instructions shall result in disqualification from the examination session, and forfeiture of the application fee.

(3)(6) An applicant shall not be admitted to the examination administration site after the door to the examination site is closed. Re-scheduling of the State Officer Certification Examination (SOCE), pursuant to this paragraph, does not constitute a re-examination, pursuant to Section 943.1397, F.S. The applicant shall forfeit the examination fee and may re-apply to Commission staff to sit for the examination, and shall again have to comply with all of the provisions of Rule 11B-30.006, F.A.C.

(4)(7) All examination booklets, answer sheets, and other State Officer Certification Examination (SOCE) examination papers and materials are the sole property of the Commission

staff. An applicant shall not remove any of the SOCE examination booklets, answer sheets, or other SOCE examination papers or materials from the examination room, or retain or reproduce the materials in whole, or in part, by any means or method whatsoever.

Specific Authority 943.03(4), 943.12(1), ~~(18)~~ FS. Law Implemented 943.12~~(18)~~ FS. History--New 1-10-94, Amended 8-7-94, 1-2-97, 7-7-99, 8-22-00, _____.

11B-30.009 Applicant Conduct at Test Site and Notice of Protection of the Program's Privileges.

~~(1) The examination administrator and proctors are Commission staff's designated agents and are responsible for maintaining a secure and proper examination administration.~~

~~(1)(2) The applicant shall not engage Any individual observed to have engaged in conduct that subverts or attempts to subvert the State Officer Certification Examination (SOCE) process. Conduct that subverts or attempts to subvert the SOCE process includes: shall have their scores on the State Officer Certification Examination withheld or declared invalid, and the individual shall be subject to the imposition of other sanctions by the Commission, pursuant to Section 943.13(7), F.S., and Rule Chapter 11B-27.007, F.A.C.~~

~~(3) Conduct that subverts or attempts to subvert the examination process includes:~~

~~(a) Conduct that violates the security of the State Officer Certification Examination materials are as follows:~~

~~(a)1- Removing from the examination room any of the SOCE materials.~~

~~(b)2- Reproducing or reconstructing any portion of the SOCE examination.~~

~~(c)3- Aiding by any means in the reproduction of any portion of the SOCE examination.~~

~~(d)4- Selling, distributing, buying, receiving, or having unauthorized possession of any portion of a past, current, or future SOCE State Officer Certification Examination.~~

~~(e) Revealing test questions or other information that would compromise the integrity of the SOCE.~~

~~(2)(b) The applicant shall not violate the standards of State Officer Certification Examination (SOCE) test administration. Violations of test administration include: Conduct that violates the standards of test administration is as follows:~~

~~(a)1- Communication with any other applicant examinee during the administration of the SOCE examination.~~

~~(b)2- Copying answers from another applicant examinee, or intentionally allowing one's answers to be copied by another applicant examinee during the administration of the SOCE examination.~~

~~(c)3- Having in one's possession during the administration of the SOCE examination, any books, notes, written, or printed materials or data of any kind.~~

~~(d)(e) Failing to comply with the SOCE administrator's instructions. Conduct that violates the applicant identification process is as follows:~~

~~(3) The applicant shall not violate the applicant identification process. Conduct that violates the applicant identification process is as follows:~~

~~(a)1- Falsifying or misrepresenting information required for admission to the State Officer Certification Examination (SOCE).~~

~~(b)2- Impersonating an applicant examinee.~~

~~(c)3- Having an impersonator take sit for the SOCE examination on one's behalf.~~

~~(4) Any violation of the provisions of Rule 11B-30.009(1)-(3), F.A.C., or other irregularity shall be documented in writing by a Commission staff agent(s), and documentation of the violation or irregularity shall be presented to the Director of the appropriate regulatory section within the Criminal Justice Professionalism Program for action by Commission staff. A Commission staff agent(s) shall exercise extreme care in their documentation to ensure that the violation or irregularities are precisely recorded as they were witnessed.~~

~~(5) When the Commission finds that an applicant has committed an act that violates paragraphs (1)-(3) of this rule section, the applicant shall:~~

~~(a) Have their State Officer Certification Examination (SOCE) declared invalid;~~

~~(b) Forfeit the application fee;~~

~~(c) Be ineligible to apply to take the SOCE in any discipline for a period of five (5) years;~~

~~(d) Be subject to denial of certification by the Commission pursuant to Rule 11B-27.007, F.A.C.;~~

~~(e) Be subject to disciplinary action taken against any currently held Commission certification.~~

~~(f) Be subject to the imposition of other sanctions by the Commission, pursuant to Section 943.13(7), F.S., and Rule 11B-27, F.A.C. Individuals who engage in conduct that subverts or attempts to subvert the State Officer Certification Examination process, shall at a minimum be ineligible for re-examination for a period of (5) five years, or may be denied certification by the Commission pursuant to Chapter 943, F.S.~~

Specific Authority 943.03(4), 943.12(1), ~~(18)~~, 943.173(3) FS. Law Implemented 943.12(18), 943.13(7), 943.1397(3), 943.173 FS. History--New 1-10-94, Amended 1-2-97, 7-7-99, 8-22-00, _____.

11B-30.010 Applicants Persons Charged with Violations; Right of Hearing.

Should the Commission find that an applicant has violated the provisions of Rule 11B-30.009(2), F.A.C., the Commission shall notify the applicant of the violation by submitting a statement invalidating the applicant's State Officer Certification Examination (SOCE). The statement invalidating the applicant's SOCE shall specify the basis for the

Commission's action and shall be forwarded to the applicant. The applicant shall be entitled to a hearing pursuant to the Administrative Procedures Act set forth in Chapter 120, F.S., and the Uniform Rules of Procedures, Rule 28-106, F.A.C. An applicant charged by Commission staff with a violation of Rule 11B-30.009(2) or (3), F.A.C., may, within 21 days of receipt of notice of being charged with such violation, request a hearing by filing a written request with Commission staff.

(2) The applicant's request shall specify the nature of the dispute with Commission staff. Upon filing a timely request, the applicant shall be provided a hearing pursuant to Section 120.569, F.S.

Specific Authority 943.03(4), 943.12(1) FS. Law Implemented 120, 943.12(18) FS. History--New 1-10-94, Amended 7-7-99, 8-22-00.

11B-30.011 Examination Scoring and Grade Notification.

(1) Individuals who graduate from a Commission-approved Traditional Basic Recruit Training Program, pursuant to Rules 11B-35.002(4)(a)-(e), 11B-35.004(3)(a)-(f) and 11B-35.008(1)(a)-(c), F.A.C., prior to September 1, 2001, shall be required to pass all sections of the State Officer Certification Examination (SOCE). The appropriate pass scores identified for the curricula sections for each discipline and grade notification are as follows: Commission staff shall notify the applicant of the examination results approximately 30 days after the examination date.

(a) Law Enforcement:

1. Section 1, CJD-760 Legal 1, CJD-761 Legal 2, and CJD-730 Legal 3, pass score is 79% or higher.

2. Section 2, CJD-763 Interpersonal Skills and CJD-762 Communications, pass score is 78% or higher.

3. Section 3, CJD-734 Law Enforcement Investigations, pass score is 80% or higher.

4. Section 4, CJD-731 Law Enforcement Patrol, pass score is 80% or higher.

5. Section 5, CJD-704 Criminal Justice Defensive Tactics, CJD-705 Criminal Justice Weapons, CJD-723 Vehicle Operations, CJD-732 Law Enforcement Traffic, and CJD-254 Medical First Responder, pass score is 80% or higher.

(b) Correctional:

1. Section 1, CJD-770 Legal 1 and CJD-771 Legal 2, pass score is 80% or higher.

2. Section 2, CJD-773 Interpersonal Skills, pass score is 80% or higher.

3. Section 3, CJD-752 Correctional Operations, pass score is 80% or higher.

4. Section 4, CJD-750 Interpersonal Skills and CJD-772 Communications, pass score is 80% or higher.

5. Section 5, CJD-704 Criminal Justice Defensive Tactics, CJD-705 Criminal Justice Weapons, CJD-254 Medical First Responder and CJD-741 Emergency Preparedness, pass score is 80% or higher.

(c) Correctional Probation:

1. Section 1, CJD-790 Correctional Probation Legal, pass score is 80% or higher.

2. Section 2, CJD-704 Criminal Justice Defensive Tactics, CJD-254 Medical First Responder, CJD-795 Firearms and CJD-791 Correctional Probation Operations, pass score is 80% or higher.

3. Section 3, CJD-792 Correctional Probation Interpersonal Skills and CJD-793 Correctional Probation Communications Skills, pass score is 82% or higher.

4. Section 4, CJD-794 Correctional Probation Supervision, pass score is 85% or higher.

(d) Applicants shall be notified within 30 days of the test date, which shall be submitted by Commission staff on an Applicants State Officer Certification Examination Test Results form CJSTC-515, revised December 6, 2000, hereby incorporated by reference.

(2) Individuals, who graduate from a Commission-approved Basic Recruit Training Programs on or after September 1, 2001, shall be required to pass the State Officer Certification Examination (SOCE) with an overall scale score of 80 or higher. Applicants shall be notified within 30 days of the test date, which shall be submitted by Commission staff on an Applicants State Officer Certification Examination Overall Test Results form CJSTC-516, December 6, 2000, hereby incorporated by reference. Applicant(s) failing the State Officer Certification Examination shall be notified of the subject area(s) failed, along with the requirements for re-examination and the review procedures.

Specific Authority 943.03(4), 943.12(1),(18) FS. Law Implemented 943.12(18), 943.1397(1) FS. History--New 1-10-94, Amended 1-2-97, 7-7-99, 8-22-00.

11B-30.012 Post Applicant Review of Examination Questions, Answers Papers, Grades, and Grading Key.

(1) Individuals who have taken the State Officer Certification Examination (SOCE) shall have the right to review their examination results by submitting a State Officer Certification Examination Grade Review Request form CJSTC-510, revised December 6, 2000, hereby incorporated by reference. To be eligible to file a form CJSTC-510, pursuant to Rule 11B-30.013, F.A.C., the form shall be submitted to Commission staff within 45 calendar days of the individual's SOCE date. Individuals who fail to meet the 45-day deadline shall not be allowed to file a challenge, but may review the SOCE results. Pursuant to Section 119.07(3)(e), F.S., applicants who have taken the State Officer Certification Examination shall have the right to review a copy of their examination questions and answers.

(2) State Officer Certification Examination Grade Reviews shall be conducted in the presence of a Commission staff during regular work hours at the Florida Department of Law Enforcement, Criminal Justice Professionalism Program, which are defined as 8:00 a.m. through 5:00 p.m., Monday through Friday, excluding official state holidays representative

at. Individuals shall be scheduled to review their State Officer Certification Examination (SOCE) grades within 40 calendar days of Commission staff's receipt of the completed form CJSTC-510 a site designated by Commission staff during regular working hours, which are defined as 8:00 a.m. through 5:00 p.m., Monday through Friday, excluding official state holidays.

(a) The provisions and sanctions of Rules 11B-30.009 and 11B-30.010, F.A.C., shall apply to individuals in an Examination Review Session. In addition, any individual who violates the standards in Rule 11B-30.009, F.A.C., shall be dismissed from the Examination Review Session.

(b) The individual who requested the grade review shall be provided with the results of the SOCE test results and the State Officer Certification Examination Review form CJSTC-511, revised December 6, 2000, hereby incorporated by reference. The CJSTC-511 form shall be signed by the individual requesting the review and a Commission staff member at the conclusion of the Examination Review Session. Individuals shall not be allowed to bring materials into the Examination Review Session or remove materials provided in the Examination Review Session. All materials used by the participants in the Examination Review Session shall be retained by Commission staff. Only the individual scheduled for the Examination Review Session and a Commission staff member shall be present during a Examination Review Session.

(c) Prior to any Examination Review Session, all individuals shall acknowledge receipt of these rules and affirm to abide by all such rules in writing.

(3) Individuals shall be prohibited from leaving an Examination Review Session with any written challenges, grade sheets, or any other examination materials. Applicants who have taken the State Officer Certification Examination may request and receive an appointment for review of their examination. Applicants may review their examination subject to the following conditions:

(a) The Officer Certification Examination Grade Review Request form CJSTC-510, revised October 19, 1998, hereby incorporated by reference, shall be received by Commission staff within 45 calendar days from the applicant's examination date. The request shall include a copy of the applicant's grade notification. Applicants failing to meet the deadline shall be allowed to review their examination, but shall not be allowed to file objections.

(b) Such review shall be completed within 40 calendar days of Commission staff's receipt of the Grade Review Request form CJSTC-510.

(e) At the examination review, the applicant shall be permitted to record on forms provided by Commission staff, all objections to the examination under review. Such forms shall remain in the custody of Commission staff, and shall be

evaluated pursuant to the procedures outlined in paragraph (3)(h) of this rule section. No material of any kind shall be used during the review except those provided by Commission staff.

(d) A Commission staff representative shall remain with the applicant throughout the review process. No person, other than the applicants and Commission staff representatives, shall be allowed to be present during the review.

(e) The applicant shall not copy questions or answers from the test materials. The applicant may write on a separate paper, in the presence of a Commission staff representative, any questionable item number(s) or other objections to the State Officer Certification Examination.

(f) The applicant shall be permitted to leave with a form listing the question numbers. All written objections and questions shall remain with a Commission staff representative when leaving the review room. Pursuant to Section 943.173(2), F.S., examination materials are exempt from the provisions of Section 119.07, F.S.

(g) Upon completion of the review, an Acknowledgment of Exam Review form CJSTC-511, revised October 19, 1998, hereby incorporated by reference, shall be signed by the applicant and a Commission staff representative shall document the starting time and ending time of the review, the materials reviewed, and any other pertinent information about the review session.

(h) All legible, substantive, and specific objections to the examination or examination portion, for which the applicant failed to achieve a passing score, shall be processed by Commission staff as follows:

1. To evaluate challenges to the examination, objections to the written examinations shall be evaluated by at least one expert in the field.

2. If Commission staff determines that the original grade was not rendered pursuant with the grading criteria, the portion or the entire examination, shall be re-scored.

(4)(i) Commission staff shall notify the individual applicant in writing of the evaluation decision within 30 working days of the examination review date, of the results of the Commission's evaluation of the individual's concerns reported on the State Officer Grade Review Request form CJSTC-510 completion of the evaluation of objections.

Specific Authority 943.03(4), 943.12(1),(18) FS. Law Implemented 943.12(18), 943.173 FS. History--New 1-10-94, Amended 1-2-97, 7-7-99, 8-22-00,_____.

11B-30.013 Challenge to Examination Results; Right of Hearing.

Should the Commission deny an individual's State Officer Certification Examination (SOCE) grade review challenge, the Commission shall notify the individual by submitting a statement denying the challenge. The statement shall specify the basis for the Commission's denial and shall be forwarded to the individual. The individual shall be entitled to a hearing pursuant to the Administrative Procedures Act set forth in

~~Chapter 120, F.S., and the Uniform Rules of Procedure, Rule Chapter 28, F.A.C. Pursuant to Section 120.57(1), F.S., an applicant may request a formal hearing before the Division of Administrative Hearings regarding a denial of credit for challenges to examination questions, under the following terms and conditions:~~

~~(a) The hearing request shall be filed with Commission staff no later than 45 calendar days after the examination administration date.~~

~~(b) If the applicant has elected to review the examination to submit objections pursuant to Rule 11B-30.012, F.A.C., the request for a hearing shall be filed by Commission staff no later than 30 calendar days after the date on the letter notifying the applicant of Commission staff's evaluation decision regarding the objections.~~

~~(c) The request shall state all disputed facts, procedural or substantive facts of the issue, and may include specific question numbers, only if written objections were submitted to those question numbers at the time of the initial review.~~

Specific Authority 943.03(4), 943.12(1),(18) FS. Law Implemented 120.943.12(18) FS. History--New 1-10-94, Amended 1-2-97, 7-7-99, 8-22-00, _____.

11B-30.014 Application-Based Officer Certification Examination.

Specific Authority 943.03(4), 943.12(1) FS. Law Implemented 943.173, 943.12(18) FS. History--New 8-22-00, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ms. Donna Hunt, Operations and Management Consultant, Florida Department of Law Enforcement, Criminal Justice Professionalism Program

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Program Director Rod Caswell Florida Department of Law Enforcement, Criminal Justice Professionalism Program

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 13, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN THE FAW: January 26, 2001

DEPARTMENT OF LAW ENFORCEMENT

Criminal Justice Standards and Training Commission

RULE CHAPTER TITLE: Training Programs
 RULE CHAPTER NO.: 11B-35

RULE TITLES: General Training Programs; Requirements and Specifications
 RULE NOS.: 11B-35.001

Basic Abilities Requirements for Applicant Admission into a Law Enforcement, Correctional, and Correctional Probation Basic Recruit Training Programs 11B-35.0011

Basic Recruit Training Programs for Law Enforcement, Correctional, and Correctional Probation	11B-35.002
Basic Recruit Training Programs for Student to Instructor Ratios and Minimum Requirements	11B-35.0021
Basic Recruit Training Programs for Student Performance in Comprehensive End-of-Course Examinations	11B-35.0022
Basic Recruit Training Programs for Student Transfers	11B-35.0023
Basic Recruit Training Programs for Student Performance in High-Liability Proficiency, Knowledge, Skills, and Abilities	11B-35.0024
Basic Recruit Training Programs for Law Enforcement and Correctional Auxiliary Training	11B-35.003
Traditional Basic Recruit Training Programs; Cross-Over for Law Enforcement, Correctional, and Correctional Probation Officers	11B-35.004
Career Development Training Program	11B-35.005
Advanced Training Program	11B-35.006
Specialized Training Program	11B-35.007
State Officer Certification Examination Qualification Course Requirements	11B-35.008
Exemption from Basic Recruit Training for Out-of-State or Federal Officers; Policy and Exemption Application Procedures	11B-35.010

PURPOSE AND EFFECT: The proposed amendments to Rule 11B-35, F.A.C., are necessary to allow the Commission to field-test its new CMS Application-Based Basic Recruit Training Program for law enforcement, to distinguish between the Traditional Basic Recruit Training Programs and the CMS Application-Based Basic Recruit Training Programs, to incorporate new training courses into the rule and to clarify existing language.

SUMMARY: Revised the following forms: Chemical Agent Exposure Training Evaluation form CJSTC-4A by removing "Firearms" from the title. This form will be used for all chemical agent exposures. Specialized Training Documentation Supplemental form CJSTC-16A by adding "designee" to the signature line; and Training Report form CJSTC-67 by adding a new column for "processed fingerprints" and adding "designee" to the signature line.
 11B-35.001: To add new rule language to allow the Commission to field-test its new Application-Based Basic Recruit Training Program; and to remove rule language because of unlawful delegation of authority. 11B-35.0011: To add new rule language, pursuant with Section 943.17, F.S., that requires all applicants to pass a basic abilities test prior to entry into a basic recruit training program effective January 1, 2002. 11B-35.002: To distinguish between "Traditional" Basic Recruit Training Programs and CMS Application-Based Basic Recruit Training Programs. 11B-35.0021: To clarify existing

rule language; and to establish an instructor student ratio for delivery of medical first responder portions of training; and to define "actively engaged" for firearms and defensive tactics. 11B-35.0022: (1): To establish criteria for development of examinations; removes obsolete rule language; and clarifies existing rule language. 11B-35.0023: To specify that the CMS Application-Based Basic Recruit Training Curricula courses are not compatible with the Traditional Basic Recruit Training Programs and are not transferable. 11B-35.0024: To clarify exiting rule language and remove rule language because of unlawful delegation of authority. 11B-35.006: To add a new advanced training course. 11B-35.007: To add a new specialized training course and remove obsolete rule language. 11B-35.008: To clarify existing rule language and remove obsolete rule language. 11B-35.010: To clarify existing rule language and establish that 12 months of sworn officer experience is required within an 18-month period.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 943.03(4), 943.12(1),(2), 943.14(3), 943.17 FS.

LAW IMPLEMENTED: 943.12, 943.131, 943.1395, 943.17, 943.173, 943.175, 943.1715, 943.25 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 (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 1:00 p.m., May 22, 2001

PLACE: 2331 Phillips Rd., Elevator Conference Room, Quad C, 3rd Floor, Tallahassee, FL. 32308-1489

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Donna Hunt, Florida Department of Law Enforcement, Criminal Justice Professionalism Program, 2331 Phillips Road, Tallahassee, Florida 32308-1489

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Pursuant with 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 days prior to the workshop by contacting Donna Hunt, (850)656-9597 (TDD).

THE FULL TEXT OF THE PROPOSED RULES IS:

11B-35.001 General Training Programs; Requirements and Specifications.

- (1) through (4) No change.

(5) Training curricula and delivery requirements shall be maintained for all Commission-approved Basic Recruit Training Courses as follows:

(a) All Basic Recruit Training Courses contained within a Commission-approved Basic Recruit Training Program, and their respective delivery requirements, are available to interested and affected individuals. Copies of the course curricula are maintained within the Criminal Justice Professionalism Program; and

(b) No change.

(6) Curriculum Maintenance System (CMS) Field-Test. The Criminal Justice Standards and Training Commission is currently developing and evaluating the Curriculum Maintenance System (CMS) Application-Based Basic Recruit Training Programs for use as a basic recruit training program for criminal justice officers. The CMS curricula are based on a statewide job-task analysis of each of the criminal justice officer disciplines, and provides an enhanced learning environment for the student, through lesson plans provided for each module, and ensures a "standardized delivery" of statewide training curricula. A CMS field-test utilizing a classroom environment with student participation is necessary to evaluate the program before certain course criteria can be established and final rules adopted. In order to accomplish these goals:

(a) The Commission-authorizes field-testing of the CMS Application-Based Basic Recruit Training Programs effective June 2001.

(b) The Commission approves the CMS Field-Test as a basic recruit training program for law enforcement officers during the field-test period.

(c) Specific conditions for instructor certification and delivery of the curricula will be established, consistent with the completed CMS Curricula Modules. Commission-certified criminal justice training schools shall adhere to the delivery specifications and the instructor requirements outlined in the CMS Curricula Modules. The Commission exempts the training schools, academies and colleges that participate in the field-testing of the CMS Field-Test from the following rules:

1. 11B-20.0014(3)(a) and (3)(d); Minimum Requirements for High-Liability and Specialized Topics Instructor Certification.

2. 11B-35.0022(1) and (2); Basic Recruit Training Programs for Student Performance in Comprehensive End-of-Course Examinations.

3. 11B-35.0024(1) and (4); Basic Recruit Training Programs for Student Performance in High-Liability Proficiency, Skills and Cognitive Abilities.

(d) Exemptions as outlined in paragraph (c) above, shall not apply to courses in the Traditional Basic Recruit Training Program.

(e) Testing of the CMS Field-Test shall be conducted at Commission-certified criminal justice training schools. Individual field tests of the CMS High-Liability Modules may be delivered by any Commission-certified criminal justice training school. A full field-test of the entire CMS Curricula Modules will be initiated at the following Commission-certified criminal justice training schools:

1. Santa Fe Community College.
2. Broward Community College.
3. St. Petersburg Junior College.
4. Florida Highway Patrol.
5. Polk Community College.
6. Lake County Vocational Technical School.
7. Tallahassee Community College.

(f) Students participating in the field-test of the CMS Application-Based Basic Recruit Training Program shall be students seeking Commission training for the purpose of applying to take the State Officer Certification Examination and seeking employment as a Florida law enforcement officer. Selection of students shall be consistent with the individual agency, community college, or vocational technical school process for selection of students. Students participating in the CMS Application-Based Basic Recruit Training Program shall successfully complete all activities contained within the lesson plans. Students who successfully complete a CMS Application-Based Basic Recruit Training Program are eligible to apply for and take the CMS Application-Based State Officer Certification Examination pursuant to Rule 11B-30.0063, F.A.C.

(g) This rule section shall expire upon Commission acceptance and approval of the basic recruit training curricula for each of the criminal justice disciplines.

(7)(6) Commission-approved training program reporting requirements for training center directors are as follows:

- (a) through (b) No change.

(c) The training center director or designee shall forward a completed Training Report form CJSTC-67, revised December 6, 2000 February 18, 1998, hereby incorporated by reference, to the Criminal Justice Professionalism Program, Bureau of Standards, following the completion of a course. Effective September 1, 1998, the information on form CJSTC-67 form shall be required to be electronically transmitted via the Commission's Automated Training Management System (ATMS). Commission staff shall maintain student training files and verify all completed training courses.

(d) The training center director or designee shall ensure that records for all Commission-approved Basic Recruit, Advanced, and Specialized Training Courses are maintained within the Commission-certified criminal justice training school. Each course shall be subject to audit by Commission staff. Such records shall include:

1. The full legal names of all attending students.
2. through 9. No change.

10. For basic recruit training programs, criminal histories on all applicants pursuant to Section 943.14(8), F.S.

(8)(7) Attendance. A student shall not be considered to have successfully completed a Commission-approved training course if there is an unexcused absence from any session of such course.

(9)(8) Attendance Records Requirements:

- (a) through (c) No change.

(d) This policy does not supersede any stricter course attendance requirements established by a Commission-certified criminal justice training school or Local Regional Training Council.

(10)(9) Florida 4-year accredited colleges and universities approved by the Commission to offer the Correctional Probation Officer Basic Recruit Training Program shall:

- (a) through (c) No change.

(11)(40) All forms and the Criminal Justice Standards and Training Commission Policies and Procedures Manual referenced in this rule chapter may be obtained by contacting the Florida Department of Law Enforcement, Criminal Justice Professionalism Program area, Post Office Box 1489, Tallahassee, Florida 32302, Attention: Planning and Evaluation Section Director's Office, Forms and Manual Liaison.

Specific Authority 943.03(4), 943.12(1),(2), 943.17 FS. Law Implemented 943.12, 943.17 FS. History--New 12-13-92, Amended 8-7-94, 1-2-97, 7-7-99, 8-22-00, _____.

11B-35.0011 Basic Abilities Requirements for Applicant Admission into a Law Enforcement, Correctional, and Correctional Probation Basic Recruit Training Programs.

In accordance with Section 943.17(1)(g), F.S., all applicants applying for entry into a Commission-approved Basic Recruit Training Program after January 1, 2002, shall obtain a passing score on a Commission-approved Basic Abilities Test for the specified discipline, i.e., law enforcement, correctional, or correctional probation, prior to entering the applicable basic recruit training program.

Specific Authority 943.03(4), 943.12(1),(2) FS. Law Implemented 943.17 FS. History--New _____.

11B-35.002 Basic Recruit Training Programs for Law Enforcement, Correctional, and Correctional Probation.

- (1) through (2) No change.

(3) Basic Recruit Training Program course requirements are as follows:

- (a) through (b) No change.

(c) For each Commission-approved Basic Recruit Training Course, a student shall pass a comprehensive end-of-course examination or examinations.

(d) Only successful completion of Commission-required Basic Recruit Training Courses within each discipline, shall determine a student's eligibility to ~~take sit for~~ the State Officer Certification Examination in a respective discipline.

(4) Traditional Basic Recruit Training Programs. The Commission-approved curricula for courses in the Commission-approved Basic Recruit Training Programs shall be on file in the Criminal Justice Professionalism Program. Effective February 4, 1999, such programs shall include the following courses:

(a) Traditional Law Enforcement Basic Recruit Training Program

		<u>Minimum Hours</u>
Criminal Justice Legal 1	CJD _760	46.0
Criminal Justice Legal 2	CJD _761	48.0
Criminal Justice Communications	CJD _762	56.0
Interpersonal Skills 1	CJD _763	66.0
*Criminal Justice Defensive Tactics <u>that includes the 38-hour Preparation for Defensive Tactics course, effective 7/1/98.</u>	CJD _704	106.0
*Includes the 38 hour Preparation for Defensive Tactics Course, effective 7/1/98.		
Criminal Justice Weapons	CJD _705	64.0
Medical First Responder (Options: CJD _254 CJT _362 or EMS _ 1059)		48.0
Law Enforcement Legal 3	CJD _730	32.0
Law Enforcement Patrol	CJD _731	64.0
Law Enforcement Traffic	CJD _732	46.0
Vehicle Operations	CJD _723	32.0
Law Enforcement Investigations	CJD _734	64.0
Total		672.0

(b) Traditional Correctional Basic Recruit Training Program

		<u>Minimum Hours</u>
Criminal Justice Legal 1	CJD _770	46.0
Criminal Justice Legal 2	CJD _771	22.0
Criminal Justice Communications	CJD _772	42.0
Interpersonal Skills 1	CJD _773	62.0
*Criminal Justice Defensive Tactics <u>that includes the 38-hour Preparation for Defensive Tactics course, effective 7/1/98.</u>	CJD _704	106.0
*Includes the 38 hour Preparation for Defensive Tactics Course, effective 7/1/98.		
Criminal Justice Weapons	CJD _705	64.0
Medical First Responder (Options: CJD _254 CJT _362 or EMS _ 1059)		48.0
Interpersonal Skills 2	CJD _750	50.0
Emergency Preparedness	CJD _741	26.0
Correctional Operations	CJD _752	64.0
Total		530.0

(c) Combination Recruit Training Program

		<u>Minimum Hours</u>
Criminal Justice Legal 1	CJD _710	54.0
Criminal Justice Legal 2	CJD _711	52.0
Criminal Justice Communications	CJD _712	62.0
Interpersonal Skills 1	CJD _713	66.0
*Criminal Justice Defensive Tactics <u>that includes the 38-hour Preparation for Defensive Tactics course, effective 7/1/98.</u>	CJD _704	106.0
*Includes the 38 hour Preparation for Defensive Tactics Course, effective 7/1/98.		

Criminal Justice Weapons	CJD _705	64.0
Medical First Responder (Options: CJD _254 CJT _362 or EMS _ 1059)		48.0
Law Enforcement Legal 3	CJD _730	32.0
Law Enforcement Patrol	CJD _731	64.0
Law Enforcement Traffic	CJD _732	46.0
Vehicle Operations	CJD _723	32.0
Law Enforcement Investigations	CJD _734	64.0
Interpersonal Skills 2	CJD _750	50.0
Emergency Preparedness	CJD _741	26.0
Correctional Operations	CJD _752	64.0
Total		830.0

(d) Associates of Science Criminal Justice Combination Academy Track

Criminal Justice Legal 1	CJD _700	54.0
Criminal Justice Legal 2	CJD _701	52.0
Criminal Justice Communications	CJD _702	62.0
Interpersonal Skills 1	CJD _703	66.0
*Criminal Justice Defensive Tactics <u>that includes the 38-hour Preparation for Defensive Tactics course, effective 7/1/98.</u>	CJD _704	106.0

~~*Includes the 38 hour Preparation for Defensive Tactics Course, effective 7/1/98.~~

Criminal Justice Weapons	CJD _705	64.0
Medical First Responder (Options: CJD _254 CJT _362 or EMS _ 1059)		48.0
Law Enforcement Legal 3	CJD _720	32.0
Law Enforcement Patrol	CJD _721	64.0
Law Enforcement Traffic	CJD _722	46.0
Vehicle Operations	CJD _723	32.0
Law Enforcement Investigations	CJD _724	64.0
Interpersonal Skills 2	CJD _740	50.0
Emergency Preparedness	CJD _741	26.0
Correctional Operations	CJD _742	64.0
Total		830.0

(e) Traditional Correctional Probation Training Program

Correctional Probation Legal	CJD _790	60.0
Correctional Probation Operations	CJD _791	16.0
Correctional Probation Interpersonal Skills	CJD _792	68.0
Correctional Probation Communication Skills	CJD _793	70.0
Correctional Probation Supervision	CJD _794	54.0
*Criminal Justice Defensive Tactics <u>that includes the 38-hour Preparation for Defensive Tactics course, effective 7/1/98.</u>	CJD _704	106.0

~~*Includes the 38 hour Preparation for Defensive Tactics Course, effective 7/1/98.~~

Correctional Probation Firearms	CJD _795	16.0
Medical First Responder (Options: CJD _254 CJT _362 or EMS _ 1059)		48.0
Total		438.0

~~(f) Application Based Law Enforcement Officer Basic Recruit Training Model Program 672.0~~

~~(g) Application Based Correctional Officer Basic Recruit Training Model Program 530.0~~

~~(h) Application Based Correctional Probation Officer Training Model Program 438.0~~

(5) CMS Application-Based Basic Recruit Training Programs

(a) CMS Application-Based Law Enforcement Officer Basic Recruit Training Program 672.0

(b) CMS Application-Based Correctional Officer Basic Recruit Training Program 530.0

(c) CMS Application-Based Correctional Probation Officer Basic Recruit Training Program 438.0

~~(6)(5)~~ Commission-approved curricula for courses in the Correctional Probation Officer College-Level Training Program.

(a) through (b) No change.

(c) The High-liability Training Courses required as part of the Correctional Probation Officer College-Level Training Program, shall be administered through a Commission-certified criminal justice training school and consist of the following courses:

Criminal Justice Defensive Tactics that	CJD_704	106.0
<u>includes the 38-hour Preparation for Defensive Tactics course, effective 7/1/98.</u>		
Correctional Probation Firearms	CJD_795	16.0
Medical First Responder (Options: CJD_254		48.0
CJT 362 or EMS _ 1059		

Specific Authority 943.03(4), 943.12(1),(2), 943.17 FS. Law Implemented 943.12, 943.17 FS. History--New 12-13-92, Amended 8-7-94, 1-2-97, 7-7-99, 8-22-00,_____.

11B-35.0021 Basic Recruit Training Programs ~~for~~ Student to Instructor Ratios and Minimum Requirements. Student to instructor ratios for a Commission-approved Basic Recruit Training Program are as follows:

(1) For instruction of criminal justice weapons, no more than six (6) students for each Commission-certified firearms instructor actively engaged in training on a firearms range. Actively engaged is defined as "a student on the firing range handling a weapon."

(2) No change.

(3) For instruction of defensive tactics, no more than eight (8) students for each Commission-certified defensive tactics instructor while actively engaged in defensive tactics training or a performance evaluation. Actively engaged is defined as " a student engaged in the practical performance of any one of the approved defensive tactics techniques." For instruction of the 38-Hour Preparation for Defensive Tactics Course, the student to instructor ratio shall be two (2) ~~two~~ instructors for each class for the first twenty (20) students ~~actively engaged~~. Each additional twenty (20) students, or any portion thereof, shall require an additional instructor.

(4) No change.

(5) For instruction of medical first responder, at least one (1) Commission-certified Medical First Responder Instructor shall be required for every six (6) students engaged in the practical and performance portions of the training.

Specific Authority 943.03(4), 943.12(1), (2), 943.14(3), 943.17 FS. Law Implemented 943.12(5), 943.17 FS. History--New 12-13-92, Amended 1-2-97, 7-7-99, 8-22-00,_____.

11B-35.0022 Basic Recruit Training Programs ~~for~~ Student Performance in Comprehensive End-of-Course Examination or Examinations.

(1) To successfully complete a Commission-approved Basic Recruit Training Course, exclusive of the demonstration of high-liability proficiency skills, pursuant to Rule 11B-35.0024, F.A.C., a student shall achieve a score of no less than 80 percent at least 80 percent on the end-of-course course's comprehensive examination or examinations, which is intended to measure the student's acquisition of knowledge, skills, and abilities.

~~(2) To successfully complete an Application Based Training Model, pursuant to Rule 11B 35.002(4)(f), (4)(g), or (4)(h), F.A.C., a student shall demonstrate knowledge, skills, and abilities in all assessments included within the curriculum.~~

~~(2)(3)~~ The training center director or designee is responsible for the development, maintenance, and administration of a the comprehensive end-of-course examination or examinations for each of the Commission-approved Basic Recruit Training Courses. The training center director may develop, maintain, and administer additional academic tests for any such courses, and is not limited to only the utilization of a the comprehensive end-of-course examination or examinations. Commission-certified criminal justice training schools shall maintain all ~~academy~~ basic recruit training course examinations in compliance with the administration, confidentiality, and security requirements, pursuant to Rule 11B-35.0085(2) and (3), F.A.C.

~~(3)(4) One student Training center directors may administer only one re-examination is administered~~ for each of the comprehensive end-of-course examination or examinations for Commission-approved Basic Recruit Training Courses; when if the training center director determines that one of the following conditions exists:

(a) through (c) No change.

~~(d)(5)~~ Each Commission-certified criminal justice training school shall develop its own administrative procedures for handling a student request for re-examination pursuant to the conditions outlined in (3)(a)-(c) of this rule section. Training School procedures for handling a student request for re-examination, shall be documented and maintained on file at the training school for Commission and student review re-examination policy that documents the justification for re-examination and is approved by the Regional Training Council. Such training school shall maintain its re-examination policy on file for Commission and student review.

~~(4)(6)~~ The training center director shall approve all re-examinations and maintain appropriate documentation on file for Commission review.

~~(5)(7)~~ A student may petition the training center director to request consideration for a re-examination.

~~(6)(8)~~ If a student does not successfully pass either the comprehensive end-of-course examination or ~~examinations~~, or if necessary, its re-examination, the student shall be deemed to have failed that particular Basic Recruit Training Course.

Specific Authority 943.03(4), 943.12(1), (2) FS. Law Implemented 943.12~~(4)~~, 943.17, 943.25(5) FS. History--New 12-13-92, Amended 8-7-94, 1-2-97, 7-7-99, 8-22-00, _____.

11B-35.0023 Basic Recruit Training Programs ~~for~~ Student Transfers.

(1) No change.

(2) A student enrolled in a Commission-approved Traditional Basic Recruit Training Program may transfer Commission-approved Basic Recruit Training Courses that have been successfully completed at one Commission-certified criminal justice training school, to another Commission-certified criminal justice training school, if the student has exited the previous training school in "good standing," which is defined in paragraph (5) of this rule section. Transfer of Commission-approved Basic Recruit Training Courses from one Commission-certified criminal justice training school to another is restricted to Commission-approved Traditional Basic Recruit Training Programs and CMS High-Liability Training Courses.

(3) No change.

(4) When a student has successfully completed courses included in a Commission-approved Traditional Basic Recruit Training Program at two or more Commission-certified criminal justice training schools, and has met all requirements for completion of such training program, the training school where the student has successfully completed the greatest number of courses in that program, shall, upon receipt of the student records from the other training school(s), submit a Training Report form CJSTC-67 to Commission staff. The training school submitting the Training Report form CJSTC-67, may require the student to demonstrate proficiency in any High-Liability Training Course, not completed at that school, pursuant to Rule 11B-35.0024(1), F.A.C. The training school submitting the Training Report form CJSTC-67, shall provide to the student written evidence of the student's successful completion of the Traditional Basic Recruit Training Program.

(5) through (6) No change.

Specific Authority 943.03(4), 943.12(1), (2) FS. Law Implemented 943.17 FS. History--New 12-13-92, Amended 1-2-97, 7-7-99, 8-22-00, _____.

11B-35.0024 Basic Recruit Training Programs ~~for~~ Student Performance in High-Liability Proficiency, Knowledge, Skills, and Abilities.

(1) Students enrolled in a Commission-approved Basic Recruit Training Program shall qualify through demonstration and written examination ~~or examinations~~, in the Commission-required high-liability proficiency, knowledge,

skills, and abilities, for a respective discipline. The Commission-required High-Liability Training Courses are as follows:

Course Number	Course Name
(a) CJD_704	*Criminal Justice Defensive Tactics that includes the 38-hour Preparation for Defensive Tactics course, effective 7/1/98.
(b) CJD_705	Criminal Justice Weapons
(c) CJD_254 or EMS_ 1059 or CJT_362	Medical First Responder
(d) CJD_723	Vehicle Operations

~~*Includes the 38-hour Preparation for Defensive Tactics course, effective 7/1/98.~~

(2) Each Commission-certified criminal justice training school shall establish written policies and procedures that provide remedial training and the opportunity for ~~only~~ one (1) requalification of the required proficiency demonstration, or one (1) re-examination of required cognitive knowledge for each of the four (4) Commission-required High-Liability Training Courses. Individuals who have failed to successfully demonstrate proficiency, or have failed to successfully demonstrate required knowledge after their second unsuccessful attempt knowledge, skills, and abilities, in a High-Liability Training Course, shall be deemed to have failed the High-Liability Training Course ~~after their second unsuccessful demonstration.~~

(3) No change.

(4) Each Commission-certified criminal justice training school shall maintain documentation of proficiency demonstration on the following Commission-approved high-liability performance checklist forms:

(a) through (c) No change.

(d) Law Enforcement Driving Basic Recruit Performance Evaluation form CJSTC-7, August 1, 1993 ~~1983~~, hereby incorporated by reference.

(e) ~~Firearms~~ Chemical Agent Exposure Training Evaluation Form CJSTC-4a, revised December 6, 2000 January 22, 1998, (Optional - is not a mandated evaluation form), hereby incorporated by reference.

~~(5) This policy does not supersede any stricter requalification requirement established by a Commission-certified criminal justice training school or Local Regional Training Council.~~

Specific Authority 943.03(4), 943.12(1),(2) FS. Law Implemented 943.12~~(4)~~,~~(5)~~, 943.17 FS. History--New 2-17-93, Amended 1-2-97, 7-7-99, 8-22-00, _____.

11B-35.003 Basic Recruit Training Programs ~~for~~ Law Enforcement and Correctional Auxiliary Training ~~Program~~.

(1) No change.

(2) For certification as an auxiliary officer, an individual shall meet the requirements outlined in Section 943.13, F.S., successfully complete the Auxiliary Officer Prerequisite Course at a Commission-certified criminal justice training

school, and complete the following applicable Commission-approved High-Liability Training Courses for which certification is being sought:

- (a) Criminal Justice Weapons
- (b) ~~*Criminal Justice Defensive Tactics that includes the 38-hour Preparation for Defensive Tactics course, effective 7/1/98.~~
- (c) Vehicle Operations (employing agency requirement)

~~*Includes the 38-hour Preparation for Defensive Tactics course, effective 7/1/98.~~

- (3) through (5) No change.

Specific Authority 943.03(4), 943.12(1),(2) FS. Law Implemented 943.12(5), 943.17(1)(a) FS. History–New 12-13-92, Amended 1-2-97, 7-7-99, 8-22-00, _____.

11B-35.004 Traditional Basic Recruit Training Programs; Cross-Over Training for Law Enforcement, Correctional, and Correctional Probation Officers.

- (1) through (3) No change.

Specific Authority 943.03(4), 943.12(1), (2) FS. Law Implemented 943.12(5), 943.17(1)(a) FS. History–New 12-13-92, Amended 9-5-93, 1-2-97, 7-7-99, 8-22-00, _____.

11B-35.005 Career Development Training Program.

Specific Authority 943.03(4), 943.12(1),(2) FS. Law Implemented 943.17(1)(a) FS. History–New 12-13-92, Amended 1-2-97, 7-7-99, 8-22-00, _____.

11B-35.006 Advanced Training Program.

- (1) through (3) No change.

(4) The following is a complete list of Commission-approved Advanced Training Courses:

Course Number	Course Name	Hours
006	Line Supervision	80 hours
007	Middle Management	80 hours
011	Developing and Maintaining a Sound Organization	40 hours
012	Planning the Effective Use of Financial Resources	40 hours
013	Building and Maintaining a Sound Behavioral Climate	40 hours
016	Narcotics Identification and Investigation	40 hours
019	Criminal Law	40 hours
020	Case Preparation and Court Presentation	40 hours
032	Special Tactical Problems	40 hours
033	Sex Crimes Investigation	40 hours
036	Injury and Death Investigation	40 hours
047	Interviews and Interrogations	40 hours
050	Stress Awareness and Resolution	40 hours
051	Field Training Officer	40 hours
053	Crisis Intervention	40 hours
054	Organized Crime	40 hours
055	RADAR Speed Measurement Training Course for Law Enforcement Officers	40 hours
057	Discipline and Special Confinement Techniques	40 hours
058	Youthful Offender Program	40 hours
068	Advanced Report Writing and Review	40 hours
072	Fire Fighting for Correctional Officers	40 hours
073	Human and Community Relations	40 hours
074	Drug Abuse Awareness and Education	40 hours
077	Underwater Police Science and Technology	80 hours

080	Computer Applications in Criminal Justice	40 hours
085	Emergency Preparedness for Correctional Officers	40 hours
087	Advanced Traffic Accident Investigation	80 hours
088	Traffic Accident Reconstruction	80 hours
090	School Resource Officer	40 hours
091	Domestic Intervention	40 hours
093	Hostage Negotiations	40 hours
094	Drug Abuse Resistance Education (D.A.R.E.) FDLE instructed only	80 hours
095	Laser Speed Measurement Operators Training Course for Law Enforcement Officers	40 hours
096	Drug Abuse Resistance Education (D.A.R.E.)	40 hours
094 & 097	Drug Abuse Resistance Education (D.A.R.E.),	40 hours
098	Traffic Homicide Investigation *	80 hours

*The previous Traffic Homicide Investigation course number 039 became inactive effective

July 1, 1998.		
100	Crimes Against the Elderly and Disabled	40 hours
(5) through (8)	No change.	

Specific Authority 943.03(4), 943.12(1), (2) FS. Law Implemented 943.12(5), 943.17(1)(a) FS. History–New 12-13-92, Amended 1-10-94, 1-2-97, 7-7-99, 8-22-00, _____.

11B-35.007 Specialized Training Program.

- (1) No change.
- (2) Commission-established categories for a Specialized Training Program are:

(a) through (i) No change.

(j) Community Policing.

(3) through (5) No change.

~~(6) The Commission shall approve or disapprove, on an individual basis, Specialized Training Courses that do not comply with this rule section. The procedures and forms for approval or disapproval may be found in the Criminal Justice Standards and Training Commission Policies and Procedures Manual.~~

~~(6)(7)~~ Criminal Justice Standards and Training Trust Funds may be expended to conduct Commission-approved Specialized Training Courses. Commission requirements for use of trust fund monies shall be expended pursuant to the requirements of Rule Chapter 11B-18, F.A.C. Completion of a Commission-approved Specialized Training Course shall be documented by completing a Specialized Training Documentation form CJSTC-16, and when applicable, completion of a Specialized Training Documentation Supplemental form CJSTC-16A, revised December 6, 2000, July 1, 1989, hereby incorporated by reference.

Specific Authority 943.03(4), 943.12(1), (2) FS. Law Implemented 943.17(5), 943.25 FS. History–New 12-13-92, Amended 8-7-94, 1-2-97, 7-7-99, 8-22-00, _____.

11B-35.008 State Officer Certification Examination Qualification Course Requirements.

- (1) through (2) No change.

~~(3) Completion of the Medical First Responder topic area of any qualification course listed in paragraph (1) of this rule section does not lead to Cardio Pulmonary Resuscitation (CPR) certification, unless that course is the full U. S. Department of Transportation First Responder Course.~~

~~(3)(4) The provisions of Rules 11B-35.001, General Training Programs and Requirements and Specifications; 11B-35.0021, Basic Recruit Training Programs for Student to Instructor Ratios and Minimum Requirements; 11B-35.0022, Basic Recruit Training Programs for Student Performance in Comprehensive End-of-Course Examinations; 11B-35.0023, Basic Recruit Programs for Student Transfer; and 11B-35.0024, Basic Recruit Training Programs for Student Performance in High-Liability Proficiency, Knowledge, Skills, and Abilities, F.A.C., shall be applicable to the training required in this rule section.~~

Specific Authority 943.03(4), 943.12(1)(2) FS. Law Implemented 943.131(2), 943.1395(3), 943.1715 FS. History—New 1-10-94, Amended 1-2-97, 7-7-99, 8-22-00, _____.

11B-35.010 Exemption from Basic Recruit Training for Out-of-State or Federal Officers; Policy and Exemption Application Procedures.

(1) Policy. An individual who applies for certification as an officer and requests an exemption from completion of a Commission-approved Basic Recruit Training Program is qualified for the exemption if ~~they meet~~ each of the following criteria is met:

(a) No change.

(b) Prior service as a full-time sworn officer in another state or for the Federal Government for at least one year in the requested criminal justice discipline for which for each of the criminal justice disciplines an officer is requesting requests to claim an exemption.

(2) No change.

(3) Primary Training Topics. The applicant's training record shall reflect successful completion of training for the following minimum primary training topics:

(a) For exemption from the Law Enforcement Basic Recruit Training Program:

1. through 4. No change.

5. Criminal Justice Defensive Tactics, ~~which includes the 38-hour Preparation for Defensive Tactics course, effective 7/1/98.~~

6. through 10. No change.

(b) For exemption from the Correctional Basic Recruit Training Program:

1. through 4. No change.

5. Criminal Justice Defensive Tactics, ~~which includes the 38-hour Preparation for Defensive Tactics course, effective 7/1/98.~~

6. through 7. No change.

(c) For exemption from the Correctional Probation Officer Basic Recruit Training Program:

1. through 3. No change.

4. Criminal Justice Defensive Tactics, ~~which includes the 38-hour Preparation for Defensive Tactics course, effective 7/1/98.~~

5. through 7. No change.

(4) Applicant Experience. An employing agency defined in 11B-35.009(1)(a), F.A.C., on behalf of an applicant seeking exemption, shall verify that the applicant has served as a full-time sworn officer for one year.

~~(a) Basic Recruit Exemption. An applicant may qualify for exemption from a Commission-approved Basic Recruit Training Program, in the specific discipline, provided the applicant has at least 12 months sworn experience with another state or with the Federal Government. The 12 months sworn experience shall have occurred at no more than two criminal justice agencies over a period not to exceed eighteen months as a full-time sworn officer in the specified discipline. Employment in more than one discipline. An applicant may qualify for exemption from a Commission approved Basic Recruit Training Program for more than one discipline, if the applicant has been concurrently employed as a full-time sworn officer in two or more disciplines for at least one year.~~

~~(b) Single or multiple employments. An applicant may qualify for exemption from a Commission approved Basic Recruit Training Program for more than one discipline if concurrently employed full time for at least one year with another state or states, or with the Federal Government, or both. However, the aggregate periods of full-time sworn officer experience shall be at least one year, pursuant to Rule 11B-35.009(1)(g), F.A.C. The applicant may not claim full-time sworn officer experience from more than two (2) previous officer employments.~~

~~(b)(e) Documentation. The authenticity of documents submitted to the employing agency by an applicant shall be corroborated by the employing agency, by telephonic or written confirmation from each agency or entity from which the applicant claims full-time sworn experience.~~

~~(c)(d) Verification. Verification of an applicant's successful completion of the required prior experience, by an employing agency, shall consist of obtaining authentic written copies of one or more of the following:~~

1. through 4. No change.

~~(d)(e) Submission of documentation for Commission review. Upon verification of an applicant's exemption from a Commission-approved Basic Recruit Training Program pursuant to this rule section, an employing agency, defined in Rule 11B-35.009(1)(a), F.A.C., on behalf of an applicant seeking exemption, shall submit to Commission staff a completed Equivalency-of-Training for Out-of-State and Federal Officers form CJSTC-76, revised September 2, 1998, hereby incorporated by reference. All supporting~~

documentation verifying the applicant's comparable basic recruit training and previous experience described in subparagraphs (a) and (b) of this rule section, shall be maintained on file by the employing agency, and submitted for review upon request of Commission staff. Commission staff shall notify the agency, in writing, of the exemption or non-exemption of the officer, within 30 working days. If the exemption is denied by Commission staff, the applicant shall be granted a hearing pursuant to Section 120.57, F.S.

(e)(f) Other prerequisites required for an Application for Officer Certification. Individuals exempt from a Commission-approved Basic Recruit Training Program pursuant to this rule section, shall comply with the training requirements in Rule 11B-35.008, F.A.C., including qualification in the Commission-required high-liability proficiency skills (Vehicle Operations, Criminal Justice Weapons, Criminal Justice Defensive Tactics and Medical First Responder ~~for law enforcement only~~), pursuant to Rule 11B-35.0024, F.A.C., and thereafter, successfully pass the State Officer Certification Examination pursuant to procedures in Rule Chapter 11B-30, F.A.C., prior to application for officer certification.

Specific Authority 943.03(4), 943.12(1), (2) FS. Law Implemented 943.131(2) FS. History--New 1-2-97, Amended 7-7-99, 8-22-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ms. Donna Hunt, Operations and Management Consultant, Florida Department of Law Enforcement, Criminal Justice Professionalism Program

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Program Director Rod Caswell Florida Department of Law Enforcement, Criminal Justice Professionalism Program

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 13, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 26, 2001

DEPARTMENT OF LAW ENFORCEMENT

Division of Criminal Justice Information Systems

RULE CHAPTER TITLE: Criminal History Records
RULE CHAPTER NO.: 11C-6

Dissemination Policy
RULE TITLE: Procedures for Requesting Criminal

History Records
RULE NO.: 11C-6.004

PURPOSE AND EFFECT: The proposed amendments to Rule 11C-6.004, F.A.C., are necessary to clarify and simplify the application and dissemination processes for vendors to request criminal history information pursuant to the National Child Protection Act of 1993 as amended, (Foley Act), and section 943.0542, F.S.

SUMMARY: Proposed revisions to Rule 11C-6.004, F.A.C., update forms for obtaining criminal histories through the National Child Protection Act of 1993 as amended, (Foley Act), and section 943.0542, F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 943.03(4), 943.053(3), 943.0542, 943.056 FS.

LAW IMPLEMENTED: 943.053(3), 943.0542, 943.056 FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS 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: 10:00 a.m., Tuesday, May 22, 2001

PLACE: Florida Department of Law Enforcement, 2331 Phillips Road, Conference Room, 4th Floor, Quad A, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Persons needing an accommodation to participate in any proceeding should call (850)410-7900 (Voice) or (850)656-9597 (TDD), at least five working days before such proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Martha Wright, Bureau Chief, User Services Bureau, Criminal Justice Information Services, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308

THE FULL TEXT OF THE PROPOSED RULE IS:

11C-6.004 Procedures for Requesting Criminal History Records.

(1) through (3) No change.

(4) Entities ~~requesting criminal history records~~ applying to the Florida Department of Law Enforcement to be qualified to receive criminal history records under the National Child Protection Act of 1993, as amended, must first complete and submit the following documents to the Florida Department of Law Enforcement, complete for each individual criminal history check, fingerprint card as well as the following forms in accordance with the instructions provided: VECHS Qualified Entity ~~entity~~ Application - Volunteer & Employee Criminal History System and Questionnaire (NCPA 1; Rev. January 1, 2001); and VECHS Criminal History Record Check User Agreement - Volunteer & Employee Criminal History System (NCPA 2; Rev. January 1, 2001); Entities that are qualified through the Florida Department of Law Enforcement to receive criminal history records under the National Child Protection Act must complete and submit the following

documents to the Florida Department of Law Enforcement with each request for a criminal history record, in accordance with the instructions provided: An authorized fingerprint card for each person whose criminal history record is requested; and a VECHS Criminal History Record Check-Waiver Agreement and Statement - Volunteer & Employee Criminal History System (NCPA 3; Rev. January 1, 2001). Qualified entities that release to another qualified entity any criminal history record information received pursuant to the National Child Protection Act must complete and maintain the following document, in accordance with the instructions provided: VECHS Dissemination Log - Volunteer & Employee Criminal History System (NCPA 4, Rev. January 1, 2001). These forms are incorporated by reference.

Specific Authority 943.03(4), 943.053(3), 943.0542, 943.056 FS. Law Implemented 943.053(3), 943.0542, 943.056 FS. History-New 12-30-76, Amended 11-7-83, Formerly 11C-6.04, Amended 9-1-88, 4-1-93, 7-7-99, 8-22-00.

NAME OF PERSON ORIGINATING PROPOSED RULE: Merribeth Holmes, User Services Bureau, Criminal Justice Information Services, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Martha White, Director, Criminal Justice Information Services, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 13, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 26, 2001

DEPARTMENT OF LAW ENFORCEMENT

Division of Local Law Enforcement Assistance

RULE CHAPTER TITLE: DNA Database Collection
RULE TITLE: Procedure

RULE CHAPTER NO.: 11D-6
RULE NO.: 11D-6.003

PURPOSE AND EFFECT: To conform with the new statutory requirements of section 943.325, F.S.

SUMMARY: Effective July 1, 2000, Section 943.325, F.S., was amended to include persons convicted of burglary among the list of offenders required to submit blood specimens for inclusion in the FDLE DNA Database. In response to the new law, the standard FDLE form utilized by state and local agencies to document each submission of a blood sample to FDLE's DNA Database is updated.

SPECIFIC AUTHORITY: 943.03(4), 943.325(9)(d) FS.

LAW IMPLEMENTED: 943.325 FS.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

IF REQUESTED IN WRITING WITHIN 21 DAYS 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: 10:00 a.m., Tuesday, May 22, 2001

PLACE: Florida Department of Law Enforcement, 2331 Phillips Road, Conference Room, 3rd Floor, Quad C, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Persons needing an accommodation to participate in any proceeding should call (850)410-7900 (Voice) or (850)656-9597 (TDD), at least five working days before such proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe White, Assistant General Counsel, Criminal Justice and Investigations and Forensic Science Program, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308

THE FULL TEXT OF THE PROPOSED RULE IS:

11D-6.003 Procedure.

(1) The subject offender must be positively identified in the manner specified by the FDLE Request for DNA Database Entry Form (FDLE/FOR-003, rev. September, 2000 and incorporated by reference) ~~FDLE Request for DNA Investigative Support Database Entry Form (FDLE Form - DNA-1, Date February 1, 1999 and incorporated by reference)~~ prior to taking the blood samples from such offender.

(2) No change.

(3) Such samples shall be taken using only the blood sample collection kit approved and provided by the Department of Law Enforcement. Agencies may obtain additional kits from FDLE, DNA Database, P. O. Box 1489, Tallahassee, Florida 32302-1489.

(4) Prior to or immediately after the taking of the samples, the FDLE Request for DNA Database Entry Form (FDLE/FOR-003) ~~FDLE Request for DNA Investigative Support Database Entry Form (FDLE Form - DNA-1)~~ must be completed, providing all information requested on the form. The imprinting of the offender's left and right thumbs, by means of an inked impression, in the spaces indicated on the form shall be completed as well. Inked fingerprint impressions must be sufficiently legible for fingerprint classification and comparison purposes. Blood samples accompanied by one or more illegible inked fingerprint impressions are unacceptable for entry into the DNA Database and will be rejected by FDLE. The collecting agency must then submit a new blood sample and completed form. The person taking, or witnessing the

taking, of the blood samples shall certify, under oath and before a notary or a law enforcement or correctional officer, as indicated on the form, that two blood samples were in fact taken from the offender thus positively identified. Additional supplies of these forms can be obtained from FDLE, DNA Database, P. O. Box 1489, Tallahassee, Florida 32302-1489.

(5) No change.

Specific Authority 943.03(4), 943.325(9)(d) FS. Law Implemented 943.325 FS. History--New 7-4-90, Amended 7-6-99, 8-22-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Joe White, Assistant General Counsel, Criminal Justice and Investigations and Forensic Science Program, Florida Department of Law Enforcement

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Barry Funk, Chief of Forensics, Florida Department of Law Enforcement

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 13, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 26, 2001

DEPARTMENT OF LAW ENFORCEMENT

Division of Local Law Enforcement Assistance

RULE CHAPTER TITLE: Implied Consent and Alcohol Testing Program

RULE CHAPTER NO.: 11D-8

RULE TITLES: Definitions 11D-8.002

Approval of Breath Test Methods and Instruments 11D-8.003

Approval of Alcohol Reference Solution and Sources 11D-8.0035

Department Inspection and Registration of Breath Test Instruments 11D-8.004

Agency Inspection of Breath Test Instruments 11D-8.006

Approved Breath Test Instruments – Access, Facility Requirements, Observation Period, and Operational Procedures 11D-8.007

Agency Retention of Records 11D-8.0075

Breath Test Operator and Agency Inspector Qualifications for Instructors 11D-8.008

Blood Samples – Labeling and Collection 11D-8.010

Denial, Revocation, and Suspension of Permits 11D-8.012

Administrative Hearings 11D-8.015

Forms 11D-8.016

PURPOSE AND EFFECT: Proposed revisions to Rule Chapter 11D-8 concerning regulation and implementation of Florida's implied consent and alcohol testing program, including substantial rewording, are necessary in order to conform and comply with recent statutory revisions and court decisions, and new developments in the field of alcohol testing.

SUMMARY: Proposed revisions define terms based on academic, scientific and common usage; provide for issuance and regulation of alcohol test permits; simplify approval and evaluation of breath and blood alcohol test methods, and approval, use and inspection of breath test instruments and records; prescribe standards for collection and preservation of blood samples for alcohol testing; specify training requirements and qualifications for alcohol test permit holders; and update forms based on rule changes.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 316.1932(1)(a)2., 316.1932(1)(f)1., 322.63(3)(a), 327.352(1)(b)3., 327.352(1)(d) FS.

LAW IMPLEMENTED: 316.1932(1)(b), 316.1933(2)(b), 316.1934(3), 322.63(3), 327.352(1)(e), 327.353(2)(b), 327.354(3) FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS 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: 10:00 a.m., Tuesday, May 22, 2001

PLACE: Florida Department of Law Enforcement, 2331 Phillips Road, Conference Room, 4th Floor, Quad A, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Persons needing an accommodation to participate in any proceeding should call (850)410-7900 (Voice) or (850)656-9597 (TDD), at least five working days before such proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Rafael E. Madrigal, Assistant General Counsel, Alcohol Testing Program, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308

THE FULL TEXT OF THE PROPOSED RULES IS:

(Substantial rewording of Rule 11D-8.002 follows. See Florida Administrative Code for present text.)

11D-8.002 Definitions.

(1) Acceptable Range – means the results of inspections which fall within the following ranges at each alcohol vapor concentration: 0.05 g/210L range is 0.045 to 0.055 g/210L; 0.08 g/210L range is 0.075 to 0.085 g/210L; 0.20 g/210L range is 0.190 to 0.210 g/210L; or the Alcohol Reference Solution gas chromatographic results which fall within the following ranges: 0.0605 g/100mL range is 0.0586 to 0.0623 g/100mL; 0.0968 g/100 mL range is 0.0938 to 0.0997 g/100mL; 0.2420 g/100mL range is 0.2347 to 0.2492 g/100mL.

(2) Accuracy – the nearness of a measurement to a known concentration.

(3) Acetone Stock Solution – a mixture of acetone and distilled or deionized water provided by the Department.

(4) Agency – a law enforcement agency other than the Department, or an entity which conducts breath tests or submits blood samples for alcohol testing pursuant to these rules, or a civilian entity performing such duties on behalf of a law enforcement agency.

(5) Agency Inspection – the periodic testing of the calibration and operation of a breath test instrument, including all required preventive maintenance, in accordance with Agency Inspection Procedures FDLE/ATP Form 16 – Rev. March 2001, and performed by a person authorized by the Department.

(6) Agency Inspector – a person who has been issued an Agency Inspector permit by the Department.

(7) Alcohol – ethyl alcohol, also known as ethanol.

(8) Alcohol Free Test – a result of 0.000 g/210L when using distilled or deionized water.

(9) Alcohol Reference Solution – a mixture of alcohol and distilled or deionized water that will have a known alcohol vapor concentration at a specific temperature.

(10) Alcohol Stock Solution – a mixture of alcohol and distilled or deionized water at a known concentration used to prepare an alcohol reference solution.

(11) Analyst – a person who has been issued a permit by the Department to conduct chemical analyses of blood under the provisions of chapters 316, 322, and 327 of the Florida Statutes.

(12) Approved Blood Alcohol Test – the analyses of two separate portions of the same blood sample using a blood alcohol test method, with results within 0.010 grams of alcohol per 100 milliliters of blood (g/100mL), and reported as the blood alcohol level.

(13) Approved Breath Alcohol Test – a minimum of two samples of breath collected within fifteen minutes, analyzed using an approved breath test instrument, producing two results within 0.020 g/210L, and reported as the breath alcohol level. If the results of the first and second samples are more than 0.020 g/210L apart, a third sample shall be analyzed. Refusal or failure to provide the required number of valid breath samples constitutes a refusal to submit to the breath test. Notwithstanding the foregoing sentence, the result(s) obtained, if proved to be reliable, shall be acceptable as a valid breath alcohol level.

(14) Authorized Repair Facility – an entity authorized by the breath test instrument manufacturer to repair such breath test instrument.

(15) Blood – whole blood.

(16) Blood Alcohol Level – the alcohol concentration by weight in a person's blood based upon grams of alcohol per 100 milliliters of blood (g/100mL).

(17) Breath Alcohol Level – the alcohol concentration by weight in a person's breath based upon grams of alcohol per 210 liters of breath (g/210L).

(18) Breath Test Instructor – a person who has been issued a Breath Test Instructor permit by the Department.

(19) Breath Test Operator – a person who has been issued a Breath Test Operator permit by the Department.

(20) Department – the Florida Department of Law Enforcement.

(21) Evidentiary Breath Test Instrument – a breath test instrument approved by the Department under Rule 11D-8.003, and used primarily to conduct alcohol breath tests pursuant to Florida law.

(22) Methods – types of alcohol analyses approved by the Department to conduct chemical or physical tests of blood or breath.

(23) Permit – when issued by the Department, certifies that the holder has met all necessary qualifications, remains in full compliance with these rules and is authorized to perform all related duties. A permit is issued only to a qualified applicant and remains valid and in full effect until it expires or is determined otherwise invalid by the Department.

(24) Precision – the nearness of measurements to each other.

(25) Reference Sample Device – a device, also known as a simulator, that produces a known vapor concentration by the passage of air through a liquid.

(26) Target Concentration – a gas chromatographic result equivalent to the following known alcohol vapor concentrations: for 0.05 g/210L the target concentration is 0.0605 g/100mL; for 0.08 g/210L the target concentration is 0.0968 g/100mL; for 0.20 g/210L the target concentration is 0.2420 g/100mL.

Specific Authority 316.1932(1)(a)2., 316.1932(1)(f)1., 322.63(3)(a), 327.352(1)(b)3., 327.352(1)(d) FS. Law Implemented 316.1932(1)(b)2., 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.353(2), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97.

(Substantial rewording of Rule 11D-8.003 follows. See Florida Administrative Code for present text.)

11D-8.003 Approval of Breath Test Methods and Instruments.

(1) The Department has approved the following method(s) for evidentiary breath testing: Infrared Light Test, also known as Infrared Light Absorption Test.

(2) The Department has approved the following breath test instrument(s) for evidentiary use: CMI, Inc. Intoxilyzer 5000 Series – including any or all instruments using one of the following programs: 5000 Basic Software Program; Florida Software Program; R-Software Program.

(3) The Department has approved the following options for use with Intoxilyzer 5000 Series instruments: keyboard; simulator recirculation; sample capture; pressure switch setting at no less than two inches and no more than six inches of water.

(4) The determination to evaluate an evidentiary breath test instrument for use in the State of Florida will be made by the Department. Upon notification by the Department that an evidentiary breath test instrument will be evaluated, the instrument's manufacturer shall submit the following to the Department:

(a) The method of analysis upon which the instrument is based;

(b) The instrument's model designation;

(c) At least two (2) instruments for evaluation and a certificate of calibration for each instrument;

(d) A description of the instrument;

(e) The operator's/technician's manual;

(f) A schematic design of the instrument;

(g) The instrument's maintenance manual, if published;

(h) Any accessories and materials necessary to use the instrument for breath testing;

(i) The maximum and minimum temperatures at which the instrument provides accurate results;

(j) The name and description of the software used.

(5) A manufacturer whose instrument has been previously approved by the Department shall notify the Department in writing prior to making any modification or adding a new option to such instrument. The Department shall evaluate such modifications or options to an approved breath test instrument and determine whether they affect the instrument's method of analysis or analytical reliability.

(6) The Department shall conduct evaluations for approval under sections (4) and (5) in accordance with Instrument Evaluation Procedures FDLE/ATP Form 34 – Rev. March 2001.

Specific Authority 316.1932(1)(a)2., 316.1932(1)(f)1., 322.63(3)(a), 327.352(1)(b)3., 327.352(1)(d) FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97.

(Substantial rewording of Rule 11D-8.0035 follows. See Florida Administrative Code for present text.)

11D-8.0035 Approval of Alcohol Reference Solution and Sources.

(1) The Department shall approve a source of alcohol reference solution for use by agencies in the State of Florida. The source approved by the Department shall be an entity that manufactures alcohol reference solutions and meets the following requirements:

(a) The source must prepare alcohol reference solution using only distilled or deionized water;

(b) The source must use reagent grade or U.S.P. grade ethanol in the preparation of the alcohol reference solution;

(c) The source must be capable of producing a minimum batch volume of 800 bottles, each containing at least 500 milliliters, to produce the following vapor alcohol concentrations: 0.05 g/210L, 0.08 g/210L, and 0.20 g/210L;

(d) The source must have performed and documented tests that demonstrate that the alcohol reference solutions are reliable for at least two years from the date of manufacture.

(2) The Department shall approve each lot of alcohol reference solution prior to distribution for use in Florida.

(a) The Department shall determine the alcohol concentration in a minimum of ten (10) sample bottles of each lot of alcohol reference solution using gas chromatography or other scientifically accepted method. Duplicate analyses will be performed on each sample bottle of alcohol reference solution. All analysis results shall fall within the alcohol reference solution acceptable range.

(b) The Department shall notify the source that the approved lots may be distributed for use in Florida, and shall issue a Certificate of Assurance, FDLE/ATP Form 32 – Rev. March 2001. Upon a determination by the Department that a lot of alcohol reference solution fails to meet the requirements for approval, the Department shall notify the source approved by the Department.

(3) Alcohol reference solution lots approved by the Department shall be used in agency or Department inspections within two (2) years of the date of manufacture.

(4) Approval analyses of alcohol reference solution lots shall be based on requirements and procedures in effect at the time such lots are submitted for approval. No post-approval analysis is required for previously approved alcohol reference solution lots.

Specific Authority 316.1932(1)(a)2., 316.1932(1)(f)1., 322.63(3)(a), 327.352(1)(b)3., 327.352(1)(d) FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History–New 7-6-99, Amended.

(Substantial rewording of Rule 11D-8.004 follows. See Florida Administrative Code for present text.)

11D-8.004 Department Inspection and Registration of Breath Test Instruments.

(1) The Department shall register and inspect a breath test instrument prior to such instrument being initially placed into evidentiary use by an agency. The registration shall reflect the registration date, the owner of the instrument, the instrument serial number, the manufacturer, and the model designation. A new registration is required to reflect a change of ownership of an evidentiary instrument.

(2) Registered breath test instruments shall be inspected by the Department at least once each calendar year, and must be accessible to the Department for inspection.

(3) Department inspections shall be conducted in accordance with Department Inspection Procedures FDLE/ATP Form 35 – Rev. March 2001.

Specific Authority 316.1932(1)(a)2., 316.1932(1)(f)1., 322.63(3)(a), 327.352(1)(b)3., 327.352(1)(d) FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History—New 10-31-93, Amended 1-1-97, _____.

(Substantial rewording of Rule 11D-8.006 follows. See Florida Administrative Code for present text.)

11D-8.006 Agency Inspection of Breath Test Instruments.

(1) Evidentiary breath test instruments shall be inspected by an agency inspector at least once each calendar month. The agency inspection shall be conducted in accordance with Agency Inspection Procedures FDLE/ATP Form 16 – Rev. March 2001.

(2) Agency inspectors must use either alcohol reference solution provided by the Department or by a source approved by the Department, or alcohol stock solution provided by the Department.

(3) Records of agency inspections shall be maintained for at least three years. Such records shall be provided to the Department upon request.

(4) Evidentiary breath test instruments shall be inspected at the agency facility where evidentiary breath tests are conducted. Whenever an agency relocates an evidentiary breath test instrument for use at another facility, an agency inspection shall be conducted prior to the instrument's removal, and another inspection shall be conducted prior to the instrument's use for evidentiary breath testing at the new facility. A mobile testing unit is considered an agency facility.

(5) Whenever an instrument is taken out of evidentiary use or is sent to an authorized repair facility, the agency shall notify the Department in writing within five business days. The agency shall provide the same notice to the Department and conduct an agency inspection when an instrument is again placed in evidentiary use or is returned from an authorized repair facility.

Specific Authority 316.1932(1)(a)2., 316.1932(1)(f)1., 322.63(3)(a), 327.352(1)(b)3., 327.352(1)(d) FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History—New 10-31-93, Amended 1-1-97, _____.

11D-8.007 Approved Breath Test Instruments – Access, Facility Requirements, Observation Period, and Operational Procedures.

(1) Evidentiary ~~Evidential~~ breath test instruments shall only be accessible to a person issued a valid permit by the Department and ~~such other~~ to persons ~~who are authorized by the permit holder.~~ Such authorized access shall only be ~~allowed~~ in the presence of a permit holder. This section does is meant to apply only to instruments located within agencies and is not meant to prohibit agencies from sending an instrument away to an ~~manufacturer~~ authorized repair facility ~~or utilizing the instrument for training programs.~~

(2) through (3) No change.

(4) A breath test operator shall conduct a breath test in accordance with the ~~O~~perational ~~P~~rocedures ~~C~~ehecklist FDLE/ATP Form 23 – Effective January 1997, and shall record the results on the Breath Test Results Affidavit FDLE/ATP Form 14 – Effective May, 2000 ~~which is approved by the Department and is incorporated by reference.~~

(5) Each agency shall record all breath tests conducted on a particular evidentiary breath test instrument on the Breath Test Log FDLE/ATP Form 13 – Effective January 1997. The breath test log shall be reviewed each calendar month by an agency inspector to ensure that the information is properly recorded and that all necessary corrections are made. The agency inspector's signature on the breath test log shall signify compliance with this section.

Specific Authority 316.1932(1)(a)2., 316.1932(1)(f)1., 322.63(3)(a), 327.352(1)(b)3., 327.352(1)(d) FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History—New 10-31-93, Amended 1-1-97, _____.

11D-8.0075 Agency Retention of Records.

(1) Each agency shall maintain the following records for at least three years from the last entry date: breath test instrument registrations, agency inspection reports and agency inspection print cards, breath test logs, and breath test instrument repair records.

(2) The above records shall be accessible to the Department upon request.

(3) The purpose of this section is solely for regulatory and administrative use, and any violation of this section shall not affect the admissibility, validity or reliability of breath test results.

Specific Authority 316.1932(1)(a)2., 316.1932(1)(f)1., 322.63(3)(a), 327.352(1)(b)3., 327.352(1)(d) FS. Law Implemented 322.63(3), 327.354(3) FS. History—New _____.

(Substantial rewording of Rule 11D-8.008 follows. See Florida Administrative Code for present text.)

11D-8.008 Breath Test Operator and Agency Inspector.

(1) Qualifications for Breath Test Operator Permit – An applicant for a breath test operator permit must meet the following qualifications:

(a) Eighteen (18) years of age or older;

(b) High school diploma or its equivalent;

(c) Present employment by an agency, or the Department, or documentation from an agency head certifying that the person will be employed or authorized by the agency to conduct breath tests or agency inspections;

(d) Successful completion of the breath test operator qualification course approved by the Department and conducted through state community colleges, vocational technical schools, or training centers certified by the Department. Successful completion shall require obtaining a passing score of at least 80% on a written examination, and demonstrating proficiency by:

1. Properly operating an approved breath test instrument in accordance with the Operational Procedures Checklist FDLE/ATP Form 23 – Effective January 1997;

2. Properly completing the operational procedures checklist form, the breath test log, the breath test results affidavit, and the print card.

(e) Submit to the Department a complete written application on the Breath Test Permit Application FDLE/ATP Form 8 – Rev. March 2001, upon successful completion of the breath test operator qualification course, but no later than thirty days after completion.

(2) Qualifications for Agency Inspector Permit – An applicant for an agency inspector permit must meet the following qualifications:

(a) Has been issued a breath test operator permit by the Department valid at the time that the application is submitted;

(b) Successfully completes the agency inspector qualification course approved by the Department conducted through state community colleges, vocational technical schools, or training centers certified by the Department. Successful completion shall require a passing score of at least 80% on a written examination and a demonstration of proficiency by:

1. Proper inspection of an approved breath test instrument in accordance with the Agency Inspection Procedures FDLE/ATP Form 16 – Rev. March 2001;

2. Proper completion of the Agency Inspection Report FDLE/ATP Form 24 – Rev. March 2001;

3. Review of the breath test log to ensure that all necessary information has been correctly recorded and signing the form on the space provided.

(c) Submits to the Department a complete written application on the Breath Test Permit Application FDLE/ATP Form 8 – Rev. March 2001, upon successful completion of the agency inspector qualification course, but no later than thirty days after completion.

(3) A breath test operator permit or an agency inspector permit shall be valid for two years from its effective date.

(4) A person qualifies for renewal of a breath test operator permit or agency inspector permit where such person possesses a valid permit and:

(a) Continues to meet the qualifications for such permit;

(b) Successfully completes the applicable renewal training course approved by the Department and conducted through state community colleges, vocational technical schools, or training centers certified by the Department. Successful completion shall require a passing score of at least 80% on a written examination and a demonstration of proficiency as described in subsection (1)(d) or subsection (2)(b) of this rule, whichever is applicable.

(c) Submits to the Department a complete written application on the Breath Test Permit Application FDLE/ATP Form 8 – Rev. March 2001, upon successful completion of the renewal training course, but no later than thirty days after completion.

(5) A renewed permit shall be valid for two years from its effective date. Renewal of an agency inspector permit automatically renews that person's breath test operator permit.

(6) A person whose expired permit is not renewed within sixty (60) days after expiration must meet the qualification requirements specified in subsection (1) or (2), whichever is applicable, in order to obtain a valid permit.

(7) A breath test operator or agency inspector must notify the Department in writing of any change of employment within thirty days of such change.

(8) Permits to conduct breath tests and inspect breath test instruments issued pursuant to former 11D-8.008, F.A.C., shall remain valid until such permits expire or otherwise become invalid in accordance with those rules.

(9) Agency Inspectors are responsible for compliance with Chapter 11D-8 rules governing agency custody, care, and inspection of breath test instruments and related records.

(10) Any breath test operator or agency inspector who fails to successfully complete the renewal training course shall not perform any duties authorized by the applicable permit until successful completion of the applicable renewal training course or qualification course.

Specific Authority 316.1932(1)(a)2., 316.1932(1)(f)1., 322.63(3)(a), 327.352(1)(b)3., 327.352(1)(d) FS. Law Implemented 316.1934(3), 322.63(3)(b), 327.354(3) FS. History--New 10-31-93, Amended 1-1-97,

(Substantial rewording of Rule 11D-8.010 follows. See Florida Administrative Code for present text.)

11D-8.010 Qualifications for Instructors.

(1) Persons who conduct Department approved breath test training courses must have a valid breath test instructor permit issued by the Department. This does not preclude instruction by guest instructors under the supervision of permitted instructors.

(2) Applicants for breath test instructor permits must meet the following qualifications:

(a) High school diploma or its equivalent;

(b) Two years as a breath test operator and two years as an agency inspector and have valid breath test operator and agency inspector permits;

(c) Possess a valid instructor certification issued by the Criminal Justice Standards and Training Commission;

(d) Successfully complete the breath test instructor qualification course approved by the Department. Successful completion requires a passing score of at least 80% on each written examination, a demonstration of proficiency required

for basic breath test operator and agency inspector permits in Rule 11D-8.008, and a demonstration of proficiency to instruct all Department approved breath testing courses:

(e) Submit to the Department a complete written application on the Breath Test Permit Application FDLE/ATP Form 8 – Rev. March 2001, upon successful completion of the breath test instructor qualification course, but no later than thirty days after completion.

(f) Applicants must meet qualifications (a), (b) and (c) prior to attending the breath test instructor qualification course.

(g) The above qualifications do not apply to persons who were issued breath test instructor permits prior to January 1, 1998.

(3) Effective January 1, 2002, during each calendar year each breath test instructor must successfully complete the breath test instructor update course approved by the Department in order to remain qualified for a breath test instructor permit. Successful completion of the breath test instructor update course automatically renews that person's agency inspector and breath test operator permits.

(4) Breath test instructors must adhere to and comply with the approved curricula and related forms when teaching Department approved courses and processing related documentation.

Specific Authority 316.1932(1)(a)2., 316.1932(1)(f)1., 322.63(3)(a), 327.352(1)(b)3., 327.352(1)(d) FS. Law Implemented 316.1934(3), 322.63(3)(b), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97,

(Substantial rewording of Rule 11D-8.012 follows. See Florida Administrative Code for present text.)

11D-8.012 Blood Samples – Labeling and Collection.

(1) Before collecting a sample of blood, the skin puncture area must be cleansed with an antiseptic that does not contain alcohol.

(2) Blood samples must be collected in a glass evacuation tube that contains a preservative such as sodium fluoride and an anticoagulant such as potassium oxalate or EDTA (ethylenediaminetetraacetic acid). Compliance with this section can be established by the stopper or label on the collection tube, documentation from the manufacturer or distributor, or other evidence.

(3) Immediately after collection, the tube must be inverted several times to mix the blood with the preservative and anticoagulant.

(4) Blood collection tubes must be labeled with the following information: name of person tested, date and time sample was collected, and initials of the person who collected the sample.

(5) Blood samples need not be refrigerated if submitted for analysis within seven (7) days of collection, or during transportation, examination or analysis. Blood samples must be otherwise refrigerated, except that refrigeration is not required subsequent to the initial analysis.

(6) Blood samples must be hand-delivered or mailed for initial analysis within thirty days of collection, and must be initially analyzed within sixty days of receipt by the facility conducting the analysis. Blood samples which are not hand-delivered must be sent by priority mail, overnight delivery service, or other equivalent delivery service.

(7) Notwithstanding any requirements in Chapter 11D-8, F.A.C., any blood analysis results obtained, if proved to be reliable, shall be acceptable as a valid blood alcohol level.

Specific Authority 316.1932(1)(a)2., 316.1932(1)(f)1., 322.63(3)(a), 327.352(1)(b)3., 327.352(1)(d) FS. Law Implemented 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.353(2), 327.354(3) FS. History–New 10-31-93, Amended

(Substantial rewording of Rule 11D-8.015 follows. See Florida Administrative Code for present text.)

11D-8.015 Denial, Revocation, and Suspension of Permits.

(1) Notwithstanding an applicant's qualifications under Section 11D-8.008, the Department shall deny an application for an original permit or renewal of a permit where the applicant:

(a) Fails to meet the permit qualifications under these rules.

(b) Has been convicted of any of the following offenses in any federal or state court:

1. Any felony;

2. Any misdemeanor involving perjury, false statements or falsification of records;

3. Criminal conviction for any violation of chapter 893, Florida Statutes;

4. Driving under the influence of alcoholic beverages or drugs during the five years prior to submitting the application;

5. Leaving the scene of an accident involving death or serious bodily injury.

(c) Knowingly performing the duties of a breath test operator, agency inspector, breath test instructor, or analyst without a valid applicable permit.

(d) Had the permit previously revoked.

(2) The Department is authorized to suspend any permit for a period of six months for any of the following reasons:

(a) Failure to prepare and maintain breath or blood testing records as required by these rules.

(b) Failure to continue to meet the qualifications for such permit.

(c) Any violation of these rules, or aiding and abetting any violation of these rules.

(3) The Department is authorized to permanently revoke any permit for any of the following reasons:

(a) Knowingly making a false statement or providing false information on any document required by these rules.

SPECIFIC AUTHORITY: 406.04 FS.

LAWS IMPLEMENTED: 112.313, 406.02, 406.06, 406.17 FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS 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: 10:00 a.m., Tuesday, May 22, 2001

PLACE: Florida Department of Law Enforcement, 2331 Phillips Road, Conference Room, 3rd Floor, Quad C, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Persons needing an accommodation to participate in any proceeding should call (850)410-7900 (Voice) or (850)656-9597 (TDD), at least five working days before such proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Craig Rockenstein, Regional Legal Advisor, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308

THE FULL TEXT OF THE PROPOSED RULE IS:

11G-1.002 District Medical Examiners, Associate Medical Examiners.

(1) No change.

(2) A District Medical Examiner may appoint such Associate Medical Examiners as needed, to serve at the pleasure of the DME. ~~An Associate Medical Examiner (AME) must be a Medical Doctor or, a Doctor of Osteopathy or a Doctor of Dental Surgery.~~

(3) through (11) No change.

Specific Authority 406.04 FS. Law Implemented 112.313, 406.02, 406.06, 406.17 FS. History—New 10-18-81, Formerly 11G-1.02, Amended 4-11-88, 12-26-88, 8-28-91, 2-23-93, 8-22-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Craig Rockenstein, Regional Legal Advisor, Florida Department of Law Enforcement

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dale Heideman, Forensic Coordinator, Florida Department of Law Enforcement.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 13, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 26, 2001

DEPARTMENT OF LAW ENFORCEMENT

Medical Examiners Commission

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Standard Investigation Procedures	11G-2
RULE TITLES:	RULE NOS.:
Physical Evidence	11G-2.004
Practice Guidelines	11G-2.006

PURPOSE AND EFFECT: The rules are amended and created to comply with Florida law revisions.

SUMMARY: The amendments to Rule 11G-2.004 and creation of Rule 11G-2.006, F.A.C., establish parameters or guidelines of practice or standards of conduct relating to examinations, investigations, or autopsies performed by medical examiners.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 406.04 FS.

LAWS IMPLEMENTED: 406.075, 406.11, 406.13 FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS 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: 10:00 a.m., Tuesday, May 22, 2001

PLACE: Florida Department of Law Enforcement, 2331 Phillips Road, Conference Room, 3rd Floor, Quad C, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Persons needing an accommodation to participate in any proceeding should call (850)410-7900 (Voice) or (850)656-9597 (TDD), at least five working days before such proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Craig Rockenstein, Regional Legal Advisor, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308

THE FULL TEXT OF THE PROPOSED RULES IS:

11G-2.004 Physical Evidence.

(1) Definitions. The following definitions apply to this section: Physical Evidence is an item or items taken during an investigation which is believed to be pertinent to the determination of the cause and manner of death or to subsequent questions arising in subsequent litigation.

(a) “Body part”. The entire head, an entire extremity, a portion of an extremity that includes a hand or foot, or the torso, of a dead human body. For human skeletal remains a body part is defined as a nearly complete skull, or most of the bones of extremity, or most of the bones of the torso.

(b) “Organ”. An entire internal viscus, such as a brain, heart, larynx, lung, stomach, or uterus of a dead human body.

(c) “Tissue”. A representative sample of a body part or organ, constituting a minority of the volume or mass of the part or organ.

(d) "Embedded tissue". Tissue which has been embedded in paraffin blocks, or the like, for the purpose of histological study.

(e) "Sections". Tissue mounted on glass slides for the purpose of histological staining.

(f) "Stained sections". Sections which have been stained for the purpose of microscopic examination.

(g) "Fluid". Liquid from a blood vessel, body cavity, hollow viscus, hematoma, or abscess of a dead human body. Fluids include blood, vitreous humor, bile, gastric content, urine, cerebrospinal fluid, and effusions.

(h) "Specimen". A body part, organ, tissue, fluid, embedded tissue, section, or stained section; or a swab from a body part, organ, tissue, or body surface.

(i) "Physical evidence". An item or items taken during an investigation which is believed to be pertinent to the determination of the cause of death, manner of death, identification of the deceased, determination of disease, injury or intoxication, or which is taken to answer anticipated questions in any investigation. Includes specimens.

(j) "Retained". With respect to specimens, kept by the medical examiner after the release of the remains to the next of kin.

(k) "Research". Any one of the following:

1. Procedures designed for therapy or resuscitation, performed on a dead human body for experiment or practice, unrelated to the determination of cause of death, mechanism of death, manner of death, presence of disease, injury, or intoxication, or identification of the deceased.

2. Testing of body parts or organs for purposes unrelated to the determination of cause of death, manner of death, presence of disease, injury, intoxication, or identification.

3. Testing of tissues or fluids by an experimental scientist that results in no report to the medical examiner.

(1) "Next of Kin". "Legally authorized person" as defined by s. 470.002(18), Florida Statutes.

(2) The medical examiner shall seize such physical evidence as shall be necessary to determine the cause and manner of death, presence of disease, injury, intoxication, and identification of the decedent, or to answer questions arising in criminal investigations, and shall label, prepare, analyze, examine, and catalog such evidence as needed. Specimens are physical evidence taken from the body during an investigation and may include gross tissue, embedded tissue, stained and unstained sections, swabs, smears, blood, urine, bile, liver, gastric, and ocular fluid.

(3) Examination for alcohol and appropriate chemical and drug concentrations shall be done in all deaths resulting from violence to persons over ten years of age, when death occurs within twelve hours of injury. The medical examiner shall seize such physical evidence as shall be necessary to determine the cause and manner of death and shall label, prepare, analyze, examine, and catalog such evidence as needed.

(4) Physical Evidence shall be retained by in the records of the medical examiner as follows: Examination for alcohol and appropriate chemical and drug concentrations shall be done in all deaths resulting from violence in persons over ten years of age, when death occurred within twelve hours of injury.

(a) Stained sections shall be preserved indefinitely and embedded tissue preserved for at least ten (10) years;

(b) All other specimens shall be retained for one year, and afterwards at the discretion of the medical examiner.

(c) All other physical evidence not released to another investigative agency or to the owner shall be retained for one year, and afterwards at the discretion of the medical examiner.

(5) Requests for independent examination and analysis of physical evidence in the custody of the medical examiner shall be allowed by the medical examiner under his supervision and control in a manner designed to provide maximal preservation of the physical evidence. Unless compelling reasons dictate, irreplaceable, non-duplicable and non-divisible physical evidence such as embedded tissue shall not be released for independent analysis and examination. Physical Evidence shall be retained in the records of the medical examiner as follows:

(a) Stained sections shall be preserved indefinitely and embedded tissue preserved for at least ten (10) years;

(b) All other specimens shall be retained for one year, and afterwards at the discretion of the medical examiner.

(c) All other physical evidence not released to another investigative agency or to the owner shall be retained for one year, and afterwards at the discretion of the medical examiner.

(6) Physical evidence specimens no longer required to be retained by the medical examiner shall be disposed of. Requests for independent examination and analysis of physical evidence in the medical examiner records shall be allowed by the medical examiner under his supervision and control in a manner designed to provide maximal preservation of the physical evidence. Unless compelling reasons dictate, irreplaceable, unduplicable, and nondivisible physical evidence such as embedded tissue shall not be released for independent analysis and examination.

(7) Procedures Concerning Body Parts. Physical evidence specimens no longer required to be retained by the medical examiner shall be disposed of.

(a) Human remains released by a medical examiner to the next of kin shall include all body parts unless the next-of-kin explicitly agree to claim an incomplete body.

(b) If human remains recovered by the medical examiner are incomplete owing to dismemberment or decomposition, and there is a possibility that further body parts will be discovered subsequently, the next-of-kin shall be given the choice of claiming incomplete remains, or waiting to claim the remains until further parts are recovered.

(c) If a body part such as a skull requires special examination, release of the remains should be delayed until the special examination is completed unless the next-of-kin explicitly choose to claim incomplete remains.

(d) Body parts retained by the medical examiner shall be subsequently released to the next-of-kin or disposed of pursuant to the wishes of the next-of-kin.

(e) Body parts not claimed by the next-of-kin are considered biomedical waste [s. 381.0098(2)(a), F.S.] and shall be destroyed by legally prescribed means, at the expense of the medical examiner.

(f) Evidentiary aspects of retained body parts shall be preserved by documentation by writing, photography, radiography or other indirect means, or by retention of tissue samples. Body parts themselves shall not be retained as evidence for legal proceedings.

(g) Permission of the next-of-kin is not required to retain organs, tissues, sections, or fluids for the determination of cause of death, manner of death, disease, injury, intoxication, or identification of the deceased.

(h) Permission of the next-of-kin is not required to destroy retained organs, tissues, sections, or fluids.

(8) Research.

(a) Permission of the next-of-kin is required for:

1. Retention of specimens solely for the purpose of research.

2. Research procedures, designed for therapy or resuscitation, performed on a dead human body for experiment or practice, unrelated to the determination of cause of death, mechanism of death, manner of death, presence of disease, injury, or intoxication, or identification of the deceased.

(b) Permission of the next-of-kin is not required for:

1. The utilization of specimens for teaching and educational purposes, or publication in scientific or medical publications, when the specimens were retained for the determination of cause of death, manner of death, disease, injury, intoxication, identification of the deceased, or preservation of evidence.

2. The utilization of medical examiner records for teaching and educational purposes, or publication in scientific or medical publications, when the records were created in the course of medical examiner death investigations.

Specific Authority 406.04 FS. Law Implemented 406.11, 406.13 FS. History--New 10-18-81, Formerly 11G-2.04, Amended 8-27-87, 10-14-96, _____.

11G-2.006 Practice Guidelines.

The duties and standards of care of a medical examiner are to be consistent with those contained in the "Practice Guidelines of the Florida Association of Medical Examiners," which publication is dated 9-29-99 and is hereby incorporated by reference.

Specific Authority 406.04 FS. Law Implemented 406.075, 406.11, 406.13 FS. History--New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Craig Rockenstein, Regional Legal Advisor, Florida Department of Law Enforcement

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dale Heideman, Forensic Coordinator, Florida Department of Law Enforcement

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 13, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 26, 2001

DEPARTMENT OF REVENUE

RULE TITLES:	RULE NOS.:
Scope of Rules	12-13.001
Definitions	12-13.002
Request for Settlement or Compromise	12-13.003
Delegation of Authority to Settle or Compromise	12-13.004
Grounds for Finding Doubt as to Liability	12-13.005
Grounds for Finding Doubt as to Collectibility	12-13.006
Grounds for Reasonable Cause for Compromise of Penalties	12-13.007
Guidelines for Determining Amount of Compromise	12-13.0075
Procedures for Compromise and Settlement of Taxes, Interest, and Penalties	12-13.008
Closing Agreements	12-13.009
Special Provisions Applicable to Compromise of Estate Taxes	12-13.010

PURPOSE AND EFFECT: The purpose of the proposed changes to Rule Chapter 12-13, F.A.C., is to implement 1999 and 2000 legislative changes regarding the Department's authority granted by statute to settle and compromise liabilities for tax, interest, and penalty. The effect of these proposed rule changes will be to provide current guidelines regarding this authority granted to the Department.

SUMMARY: The proposed amendments to Rule 12-13.001, F.A.C., clarify that the Department of Revenue (DOR) has been "granted" authority by statute to settle and compromise liabilities for tax, interest, and penalty.

The proposed amendments to Rule 12-13.002, F.A.C., ensure that DOR's authority to settle and compromise refund issues is acknowledged in applicable definitions, and add language relating the settlement and compromise provisions of this rule chapter to the revenue sources enumerated in s. 72.001(1), F.S., which conforms these rules to s. 213.21, F.S.

The proposed amendments to Rule 12-13.003, F.A.C., explain when a settlement or compromise request must be written, and eliminate obsolete provisions concerning the taxation of unlawful sales, use, and other transactions involving medicinal drugs, cannabis, or controlled substances.

The proposed amendments to Rule 12-13.004, F.A.C., ensure that DOR's authority to settle and compromise refund issues is acknowledged in the provisions of this rule; increase the Executive Director's authority to settle and compromise from \$100,000 to \$250,000, as required by 1999 legislative change; add settlement on the basis of reliance on a prior written determination from the DOR to circumstances in which the \$250,000 limitation on settlement authority does not apply, as provided in 2000 legislative changes; establish procedures for the temporary delegation of settlement and compromise authority; retain the specific designations by job title and dollar amount, and increase such amounts by 150 percent, based on 1999 legislative changes; increase the settlement and compromise authority of the Deputy Executive Director, the General Counsel, and the Deputy General Counsel from \$100,000 to \$250,000.

The proposed amendments to Rule 12-13.005, F.A.C., address the circumstances under which a taxpayer will be considered to have reasonably relied on a prior written determination of the DOR for purposes of establishing doubt as to liability for compromise of tax or interest, as provided in 2000 legislative changes.

The proposed amendments to Rule 12-13.006, F.A.C., contain technical changes concerning DOR's determination of "doubt as to collectibility" regarding a taxpayer's request for settlement or compromise of tax and interest.

The proposed amendments to Rule 12-13.007, F.A.C., address when a taxpayer has reasonably relied on written advice of the DOR for purposes of establishing reasonable cause for compromise of penalty.

The proposed amendments to Rule 12-13.0075, F.A.C., make several technical changes and add reasonable reliance on written determination by DOR to the factors to be considered in determining amount of compromise based on doubt as to liability.

The proposed amendments to Rule 12-13.008, F.A.C., establish procedures for accepting oral and electronic requests from taxpayers for settlements and compromises that do not exceed a certain monetary amount, and make technical changes conforming other provisions of this rule to the acceptance of oral and electronic requests.

The proposed amendments to Rule 12-13.009, F.A.C., increase from \$15,000 to \$37,500 the minimum amount used to designate DOR employees who are authorized to sign closing agreements with taxpayers, which conforms this dollar amount to the 1999 legislative changes.

The proposed amendments to Rule 12-13.010, F.A.C., increase the Estate Tax settlement and compromise authority of the General Counsel and the Deputy General Counsel from \$100,000 to \$250,000, and provide for delegation of settlement and compromise authority for the Estate Tax to other DOR employees.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Since these proposed rule amendments to Rule Chapter 12-13, F.A.C., only implement statutory provisions, no new regulatory costs are being created. Therefore, no statement of estimated regulatory costs has been prepared.

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

SPECIFIC AUTHORITY: 20.05(5), 213.06(1), 213.21(5) FS.

LAW IMPLEMENTED: 120.55(1)(a)4., 213.05, 213.21 FS.

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

TIME AND DATE: 10:00 a.m., May 22, 2001

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Linda W. Bridges, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9412

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least five (5) calendar days before such proceeding by contacting Jamie Phillips at (850)488-0717. If you are hearing or speech impaired, please contact the Department by calling 1(800)DOR-TDD1 (1(800)367-8331).

THE FULL TEXT OF THE PROPOSED RULES IS:

12-13.001 Scope of Rules.

The rules set forth in this chapter shall be used by the Executive Director or the Executive Director's designee, as set forth hereinafter, in the exercise of the authority to settle and compromise liability for tax, interest, and penalty granted by ~~pursuant to~~ s. 213.21, F.S. However, special provisions applicable to settlement and compromise of estate taxes, interest, and penalty imposed pursuant to Chapter 198, F.S., are set forth in Rule 12-13.010, F.A.C.

Specific Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21 FS. History—New 5-23-89, Amended 8-10-92, _____.

12-13.002 Definitions.

The meanings ascribed to the words and terms listed below shall be applicable, unless a different meaning is clearly indicated by the context in which the word or term is used.

(1) "Compromise" means a reduction of the amount of tax, interest, or penalty imposed to an amount less than the amount of tax, interest, or penalty imposed under a revenue law of this state, or a reduction in the amount of refund requested by a taxpayer. "Compromise" does not include correction of an error through cancellation of an erroneous billing, revision or withdrawal of an erroneous proposed assessment, or billing, or other corrective actions taken by the Department.

(2) No change.

(3) "Reasonable cause" means a basis for compromise of penalty which has been shown to exist based upon the facts and circumstances of the specific case and which reflects that the taxpayer exercised ordinary care and prudence in complying with a revenue law of this state, as provided in s. 213.21(2) and (3), F.S.

(4) "Revenue law of this state" means any a statute listed in s. 72.011(1), F.S., that imposes imposing a tax, penalty or interest, surcharge, permit, license, or fee collected by the Department.

(5) "Settle" means the resolution of a particular taxpayer's liability for tax, interest, or penalty, or the resolution of a taxpayer's refund request, by the Department under the provisions of this rule chapter.

(6) through (7) No change.

Specific Authority 213.06(1), 213.21(5) FS. Law Implemented ~~213.05~~, 213.21 FS. History--New 5-23-89, Amended 8-10-92, _____.

12-13.003 Request for Settlement or Compromise Taxes, Interest, and Penalties Which May Be Compromised.

(1) Subsections 213.21(2)(a) and (3), F.S., authorize the Executive Director, or the Executive Director's designee, to enter into closing agreements settling or compromising a liability for tax, interest, or penalty under any of the chapters specified in s. 72.011(1), F.S.

(2)(a) No tax, interest, penalty, or service fee shall be compromised or settled unless the taxpayer first submits a ~~written~~ request to compromise or settle tax, interest, penalty, or service fees. Such request must be in writing if and establishes as follows:

1. The amount requested to be compromised is greater than \$30,000; or,

2. The taxpayer asks to submit the request in writing; or,

3. The complexity of the issue(s) involved requires that the taxpayer submit a written request that explains the issue(s).

(b) The Department will accept a taxpayer's oral or electronic request for compromise or settlement, if:

1. The request for a compromise is for an amount less than or equal to \$30,000; and,

2. The request is not subject to either of the criteria discussed in subparagraphs 2. or 3. of paragraph (a) of this subsection.

(c) The taxpayer must establish in his or her request:

~~1.(a)~~ In regard to tax or interest, doubt as to the taxpayer's liability for tax or interest, or actual lack of collectibility of the tax or interest as demonstrated to the satisfaction of the Department by audited financial statements or other suitable evidence acceptable to the Department. Grounds for finding doubt as to liability and doubt as to collectibility, respectively, are set forth in further detail in Rules 12-13.005 and 12-13.006, F.A.C.

~~2.(b)~~ In regard to penalty, that the noncompliance was due to reasonable cause and not to willful negligence, willful neglect, or fraud. The taxpayer shall be required to set forth ~~in a written statement~~ the facts and circumstances which support the taxpayer's basis for compromise and which demonstrate the existence of reasonable cause for compromise of the penalty or service fee and such other information as may be required by the Department.

~~3.(c)~~ In regard to the service fee, when a financial institution error results in a draft, order, or check being returned to the Department, the taxpayer will be required to submit to the Department a written statement from the financial institution. The written statement must give the detail of the error(s) and explain why the financial institution was at fault. The statement must be on the financial institution's letterhead.

~~4.(d)~~ Grounds for finding reasonable cause are set forth in further detail in Rule 12-13.007, F.A.C.

~~(3) However, with regard to assessment made under s. 212.0505, F.S., Taxation of Unlawful Sales, Use, and Other Transactions Involving Medicinal Drugs, Cannabis, or Controlled Substances, the Executive Director or the Executive Director's designee may settle or compromise tax, penalty or interest only:~~

~~(a) Upon receipt of a written request by the state attorney, the statewide prosecutor, or the Attorney General which requests settlement or compromise and specifies the reason for such a request; and~~

~~(b) If the Executive Director or the Executive Director's designee finds that the requested compromise and settlement is in the best interest of the State.~~

Specific Authority 20.05(5), 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21(2)(a),(3),(5) FS., ~~Section 15, Chapter 94-353, Laws of Florida.~~ History--New 5-23-89, Amended 8-10-92, 11-15-94, _____.

12-13.004 Delegation of Authority to Settle or Compromise.

(1)(a) Authority to settle and compromise tax, interest, and penalty liabilities, and requests for refunds has, in addition to the statutory authorization in s. 213.21, F.S., been delegated to

the Executive Director of the Department by the Governor and Cabinet as the head of the Department, pursuant to Rule 12-3.007, F.A.C.

(b) The Executive Director is authorized to settle and compromise tax, interest, and penalty, and refund requests in all matters in litigation, including litigation pursuant to s. 72.011, F.S.

(c) In all other instances, the Executive Director is authorized to settle and compromise tax, interest, and penalty, and refund requests where the amount of tax compromised is \$250,000 \$100,000 or less. Any tax compromise of more than \$250,000 \$100,000, excepting only those cases in litigation or those cases in which a taxpayer has reasonably relied on a written determination issued by the Department, must be approved by the Governor and Cabinet, as the head of the Department. ~~Authority to settle and compromise tax, interest, and penalty is further delegated by the Executive Director under the circumstances described in subsections (2) through (7) herein.~~

~~Cross Reference: Rule 12-3.007, F.A.C.~~

(2) Cases in Litigation.

(a) Authority is delegated to the Deputy Executive Director, the General Counsel, and the Deputy General Counsel of the Department to settle and compromise tax, interest, or penalty in cases where a tax matter is in litigation pursuant to s. 72.011, F.S.

(b) Authority is delegated to any Assistant General Counsel to settle and compromise tax or interest of \$62,500 \$25,000 or less and penalty of \$125,000 \$50,000 or less.

(3) Cases in Protest. In cases involving a tax matter in protest in Technical Assistance and Dispute Resolution within the Office of the General Counsel, authority to settle and compromise is delegated as follows:

(a) For compromise of amounts of tax of \$250,000 \$100,000 or less, and compromise of interest and penalty in any amount, to the Deputy Executive Director, the General Counsel, and the Deputy General Counsel.

(b) For compromise of amounts of tax or interest of \$62,500 \$25,000 each or less and of penalty of \$250,000 \$100,000 or less to any Assistant General Counsel.

(c) For compromise of amounts of tax or interest of \$125,000 \$50,000 each or less and of penalty in any amount, to the Director of Technical Assistance and Dispute Resolution within the Office of the General Counsel, and the ~~Senior~~ Program Director and ~~Deputy Program Director~~ ~~Directors~~ within the General Tax Administration Program.

(d) For compromise of amounts of tax or interest of \$62,500 \$25,000 each or less and penalty of \$250,000 \$100,000 or less, to the Revenue Program Administrators I and II within the Office of the General Counsel, and the Process Managers of the Taxpayer Services, Compliance Enforcement, and Compliance Support Processes.

(e) For compromise of amounts of tax or interest of \$12,500 \$5,000 each or less and of penalty of \$125,000 \$50,000 or less, to all Regional Managers of the Compliance Enforcement Process.

(f) For compromise of amounts of tax or interest of \$12,500 \$5,000 each or less and of penalty of \$75,000 \$30,000 or less, to the Senior Attorneys, Attorneys, Tax Law Specialists, and Senior Tax Specialists of Technical Assistance and Dispute Resolution, and the Revenue Program Administrators I and II of the Compliance Support Process.

(g) For compromise of amounts of tax or interest of \$2,500 \$1,000 each or less and of penalty of \$75,000 \$30,000 or less, to the Revenue Program Administrators II and Revenue Administrators III of the Taxpayer Services Process.

(h) For compromise of amounts of tax or interest of \$1,250 \$500 each or less and of penalty of \$75,000 \$30,000 or less, to the Service Center Managers of the Compliance Enforcement Process.

(i) For compromise of amounts of tax or interest of \$1,250 \$500 each or less and of penalty of \$12,500 \$5,000 or less, to the Tax Specialists I and II, the Revenue Specialist Supervisors of the Taxpayer Services Process, and the Revenue Specialist Supervisors of the Compliance Enforcement Process.

(j) For compromise of amounts of tax or interest of \$625 \$250 each or less and penalty of \$3,750 \$1,500 or less, to the Revenue Specialists I, II, and III of the Taxpayer Services Process.

(k) For compromise of penalty of \$75,000 \$30,000 or less, to the Revenue Program Administrators I and II of the Compliance Enforcement Process.

(l) For compromise of penalty of \$37,500 \$15,000 or less, to the Process Group Managers of the Compliance Enforcement Process.

(m) For compromise of penalty of \$12,500 \$5,000 or less, to the Tax Specialist Administrators, Tax Audit Support Services Supervisors, and the Senior Tax Specialists (Case Processing and Contract Audits) of the Compliance Support Process.

(n) For compromise of penalty of \$12,500 \$5,000 or less, to the Tax Specialist II of the Program Director's Office within the General Tax Administration Program.

(o) For compromise of penalty of \$3,750 \$1,500 or less, to the Revenue Specialists I, II, and III of the Compliance Enforcement Process.

(4) Collection Cases. In cases involving a tax matter related to billings or assessments which have been issued by or referred to the Taxpayer Services Process, authority to settle and compromise is delegated as follows:

(a) For compromise of amounts of tax of \$250,000 \$100,000 or less, and compromise of interest and penalty in any amount, to the Deputy Executive Director, the General Counsel, and the Deputy General Counsel.

(b) For compromise of amounts of tax or interest of ~~\$25,000~~ ~~\$10,000~~ each or less and penalty of ~~\$62,500~~ ~~\$25,000~~ or less, to any Assistant General Counsel.

(c) For compromise of amounts of tax or interest of ~~\$125,000~~ ~~\$50,000~~ each or less and penalty in any amount, to the ~~Senior~~ Program Director and ~~Deputy~~ Program ~~Director~~ ~~Directors~~ of the General Tax Administration Program.

(d) For compromise of amounts of tax or interest of ~~\$62,500~~ ~~\$25,000~~ each or less and penalty of ~~\$250,000~~ ~~\$100,000~~ or less, to the Process Managers of the Taxpayer Services, Compliance Enforcement, and Compliance Support Processes.

(e) For compromise of amounts of tax or interest of ~~\$12,500~~ ~~\$5,000~~ each or less and penalty of ~~\$125,000~~ ~~\$50,000~~ or less, to the Regional Managers of the Compliance Enforcement Process.

(f) For compromise of amounts of tax or interest of ~~\$12,500~~ ~~\$5,000~~ each or less and penalty of ~~\$75,000~~ ~~\$30,000~~ or less, to the Revenue Program Administrators I and II of the Compliance Support Process.

(g) For compromise of amounts of tax or interest of ~~\$2,500~~ ~~\$1,000~~ each or less and penalty of ~~\$75,000~~ ~~\$30,000~~ or less, to the Revenue Program Administrators II and Revenue Administrators III of the Taxpayer Services Process.

(h) For compromise of amounts of tax or interest of ~~\$1,250~~ ~~\$500~~ each or less and penalty of ~~\$75,000~~ ~~\$30,000~~ or less, to the Service Center Managers of the Compliance Enforcement Process.

(i) For compromise of amounts of tax or interest of ~~\$1,250~~ ~~\$500~~ each or less and penalty of ~~\$12,500~~ ~~\$5,000~~ or less, to the Revenue Specialist Supervisors ~~and~~ Tax Specialists I and II of the Taxpayer Services Process and Revenue Specialist Supervisors of the Compliance Enforcement Process.

(j) For compromise of amounts of tax or interest of ~~\$625~~ ~~\$250~~ each or less and penalty of ~~\$3,750~~ ~~\$1,500~~ or less, to the Revenue Specialists I, II, and III of the Taxpayer Services Process.

(k) For compromise of penalty in amounts of ~~\$75,000~~ ~~\$30,000~~ or less, to all Revenue Program Administrators I and II of the Compliance Enforcement Process.

(l) For compromise of penalty in amounts of ~~\$37,500~~ ~~\$15,000~~ or less, to all the Process Group Managers of the Compliance Enforcement Process.

(m) For compromise of penalty in amounts of ~~\$12,500~~ ~~\$5,000~~ or less, to all Tax Specialist Administrators, Tax Audit Support Services Supervisors, Senior Tax Specialists (Case Processing and Contract Audits) of the Compliance Support Process.

(n) For compromise of penalty of ~~\$12,500~~ ~~\$5,000~~ or less, to the Tax Specialist II of the Program Director's Office within the General Tax Administration Program.

(o) For compromise of penalty in amounts of ~~\$3,750~~ ~~\$1,500~~ or less, to all Revenue Specialists I, II, and III of the Compliance Enforcement Process.

(p) Once an audit assessment has become final, the authority to compromise delegated pursuant to paragraphs (c) through (o) shall be limited to compromises based on doubt as to collectibility or reasonable cause based upon doubt as to collectibility.

(5) Audit Cases. In cases involving an audit of the taxpayer, or an audit conducted pursuant to a refund request, prior to initiation of litigation pursuant to s. 72.011, F.S., or expiration of the period for initiating same, or upon initial receipt of a protest involving penalty issues only, authority to settle and compromise is delegated as follows:

(a) For compromise of amounts of tax of ~~\$250,000~~ ~~\$100,000~~ or less, and compromise of interest or penalty in any amount, to the Deputy Executive Director, the General Counsel, and the Deputy General Counsel.

(b) For compromise of amounts of tax or interest of ~~\$125,000~~ ~~\$50,000~~ each or less and penalty in any amount, to the ~~Senior~~ Program Director and ~~Deputy~~ Program ~~Director~~ ~~Directors~~ in the General Tax Administration Program.

(c) For compromise of amounts of tax or interest of ~~\$62,500~~ ~~\$25,000~~ each or less and penalty of ~~\$250,000~~ ~~\$100,000~~ or less, to the Process Managers of the Taxpayer Services, Compliance Enforcement, and Compliance Support Processes.

(d) For compromise of amounts of tax or interest of ~~\$12,500~~ ~~\$5,000~~ each or less and penalty of ~~\$125,000~~ ~~\$50,000~~ or less, to the Regional Managers of the Compliance Enforcement Process.

(e) For compromise of amounts of tax or interest of ~~\$12,500~~ ~~\$5,000~~ each or less and penalty of ~~\$75,000~~ ~~\$30,000~~ or less, to the Revenue Program Administrators I and II of the Compliance Support Process.

(f) For compromise of amounts of tax or interest of ~~\$1,250~~ ~~\$500~~ each or less and penalty of ~~\$75,000~~ ~~\$30,000~~ or less, to the Service Center Managers of the Compliance Enforcement Process.

(g) For compromise of amounts of tax or interest of ~~\$1,250~~ ~~\$500~~ each or less and penalty of ~~\$12,500~~ ~~\$5,000~~ or less, to the Revenue Specialist Supervisors of the Compliance Enforcement Process.

(h) For compromise of amounts of tax or interest of ~~\$1,250~~ each or less and penalty of ~~\$37,500~~ or less, to the Tax Law Specialists, Senior Tax Specialists, and Revenue Program Administrator I in the Contract Audit and Certified Audit Subprocess within the Compliance Enforcement Process.

~~(i)~~ For compromise of amounts of penalty ~~in the amount of~~ ~~\$75,000~~ ~~\$30,000~~ or less, to all Revenue Program Administrators I and II of the Compliance Enforcement Process.

~~(j)(4)~~ For compromise of penalty in amounts of \$37,500 ~~\$15,000~~ or less, to all Process Group Managers of the Compliance Enforcement Process.

~~(k)(4)~~ For compromise of penalty in amounts of \$12,500 ~~\$5,000~~ or less, to all Tax Specialist Administrators, Tax Audit Support Services Supervisors, Senior Tax Specialists (Case Processing and Contract Audits) of the Compliance Support Process and Tax Specialists II within the General Tax Administration Program.

~~(l)(4)~~ For compromise of amounts of penalty ~~in the amount of~~ \$3,750 ~~\$1,500~~ or less, to all Revenue Specialists I, II, and III of the Compliance Enforcement Process.

(6) Refund Cases. In cases involving refund requests that have not been referred for audit, prior to initiation of litigation pursuant to s. 72.011, F.S., or prior to expiration of the period for initiating same, authority to settle and compromise is delegated as follows:

(a) For compromise of amounts of penalty of \$100,000 or less, to the Process Manager of the Refunds and Revenue Distribution Process.

(b) For compromise of amounts of penalty of \$30,000 or less, to the Senior Tax Audit Administrator in the Refunds and Revenue Distribution Process.

(c) For compromise of amounts of penalty of \$15,000 or less, to the Tax Audit Supervisors in the Refunds and Revenue Distribution Process.

~~(7)(6)~~ In all other circumstances not previously described in this rule, authority to settle and compromise tax in amounts of \$250,000 ~~\$100,000~~ or less and interest and penalty in any amount is delegated to the Deputy Executive Director, the General Counsel, and the Deputy General Counsel.

~~(8)(a)(7)~~ The Executive Director also shall have discretionary authority to delegate authority to settle and compromise to specific employees or positions on a temporary basis pursuant to the following circumstances: ~~not enumerated in this rule.~~

1. The issue assigned to the employee exceeds the monetary amount the employee is currently authorized to settle or compromise pursuant to this rule chapter; or,

2. The employee has assumed the duties of another employee who has authority, or a higher authority, to settle or compromise tax, interest, and penalty, and refund requests.

(b) A temporary ~~However,~~ a delegation of authority to any employee or position beyond that described herein shall be in writing, signed by the Executive Director, and shall be for a specified time period of no more than 2 years.

(c) Such delegations cannot grant authority to compromise tax in excess of \$250,000 ~~may be renewed in writing.~~

(d) Copies of any such written delegations of authority shall be maintained on file with the agency clerk in the Office of General Counsel.

Specific Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21 FS. History--New 5-23-89, Amended 8-10-92, 10-24-96,_____.

12-13.005 Grounds for Finding Doubt as to Liability.

(1) The Executive Director or the Executive Director's designee, as enumerated in Rule 12-13.004, F.A.C., shall make a determination ~~of~~ whether there is doubt as to liability for tax or interest based on all the facts and circumstances of the specific case. Doubt as to liability is indicated when there is reasonable doubt ~~as to~~ whether an action is required in view of conflicting rulings, decisions, or ambiguities in the law, and the taxpayer has exercised ordinary care and prudence in attempting to comply with the revenue laws of this state.

(2) Reasonable reliance ~~Reliance~~ upon the express terms of a written determination ~~advice given~~ by the Department establishes ~~may be the basis for~~ doubt as to liability. Consideration will be given to the complexity of the facts and the difficulty of the tax law and the issue involved, and also to the existence or lack of clear rules or instructions covering the taxpayer's situation. The taxpayer must show that the advice was timely sought from a departmental employee and that all material facts were disclosed, and that the express terms of the advice were actually followed. Advice issued by the Department informally, or in response to a hypothetical situation, will not be a basis for doubt as to liability. Advice issued in response to a taxpayer's request containing a misrepresentation of material facts is not a basis for a finding of doubt as to liability.

(a) For purposes of establishing doubt as to liability, a "written determination" shall be deemed issued by the Department under the following circumstances:

1. Audit workpapers from a prior audit of the same taxpayer clearly show that the same issue was considered in the course of the audit and that, after such consideration, the Department's auditor determined that no assessment was appropriate in regard to that issue. Audit workpapers that fail to assess tax based on a particular issue are not a written determination in regard to that issue unless those workpapers clearly demonstrate that the auditor was aware of the issue and determined that no assessment was appropriate in regard to that issue. Failure by an auditor to recognize an issue and assess tax in the audit workpapers is not a basis for doubt as to liability based on a written determination by the Department.

a. Audit workpapers include all correspondence, notices, file memoranda, schedules, exhibits, or other documents an auditor generates, receives from the taxpayer, or reviews in the course of conducting an audit.

b. If an auditor submits a request for technical advice in accordance with Rule Chapter 12-11, F.A.C., and an internal technical advisement is issued in response to that request, the internal technical advisement is part of the audit workpapers and will be considered a written determination of the Department as to that issue.

c. A written communication from the auditor to the taxpayer in the course of the audit that discusses an issue upon which no assessment is made will demonstrate that the issue was considered by the auditor.

d. If an auditor issues a notice of intent to make audit changes that includes an assessment on an issue and subsequently issues a revised notice of intent to make audit changes that removes the assessment on that issue, that revision and any written explanation the auditor prepares in regard to that revision establishes that the auditor determined that the taxpayer was not subject to assessment as to that issue.

e. Correspondence from the taxpayer to the auditor that discusses an issue upon which no assessment is made will demonstrate that the issue was considered by the auditor if the requirements of this sub-subparagraph are met. There must be documentation of the auditor's receipt of the correspondence, such as the auditor's signature on a receipt or a copy of the correspondence, if it is hand delivered, or a return receipt for registered or certified mail. Correspondence from the taxpayer will establish that the auditor considered an issue only if such correspondence is dated sufficiently prior to the auditor's issuance of a notice of intent to make audit changes or a revised notice of intent to make audit changes to permit the auditor to investigate the issue and make a determination prior to issuing the notice. Correspondence from a taxpayer calling an issue to the auditor's attention will not have the effect of establishing that the auditor considered the issue if that correspondence is delivered to the auditor after the auditor has substantially completed the auditor's review of the taxpayer's books and records, unless the taxpayer agrees to a reasonable extension of the time in which the auditor must complete the audit under the applicable statute of limitations.

2. A final notice of decision or notice of reconsideration withdrawing an assessment on the same issue during an informal protest of a proposed assessment in a prior audit of the same taxpayer was issued by the Department. Correspondence from the Department in which an issue is discussed prior to issuance of a final notice or any offer to compromise the assessment in lieu of or in conjunction with the issuance of a notice of decision or notice of reconsideration is not a written determination on the issue for purposes of establishing doubt as to liability. This subparagraph applies only to a notice of decision or a notice of reconsideration that resolves the issue in favor of the taxpayer based on a determination that the assessment was not supported by the governing legal authorities.

3. A technical assistance advisement was issued to the same taxpayer pursuant to s. 213.22, F.S., in regard to the same issue. For purposes of this paragraph, a technical assistance advisement issued to an industry association as the representative of its members in accordance with Rule Chapter

12-11, F.A.C., will be considered a written determination as to any taxpayer that was a member of the association at the time the taxpayer reasonably relied upon the advisement.

(b) Only audit workpapers, notices of decision or reconsideration, and technical assistance advisements described in paragraph (a) are written determinations of the Department for purposes of s. 213.21(3), F.S. Audit workpapers, notices of decision or reconsideration, and technical assistance advisements are written determinations only as to the specific taxpayer or taxpayers to whom they were issued. For this purpose, if a taxpayer has multiple locations, the taxpayer may rely on a written determination issued as to any of the taxpayer's locations for purposes of the taxpayer's other locations so long as it is otherwise reasonable to do so under the criteria set forth in paragraph (c).

(c) A taxpayer must demonstrate that reliance on a written determination was reasonable. This requires that the taxpayer fully disclosed all material facts and did not misrepresent any material facts when the Department was considering the issue for purposes of issuing the written determination. Reliance on a written determination is reasonable only so long as the taxpayer continues to operate in accordance with the material facts upon which the written determination was based. Reliance by an industry association member on a technical assistance advisement issued to the association as the representative of its members is reasonable only when that member's facts and circumstances conform in all material respects with the facts and circumstances upon which the technical assistance advisement to the industry association was based. If specific facts and circumstances change in a material manner, reliance on the written determination is no longer reasonable. Reliance on a written determination is not reasonable if the law applicable to an issue has changed so that the legal analysis on which the written determination was based is no longer valid. This would be the case if governing statutes or regulations have been materially revised or if a court of competent jurisdiction has published a final decision overruling the Department's determination. Reliance is not reasonable if the Department notifies the taxpayer in writing that the previous written determination is no longer correct and should not be relied upon after the date of such notification.

Specific Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21, 213.22 FS. History—New 5-23-89, Amended 8-10-92, 5-18-94, _____.

12-13.006 Grounds for Finding Doubt as to Collectibility. Tax or interest or both will ~~may~~ be compromised or settled on the grounds of "doubt as to collectibility" when it is determined that the financial status of the taxpayer is such that it is in the best interests of the State to settle or compromise the matter because full payment of the unpaid tax obligation is highly doubtful and there appears to be an advantage in having the case permanently and conclusively closed. The discretion to

make this determination is delegated pursuant to the procedures to those persons enumerated in Rule 12-13.004, F.A.C.

Specific Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21 FS. History—New 5-23-89, Amended 8-10-92, _____.

12-13.007 Grounds for Reasonable Cause for Compromise of Penalties.

(1) through (4) No change.

(5) Reasonable reliance ~~Reliance~~ upon the express terms of written advice given by the Department establishes is a basis for reasonable cause when the taxpayer shows that the advice was timely sought from a departmental employee and that all material facts were disclosed, and that the express terms of the advice were actually followed. “Written advice” for purposes of establishing reasonable cause as a basis for compromise of penalties includes a writing issued to the same taxpayer by the Department in response to that taxpayer's request for advice. The determination whether the taxpayer has reasonably relied on such written advice will be made in accordance with the criteria for determining if a taxpayer has reasonably relied on a written determination for purposes of compromise of tax and interest as set forth in Rule 12-13.005(2), F.A.C.

(6) through (14) No change.

Specific Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21 FS. History—New 5-23-89, Amended 8-10-92, 5-18-94, _____.

12-13.0075 Guidelines for Determining Amount of Compromise.

(1) Tax and Interest.

(a) Doubt as to Liability. When determining the amount of a compromise of tax or interest based upon doubt as to liability, the following factors shall be considered by the Department:

1. Likelihood of prevailing on the issue in litigation;
2. Ambiguity in the applicable laws or rules, as evidenced by both the laws or rules themselves and the common interpretation and application of same among members of the taxpayer's industry; ~~and~~
3. Whether doubt as to liability is based upon reasonable reliance by the taxpayer on a written determination by the Department as provided in Rule 12-13.005(2), F.A.C.; and

~~4.3.~~ Whether tax was collected but not remitted to the state by the taxpayer.

(b) Doubt as to Collectibility. When determining the amount of a compromise of tax or interest based upon doubt as to collectibility, the following factors shall be considered by the Department:

1. Whether the financial problems of the taxpayer can be addressed, in whole or in part, through use of a stipulated payment arrangement, in lieu of reduction of the taxpayer's liability;

2. Whether a pattern of chronic tax delinquencies by the taxpayer exists to indicate that efforts to assist this taxpayer because of its financial problems will not ultimately serve the public interest but will simply afford this a particular taxpayer a competitive advantage in the market; and,

3. Whether tax was collected but not remitted to the state by the taxpayer.

(2) Penalty. When determining the amount of a compromise of penalty based upon a finding of reasonable cause, the following factors shall be considered by the Department:

(a) Factors that weigh against reduction of penalty include:

1. The tax deficiency assessed as a result of an audit exceeds 5% of the total liability for the same tax for the audit period.

2. Taxpayer has been audited previously and the current tax deficiency resulted from specific issue-related error(s) identified in previous audit(s). It is not the intent that ~~of~~ this subparagraph ~~to~~ apply to infrequent occurrences of human error.

3. Taxpayer has been repeatedly delinquent in remitting the tax.

4. Taxpayer failed to promptly remit tax and interest upon receipt of a billing or notice.

5. Tax was collected but not remitted to the state by the taxpayer.

(b) Factors that weigh in favor of reduction of penalty include:

1. Tax assessed as a result of an audit is less than 5% of the total liability for the same tax for the audit period.

2. Tax deficiency assessed is a result of a first-time audit, or is a result of an audit conducted subsequent to an audit in which the same specific issue-related errors by the taxpayer were not present or not identified by the Department. It is not the intent that ~~of~~ this subparagraph ~~to~~ apply to infrequent occurrences of human error.

3. Taxpayer has not been repeatedly delinquent in remitting the tax to the Department.

4. Taxpayer demonstrated to auditor prior to conclusion of the audit that action had been taken to improve future compliance by correcting or controlling activities which gave rise to the tax deficiency and related penalty.

5. Taxpayer promptly remitted tax and interest upon receipt of a billing or notice.

(3) No change.

(4) Self Audits/Self-Analysis of Books.

(a) When a taxpayer timely responds to and complies with the Department's request that the taxpayer participate in a self-audit or self-analysis of books and records, the Department will compromise all penalties.

(b) through (7) No change.

Specific Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21 FS. History--New 8-10-92, Amended.

12-13.008 Procedures for Compromise and Settlement of Taxes, Interest, and Penalties.

(1) The Department will consider compromise or settlement of the taxpayer's liability for tax, interest, or penalty only upon its receipt of the taxpayer's written request that the same be settled and compromised under s. 213.21(3), F.S. However, a written request is not required for the compromise or settlement of penalty and returned check service fee amounts of \$30,000 or less. The taxpayer's ~~written~~ request should include:

- (a) The taxpayer's name, address, and taxpayer identifying tax identification number;
- (b) The type of tax and, if applicable, the type of penalty, and the taxable period(s) involved;
- (c) The amount of tax, interest, or penalty involved; and
- (d) A statement of the following:

1. In the case of tax or interest, the taxpayer's basis for doubt as to liability or collectibility, and the facts and circumstances which support the existence of such doubt; and

2. In the case of penalty, the taxpayer's basis for reasonable cause, and the facts and circumstances which support the existence of reasonable cause and which indicate the absence of willful negligence, willful neglect, or fraud.

(2) When a Department employee has additional knowledge or information supporting the taxpayer's ~~written~~ request for compromise, the finding in support of a compromise may be based upon such knowledge or information, provided the basis for compromise is documented in writing.

(3) A Department employee is authorized to compromise penalty within the employee's authority when it is determined that sufficient evidence exists to support a finding of reasonable cause despite the fact that no written request has been made by the taxpayer. The person exercising the Department's authority shall prepare full documentation of any request and the compromise, including the basis for finding reasonable cause, for the Department's record.

(4) The taxpayer's ~~written~~ request for compromise shall be filed upon receipt of a billing, notice, proposed assessment, or assessment, and shall be filed with the office issuing such billing, notice, proposed assessment, or assessment. This subsection is intended to expedite requests for compromise and settlement of taxes, interest, and penalties, but it does not alter deadlines specified in Rule Chapter 12-6, F.A.C.

Specific Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21 FS. History--New 5-23-89, Amended 8-10-92, 5-18-94, 10-24-96,_____.

12-13.009 Closing Agreements.

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

(d) Any person delegated authority under this rule to compromise amounts of ~~\$37,500~~ \$15,000 or more may sign a closing agreement on behalf of the Department, after determining that the compromise action complies with these rules. The Executive Director shall have discretionary authority to delegate authority to sign closing agreements to specific employees or positions not enumerated in these rules. A delegation of authority to any employee or position which is not enumerated herein shall be in writing, signed by the Executive Director, and shall be for a specified time period of no more than 2 years. Such delegations may be renewed in writing. Copies of any such written delegations of authority shall be maintained on file with the Agency Clerk in the Office of General Counsel.

(3) through (5) No change.

Specific Authority 213.06(1), 213.21(5) FS. Law Implemented 120.55(1)(a)4., 213.05, 213.21 FS. History--New 5-23-89, Amended 8-10-92, 5-18-94, 10-24-96,_____.

12-13.010 Special Provisions Applicable to Compromise of Estate Taxes.

(1) Pursuant to s. 213.21(2)(b), F.S., the Executive Director is granted authority to compromise and settle the amount of taxes arising as a result of Chapter 198, F.S. Section 213.21(3), F.S., authorizes the Department to compromise or settle tax, penalty, or interest in any amount. If a case involves a billing or assessment issued by or referred to the Taxpayer Services Process, authority to compromise and settle is delegated as set forth in Rule 12-13.004(4), F.A.C., for collection cases. If a case is protested, authority to compromise and settle is delegated as set forth in Rule 12-13.004(3), F.A.C. If a case is in litigation, authority to compromise and settle is delegated as set for in Rule 12-13.004(2), F.A.C. This is further delegated by this rule to:

~~(a) The General Counsel and Deputy General Counsel to compromise tax of \$100,000 or less and interest and penalty in any amount; and~~

~~(b) Other designees of the Executive Director to compromise penalty of \$10,000 or less.~~

(2) through (3) No change.

Specific Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21 FS. History--New 8-10-92, Amended 5-18-94,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Linda W. Bridges, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9412

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mark Zych, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone number (850)488-2576

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 16, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed rule amendments were noticed for a Rule Development Workshop in the Florida Administrative Weekly on February 9, 2001 (Vol. 27, No. 6, pp. 527-534). A rule development workshop was held on February 26, 2001, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida, regarding these proposed rule amendments. Changes were made to and included in the proposed amendments, as contained in the Notice of Proposed Rulemaking, in response to comments received at the rule development workshop and in writing.

DEPARTMENT OF REVENUE

RULE TITLES:	RULE NOS.:
Application for Refund	12-26.003
Refund Approval Process	12-26.004
Public Use Forms	12-26.008

PURPOSE AND EFFECT: These proposed rule changes clarify the procedures a taxpayer must use to claim a refund of taxes paid to the Department. The effect of these proposed rules is to ensure taxpayers successfully complete all refund application procedures.

SUMMARY: A) The proposed amendments to Rule 12-26.003, F.A.C. (Application for Refund) inform taxpayers applying for a refund that they should return the appropriate application to DOR using the address or instructions on the form; remove the reference to the specific DOR address to which taxpayers must send form DR-26; add forms DR-26S and F-1120A to those forms that can be used to apply, respectively, for a sales tax or corporate income tax refund; provide that, beginning January 1, 2002, Form DR-26S must be used for applying for a refund of taxes paid pursuant to Chapter 212, F.S.; and, clarify that an application for an Estate Tax refund does not require the filing of a DR-26, but instead requires the filing of DOR form F-706 with the application. B) The proposed change to Rule 12-26.004, F.A.C. (Refund Approval Process) establishes DOR form DR-370026 (Mutual Agreement to Audit or Verify Refund Claim) as the proper form to use to document that a taxpayer and the Department have jointly agreed to extend the time during which a taxpayer's refund request is pending. C) The proposed revisions to Rule 12-26.008, F.A.C. (Public Use Forms) add forms DR-26S (Application for Refund – Sales and Use Tax), and DR-370026 (Mutual Agreement to Audit or Verify Refund Claim) to those used by the Department and the public for refund procedures; and, delete two forms that are not rules pursuant to Chapter 120, F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Since these proposed rule amendments reduce the administrative burden and potential confusion taxpayers may experience when they apply to claim

a refund, no new administrative costs are being created. Therefore, no statement of estimated regulatory cost has been prepared.

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

SPECIFIC AUTHORITY: 213.06(1) FS.

LAW IMPLEMENTED: 95.091(3), 213.235, 213.255, 213.34, 213.345, 215.26 FS., ss. 2, 3, 4, 5, 6, 7, and 40, Ch. 91-112, L.O.F.

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

TIME AND DATE: 10:00 a.m., May 22, 2001

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Larry Green, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, Post Office Box 7443, Tallahassee, Florida 32314-7443, or by telephone at (850)922-4830

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least five (5) calendar days before such proceeding by contacting Jamie Phillips, (850)922-4726. If you are hearing or speech impaired, please contact the Department by calling 1(800)DOR-TDD1 (1(800)367-8331).

THE FULL TEXT OF THE PROPOSED RULES IS:

12-26.003 Application for Refund.

(1) No change.

(2)(a) Applications for tax refund under those revenue laws enumerated in s. 72.011(1), F.S., shall be deemed complete upon the Department's receipt of a properly executed application for refund form which contains the information required by ss. 213.255(2) and 215.26, F.S., and this rule, except as provided in paragraph (b) of this subsection. Applications for refund shall be filed with the Florida Department of Revenue by submitting the completed application to the Department, using the address or instructions contained on the DR-26 or DR-26S application, or other form described in subsection (4) of this rule.

(b) Refund applications filed under the provisions of section 212.08(5)(g), (h), (n), and (o), Florida Statutes, also require, in addition to the DR-26 or DR-26S required by paragraph (a) of this subsection, the forms specified in Rule 12A-1.107, F.A.C., in order to be deemed completed applications. ~~Refund Subprocess, P. O. Box 6490, Tallahassee, Florida 32314-6490.~~

(3) For purposes of this rule, Form DR-26, Application for Refund from the State of Florida Department of Revenue, incorporated by reference in Rule 12-26.008, F.A.C., is the approved refund application for all taxes collected by the Department, except as otherwise specified in subsection (4) of this rule. However, taxpayers applying for a refund of any taxes paid pursuant to Chapter 212, F.S., can also use Form DR-26S, Application for Refund – Sales and Use Tax, incorporated by reference in Rule 12-26.008, F.A.C. Beginning, January 1, 2002, Form DR-26S must be used to apply for a refund of taxes paid pursuant to Chapter 212, F.S.

(4) Tax refunds requiring a refund application other than Form DR-26 are listed below.

(a) Corporate Income Tax. Except as provided in subsection (5), all refunds claimed under Chapters 220 and 221, F.S., shall be made by the filing of ~~either~~:

1. Form F-1120, Florida Corporate Income/Franchise and Emergency Excise Tax Return or form F-1120A, Florida Corporate Short Form Income Tax Return (incorporated by reference in Rule 12C-1.051, F.A.C.) or

2. through (e) No change.

(f) Estate Tax. Application for all refunds claimed under Chapter 198, F.S., must be made by filing Form F-706 (incorporated by reference in Rule 12C-3.008, F.A.C.).

(5) through (8) No change.

Specific Authority 213.06(1) FS. Law Implemented 95.091(3), 213.235, 213.255, 213.34, 213.345, 215.26 FS. History--New 11-14-91, Amended 4-18-93, 4-18-95, 4-2-00,_____.

12-26.004 Refund Approval Process.

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

(c) The 90 consecutive calendar day period and the requirement to pay interest on refund amounts not timely paid or credited to a taxpayer, as discussed in paragraphs (a) and (b) above, will be tolled if:

1. Both the taxpayer and the Department agree that an audit or other verification process is necessary to validate the taxpayer's refund request, and;

2. Both parties complete and sign Department Form DR-370026 (Mutual Agreement to Audit or Verify Refund Claim) ~~DR-872 (Consent to Extend the Time to Issue an Assessment or to File a Claim for Refund).~~

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

Specific Authority 213.06(1) FS. Law Implemented 95.091(3), 213.235, 213.255, 213.34, 213.345, 215.26 FS. History--New 11-14-91, Amended 4-2-00,_____.

12-26.008 Public Use Forms.

The following public use forms are used by the Department in the processing of refunds and refund denials and are hereby incorporated by reference. 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 stated in 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, ~~upon written request directed to the Department of Revenue, Refund Section, Building E, 5050 West Tennessee Street, Tallahassee, Florida 32399-0100.~~

Form Number	Title	Effective Date
(1) DR-26	Application for Refund from the State of Florida Department of Revenue (r. 09/92 04/92)	04/93
(2) DR-370026	Mutual Agreement to Audit or Verify Refund Claim (n. 03/01)	
DR-832R	Notice of Proposed Refund Denial (r. 01/93)	04/93
(3) DR-26S	Application for Refund--Sales and Use Tax (n. 11/00)	
DR-1200R	Notice of Intent to Make Refund Claim Changes (r. 07/92)	04/93

Specific Authority 213.06(1) FS. Law Implemented 213.34, 215.26 FS., ss. 2, 3, 4, 5, 6, 7, and 40, Ch. 91-112, L.O.F. History--New 11-14-91, Amended 4-18-93,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Larry Green, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, Post Office Box 7443, Tallahassee, Florida 32314-7443, or by telephone at (850)922-4830

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, Post Office Box 7443, Tallahassee, Florida 32314-7443; telephone number (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 16, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Rule Development Workshop was published in the Florida Administrative Weekly on February 9, 2001 (Vol. 27, No. 6, pp. 534-536)

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE TITLES:	RULE NOS.:
Specific Exemptions	12A-1.001
Sales and Use Tax on Services; Sale for Resale	12A-1.0161
Consumer's Certificate of Exemption;	
Exemption Certificates	12A-1.038
Sales for Resale	12A-1.039
Public Use Forms	12A-1.097

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-1.001, F.A.C. (Specific Exemptions); Rule 12A-1.0161, F.A.C. (Sales and Use Tax on Services; Sale for Resale); and Rule 12A-1.097, F.A.C. (Public Use Forms); and the proposed substantial rewording of Rule 12A-1.038, F.A.C. (Consumer's Certificate of Exemption); and Rule 12A-1.039, F.A.C. (Sales for Resale), is necessary to implement ss. 18, 19, 20, 21, 22, 23, and 24, Chapter 99-208, L.O.F. Chapter 99-208, L.O.F., substantially amended provisions regarding the exemption provided for sales made for the purpose of resale. Chapter 2000-228, L.O.F., substantially revised s. 212.08(7), F.S., which provides sales tax exemptions for certain qualifying organizations. The proposed changes will remove obsolete guidelines for sales to exempt organizations and sales for the purposes of resale, remove obsolete suggested formats of resale/exemption certificates, and provide current guidelines regarding how to obtain a Florida Consumer's Certificate of Exemption and how to properly document tax exempt sales made for the purposes of resale.

SUMMARY: The proposed amendments to Rule 12A-1.001, F.A.C. (Specific Exemptions), implement the provisions of s. 1, Chapter 2000-228, L.O.F. This law substantially revised s. 212.08(7), F.S., which provides sales tax exemptions for certain qualifying organizations. With the exception of the provisions of s. 212.08(7)(cc), F.S., regarding the exemption provided for certain works of art, the new s. 212.08(7), F.S., is clear and an administrative rule to implement these exemptions provided by statute is unnecessary. For the purposes of the exemption provided for certain works of art, the law eliminates the definition provided in s. 212.08(7)(o)2.d., F.S., and creates a definition for the term "educational institution" in s. 212.08(7)(cc), F.S.

The proposed amendments to Rule 12A-1.001, F.A.C., also remove provisions regarding sales made directly to the United States Government, a state, county, municipality, or political subdivision and the suggested formats for exemption certificates to be issued by employees of these governmental entities. These suggested formats for exemption certificates will be provided in Rule 12A-1.038, F.A.C., as proposed for amendment.

The proposed amendments to Rule 12A-1.0161, F.A.C. (Sales and Use Tax on Services; Sale for Resale), provide current guidelines regarding the sale of taxable services for resale and remove obsolete guidelines regarding sales to exempt organizations. Guidelines regarding sales to exempt organizations and the suggested formats for exemption certificates will be provided in Rule 12A-1.038, F.A.C., as proposed for amendment. Guidelines regarding sales for the purpose of resale will be provided in Rule 12A-1.039, F.A.C., as proposed for amendment.

The proposed amendments to Rule 12A-1.038, F.A.C. (Consumer's Certificate of Exemption): (1) remove obsolete guidelines regarding sales made to tax exempt entities; (2) provide guidelines for organizations and governmental entities on how to obtain a Florida Consumer's Certificate of Exemption; (3) provide guidelines for the effective dates of Florida Consumer's Certificates of Exemption issued by the Department; (4) provide guidelines on how to challenge the denial of an application for a Florida Consumer's Certificate of Exemption; (5) provide guidelines for dealers making tax exempt sales to organizations holding a Consumer's Certificate of Exemption, to governmental entities, and to persons who purchase items tax exempt based on the use of the property or service; (6) provide guidelines on how to obtain a transaction authorization number or a vendor authorization number from the Department to properly document tax exempt sales; and (7) provide guidelines to dealers regarding records that are required to be maintained to document tax exempt sales.

The proposed substantial rewording of Rule 12A-1.039, F.A.C. (Sales for Resale): (1) implements the provisions of Chapter 99-208, L.O.F., regarding the exemption provided for sales for the purpose of resale and the Department's requirement to issue an Annual Resale Certificate to dealers actively registered with the Department; (2) removes obsolete provisions regarding the use of resale and exemption certificates; (3) provides guidelines regarding the methods that a selling dealer may use to properly document an exempt sale for the purpose of resale; (4) provides guidelines on how a selling dealer may obtain a transaction authorization number or a vendor authorization number from the Department to properly document tax exempt sales; (5) provides guidelines to selling dealers on the requirements for documenting sales of alcoholic beverages, sales of certain motor vehicles, and sales of motor vehicles to dealers who are not required to be registered in this state; (6) provides guidelines for when a selling dealer will be held harmless for establishing the exempt nature of a tax exempt sale for the purpose of resale; (7) provides guidelines to dealers regarding records that are required to be maintained to document tax exempt sales for the purpose of resale; (8) provides the requirements on how a taxpayer may purchase items or services for the purpose of resale tax exempt and the documentation requirements of such purchases; and (9) provides how taxpayers may use the Multistate Tax Commission's Uniform Sales and Use Tax Certificate-Multijurisdiction to make tax exempt purchases for the purposes of resale.

The proposed amendments to Rule 12A-1.097, F.A.C. (Public Use Forms), incorporate by reference, as required by s. 120.54, F.S., form DR-5N, Information and Instructions for Completing Application for Consumer's Certificate of Exemption, and incorporate form DR-5, Application for Consumer's Certificate of Exemption, and form DR-600013, Request for Verification that Customers are Authorized to Purchase for Resale.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Since these proposed rule amendments to Rules 12A-1.001, 12A-1.0161, and 12A-1.097, F.A.C., and the substantial rewording of Rules 12A-1.038 and 12A-1.039, F.A.C., only implement statutory provisions, no new regulatory costs are being created. Therefore, no statement of estimated regulatory costs has been prepared.

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

SPECIFIC AUTHORITY: 212.07(1)(b), 212.17(6), 212.18(2), 213.06(1) FS.

LAW IMPLEMENTED: 95.091(3), 120.57(1),(2), 120.60(3), 120.80(14), 212.02(10),(12),(14), (16),(20),(21), 212.05, 212.0515, 212.054, 212.055, 212.0596(7), 212.06(1)(a),(c),(e), (2),(9), 212.07(1),(8), 212.08(4),(5)(a),(e),(6),(7)(a),(b),(c),(d), (f),(h),(i),(k),(q),(v),(x),(cc),(nn),(8), 212.085, 212.13(4), (5)(c),(d), 212.17(6), 212.18(2),(3), 212.21(2), 213.053(10), 213.12(2), 213.37, 403.715 FS., ss. 21, 22, 23, 24, Ch. 99-208, L.O.F.

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

TIME AND DATE: 10:00 a.m., May 22, 2001

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Janet L. Young, (850)922-9407 and Vicki Allen, (850)922-4846, Tax Law Specialists, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least five (5) calendar days before such proceeding by contacting Jamie Phillips, (850)488-0717. If you are hearing or speech impaired, please contact the Department by calling 1(800)DOR-TDD1 (1(800)367-8331).

THE FULL TEXT OF THE PROPOSED RULES IS:

12A-1.001 Specific Exemptions.

(1) through (2) No change.

~~(3) RELIGIOUS, EDUCATIONAL, CHARITABLE, VETERANS' AND SCIENTIFIC ORGANIZATIONS, HOMES FOR THE AGED, NURSING HOMES OR HOSPICES, FEDERAL AND STATE CHARTERED CREDIT UNIONS, FLORIDA RETIRED EDUCATORS ASSOCIATION AND LOCAL CHAPTERS, ORGANIZATIONS PROVIDING SPECIAL EDUCATIONAL AND SOCIAL BENEFITS TO MINORS,~~

~~STATE THEATER CONTRACT ORGANIZATIONS, MILITARY MUSEUM FUNDRAISERS, COAST GUARD AUXILIARIES, AND CEMETERY ASSOCIATIONS.~~

~~(a) A sale or lease directly to or sales or leases of tangible personal property by churches, or a sale or lease directly to nonprofit religious, nonprofit educational, nonprofit charitable institutions, and veterans' organizations, for use in the course of their customary nonprofit religious, nonprofit educational, nonprofit charitable activities, and for use by veterans' organizations, including church cemeteries, are exempt from the tax imposed by Chapter 212, F.S. Also exempt are scientific organizations and organizations providing special educational and social benefits to minors; State Theater Contract Organizations; Florida Retired Educators Association; and certain nonprofit corporations qualified as homes for the aged or licensed as a nursing home or hospice. However, such institutions or organizations desiring to qualify for the exemption must obtain from the Department of Revenue a consumer's certificate of exemption, and payment must be made directly to the dealer by the exempt entity. See subparagraph (9)(d)2. of this rule for a suggested document to be provided the dealer by an employee who has been authorized to make purchases on behalf of a nonprofit organization when payments are made directly to the dealer by the exempt entity. This exemption shall not inure to any transaction otherwise taxable when payment is made by an exempt entity's employee by any means, including but not limited to, cash, check, or credit card, when that employee is subsequently reimbursed by the exempt entity. See Rules 12A 1.038 and 12A 1.039, F.A.C.~~

~~(b) With the exceptions noted below, sales or rentals of tangible personal property, rentals or leases of transient rental accommodations, rentals or leases of real property, rentals or leases of parking, docking, or tie down spaces, admissions, or other transactions subject to the tax imposed by Chapter 212, F.S., made by exempt entities are taxable. Such entities are required to register in the same manner as other dealers and collect and remit tax on transactions which are subject to the tax imposed by Chapter 212, F.S. For admission charges imposed by not-for-profit sponsoring organizations qualifying under the provisions of s. 501(c)(3) of the U.S. Internal Revenue Code, see Rule 12A 1.005(3)(g), F.A.C. Sales or leases of tangible personal property by churches are exempt. Sales or leases by the following organizations are exempt from the tax imposed pursuant to Chapter 212, F.S.:~~

~~1. Homes for the aged, nursing homes, or hospices; pursuant to s. 212.08(7)(m), F.S.;~~

~~2. Organizations providing special educational, cultural, recreational, and social benefits to minors, pursuant to s. 212.08(7)(n), F.S.;~~

~~3. State theater contract organizations, pursuant to 212.08(7)(r), F.S.;~~

4. Coast Guard auxiliaries, pursuant to s. 212.08(7)(ec), F.S.;

5. Citizen support organizations, pursuant to s. 212.08(7)(kk), F.S.;

6. Nonprofit cooperative hospital laundries, pursuant to s. 212.08(7)(nn), F.S.

(c) Church” means a religious institution having an established physical place of worship where persons regularly assemble for worship and instruction for religious purposes. Religious organizations whose functions are radio or television broadcasting or those organizations conducting services for short periods of time at temporary locations, and religious associations that provide administrative functions only, are not considered to be churches.

(d) “Religious institutions” means churches, synagogues, and established physical places for worship at which nonprofit religious services and activities are regularly conducted and carried on. The term “religious institutions” includes:

1. Nonprofit corporations, the sole purpose of which is to provide free transportation services to church members, their families, and other church attendees.

2. State, district, or other governing or administrative offices whose function is to assist or regulate the customary activities of religious organizations or members within the state or district organization.

3. Any corporation qualified as nonprofit pursuant to s. 501(c)(3), United States Internal Revenue Code, 1986, as amended, that owns and operates a Florida television station of which 90 percent of the station’s programming consists of programs of a religious nature. In addition, in excess of 50 percent of the financial support for the corporation, exclusive of receipts for broadcasting from other nonprofit organizations, must come from contributions from the general public.

(e) Furniture purchased by a church for the parsonage, rectory, or church home for the pastor with title to such furniture remaining in the name of the church is exempt.

(f)1. Nonprofit educational institutions must hold consumer’s certificates of exemption in order to be exempt from payment of tax on materials and supplies which are purchased for use by them in their customary educational activities. See Rules 12A 1.038 and 12A 1.039, F.A.C.

2.a. “Educational institutions” shall mean state tax supported or parochial, church and nonprofit private schools, colleges, or universities conducting regular classes and courses of study required for accreditation by, or membership in, the Southern Association of Colleges and Schools, State Department of Education, Florida Council of Independent Schools, or the Florida Association of Christian Colleges or nonprofit private schools which conduct regular classes and courses of study accepted for continuing education credit by a Board of the Division of Medical Quality Assurance of the

Department of Professional Regulation or which conduct regular classes and courses of study accepted for continuing education credit by the American Medical Association.

b. The term “educational institutions” includes any educational television or radio network or system established pursuant to s. 229.805, F.S., or s. 229.8051, F.S., and any nonprofit television or radio station which is a part of such network or system and which holds a current exemption from federal income tax under s. 501(c)(3), United States Internal Revenue Code.

e. The term “educational institutions” shall also include private nonprofit organizations whose primary purpose is to raise funds for schools teaching grades kindergarten through high school, colleges, and universities.

d. The term “educational institutions” also includes state, district, or other governing or administrative offices the function of which is to assist or regulate the customary activities of educational organizations or members.

e. Nonprofit libraries, art galleries, and museums open to the public are defined as educational institutions and are eligible for exemption.

f. The term “educational institutions” includes any nonprofit newspaper of free or paid circulation primarily on university or college campuses which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code. For the taxability of the sale of newspapers by educational institutions see Rule 12A 1.008(10), F.A.C.

g. On or after July 1, 1994, the term “educational institutions” includes a nonprofit educational cable consortium which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code, 1986, as amended, whose primary purpose is the delivery of educational and instructional cable television programming and whose members are composed exclusively of educational organizations which hold a valid consumer’s certificate of exemption and which are either an “educational institution” as defined in this paragraph or qualified as a nonprofit organization pursuant to s. 501(c)(3) of the Internal Revenue Code, 1986, as amended.

(3) ART SOLD TO OR USED BY AN EDUCATIONAL INSTITUTION.

(a)3.a. A “work of art,” as defined in s. 212.08(7)(cc)(dd)8., F.S., is exempt from sales and use tax if the work of art is sold to or used by an educational institution, as defined in s. 212.08(7)(cc)8., F.S. subparagraph 2., or if it is purchased in Florida or imported into Florida within six months from the date of purchase by any person exclusively for the purpose of being donated to, or being loaned to and made available for display by, an educational institution. A work of art is presumed to have been purchased in or imported into this state exclusively for loan to an educational institution if it is so loaned or placed in storage in

preparation for such a loan within 90 days after purchase or importation, whichever is later. A work of art will not be deemed to be "in storage" for purposes of this subsection ~~subparagraph~~ if it is displayed at any place other than an educational institution.

~~(b)~~ The purchaser or his authorized agent must: (1) complete an affidavit documenting entitlement to the exemption provided in s. 212.08(7)(cc)(~~dd~~), F.S., (2) present the affidavit to the seller of the work of art, and (3) forward a copy of the affidavit to the Department of Revenue when it is presented to the vendor. A purchaser may authorize his or her agent to execute such affidavit by a documented Power of Attorney filed with the Department. The Department prescribes Form DR-835, Power of Attorney (incorporated by reference in Rule 12C-1.051 ~~12A-1.097~~, F.A.C.), as the form to be used for such purposes.

~~(c)~~ The following is a suggested format of the affidavit to be provided by the purchaser or the authorized agent to the vendor of the work of art:

AFFIDAVIT FOR EXEMPTION OF A WORK OF ART TO BE DONATED OR LOANED TO AN EDUCATIONAL INSTITUTION

STATE OF FLORIDA
COUNTY OF _____

Personally appears the below named affiant, who being duly sworn, deposes and says:

1. I claim exemption under s. 212.08(7)(cc)(~~dd~~), F.S., from Florida sales and use tax on the work(s) of art, described below, purchased in Florida or imported into Florida exclusively for the purpose of being (check one).

a. _____ donated to _____, an educational institution as defined in s. 212.08(7)(cc)8.(~~6~~)2.d., F.S.

b. _____ loaned to _____, an educational institution as defined in s. 212.08(7)(cc)8.(~~6~~)2.d., F.S.

2. If a donation, title to the work(s) of art is being or will be transferred to the educational institution, and at the time of transfer, I will submit to the Department an affidavit evidencing the transfer of title.

3. If a loan:

a. The work(s) of art will be loaned to the educational institution or placed in storage in preparation for loan within 90 days after it was purchased in or imported into Florida. If placed in storage, it will not be displayed until such time as it is delivered to an educational institution.

b. I have entered into a written agreement with the educational institution providing for a loan of the work(s) of art and making the work(s) of art available to the educational institution for display for a term of not less than 10 years, or will do so before the transfer of possession of the work(s) of art to the educational institution occurs. A copy of the loan agreement will be provided to the Florida Department of Revenue at the time that the agreement is executed.

c. I understand that the exemption provided in s. 212.08(7)(cc)(~~dd~~), F.S., is allowed during the period of time in which the work(s) of art is in the possession of the educational institution, and

d. I understand that tax based upon the sales price as stated below will become due and payable at the time the provisions of s. 212.08(7)(cc)(~~dd~~), F.S., are no longer met, and the statute of limitations as provided in s. 95.091, F.S., will begin to run at that time. However, if I donate the work(s) of art to an educational institution after the loan ceases, no tax will be due.

4. A signed copy of this affidavit is being forwarded to the Florida Department of Revenue at the time the original is given to the seller of the work(s) of art.

Name of Purchaser _____

Purchaser's Permanent Address _____ (Street)
_____ (City) _____ (State)

Name of Seller _____

Seller's Permanent Address _____ (Street)
_____ (City) _____ (State)

DESCRIPTION OF WORK(S) OF ART _____

Sales Price _____ Date of Sale _____

Name of Educational Institution _____

Institution's Address _____ (Street)
_____ (City) _____ (State)

Educational Institution's Florida Consumer's Certificate of Exemption Number _____

Under the penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

(Signature of Purchaser or Authorized Agent)

Sworn to and subscribed before me
this _____ day of
_____ (Month), _____ (Year).

Notary Public, State of Florida
My commission expires: _____

NOTARY SEAL

Personally known ()

Produced Identification () Type: _____

Original to be retained by the seller and made part of the seller's records

1st Copy to be submitted to the Florida Department of Revenue, Compliance Enforcement, Enforcement Operations, P. O. Box 6417, Tallahassee, Florida 32314-6417

2nd copy: Purchaser's copy

~~(d)~~ The following is a suggested format of an affidavit of transfer of title to be provided by the purchaser or the authorized agent to the educational institution, as defined in s. 212.08(7)(cc)8. ~~(e)2-d.~~, F.S., upon donation of a work of art to that institution:

AFFIDAVIT TRANSFERRING TITLE TO A WORK OF ART TO AN EDUCATIONAL INSTITUTION

STATE OF FLORIDA
COUNTY OF _____

Personally appears the below named affiant, who being duly sworn, deposes and says:

1. I claim exemption under s. 212.08(7)(cc) ~~(dd)~~, F.S., from Florida sales and use tax on the work(s) of art described below that was purchased in Florida or imported into Florida for the exclusive purpose of being donated to _____, an educational institution as defined in s. 212.08(7)(cc)8. ~~(e)2-d.~~, F.S. A copy of the affidavit provided to the vendor of the work(s) of art at the time of purchase is attached.

2. Title to the work(s) of art has been, or is being, transferred to the educational institution, effective (date; no later than the date of this affidavit). Copies of any other documents evidencing the transfer of title to the educational institution are attached to this affidavit and are being forwarded to the Florida Department of Revenue with the affidavit.

3. A signed copy of this affidavit is being forwarded to the Florida Department of Revenue at the time the original is given to the educational institution.

Name of Transferor _____
_____ (City) _____ (State)

DESCRIPTION OF WORK(S) OF ART _____

Date Purchased _____

Name and Address of Person from Whom Purchased _____

Name of Educational Institution _____

Institution's Address _____ (Street)
_____ (City) _____ (State)

Educational Institution's Florida Consumer's Certificate of Exemption Number _____

Under the penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

(Signature of Transferor)

Sworn to and subscribed before me

this _____ day of

_____ (Month), _____ (Year).

Notary Public, State of Florida

My commission expires: _____

NOTARY SEAL

Personally known ()

Produced identification () Type: _____

Original to be retained by the educational institution and made part of that institution's records

1st Copy to be submitted to the Florida Department of Revenue, Compliance Enforcement, Enforcement Operations, P. O. Box 6417, Tallahassee, Florida 32314-6417.

2nd copy: Donor's copy

~~(e)~~ The exemption provided to the purchaser of a work of art loaned to an educational institution is not terminated if the educational institution loans the work of art to another educational institution(s) and the physical custody of such work of art is returned to the lending educational institution at the termination of the loan agreement(s). Any educational institution which transfers possession of a work of art that is exempt under this subsection ~~subparagraph~~ to other educational institutions is required to notify the Department within 60 days of such transfers. The notification must include a description of the work of art, the name and address of the purchaser who loaned it, the names and addresses of each of the educational institutions receiving the work of art for display, and the time periods that the work of art will be displayed at each identified educational institution.

~~(f)~~ Any educational institution in this state that has received from a purchaser a work of art that which is exempt under this subsection ~~subparagraph~~ is required to notify the Department within 60 days that it has received the work of art. The notification to the Department must include a description of the work of art, the name and address of the purchaser who loaned it, and the date on which the transfer of possession occurred.

~~(g)~~ Any educational institution which displays a work of art received on loan that is exempt under s. 212.08(7)(cc) ~~(dd)~~, F.S., is required to maintain any written agreements, notifications, affidavits, and any other documentation which substantiates the educational institution's right to display the work of art until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under s. 95.091(3), F.S., and such documentation shall be made available to the Department upon request.

~~(h)~~ Any educational institution that transfers from its possession a work of art received on loan that is exempt under s. 212.08(7)(cc) ~~(dd)~~, F.S., is required to notify the Department within 60 days after the transfer, except for transfers which do not terminate the exemption provided by s. 212.08(7)(cc) ~~(dd)~~, F.S., for purposes such as storage, repairs, conservation and restoration, authentication, insurance examination, valuation, appraisal, research, photography and reproduction, or fumigation during which the work of art is not displayed and the educational institution maintains documentation to substantiate that such transfers do not constitute a transfer of possession for purposes of display of such work of art. The

notification to the Department must include a description of the work of art, the name and address of the purchaser who loaned it, the name and address of to whom the work of art is transferred, and the date on which the transfer of possession occurred.

~~(i)~~ Documents and notifications required to be provided to the Department should be mailed to the following address:

Florida Department of Revenue
 Compliance Enforcement
 Enforcement Operations
 P. O. Box 6417
 Tallahassee, Florida 32314-6417

~~(g)1.~~ "Charitable institutions" means only nonprofit corporations qualified as nonprofit pursuant to s. 501(c)(3), United States Internal Revenue Code, 1954, as amended, and other nonprofit entities that meet the following requirements:

a. the sole or primary function is providing a "qualified charitable service" as defined in this subsection; and

b. a reasonable percentage of such service is provided free of charge, or at a substantially reduced cost, to persons, animals, or organizations that are unable to pay for such service.

2. "Qualified charitable service" means:

a. Medical aid for the relief of disease, injury, or disability;

b. Regular provision of physical necessities such as food, clothing, or shelter;

c. Services for the prevention of or rehabilitation of persons from alcoholism or drug abuse; the prevention of suicide; or the alleviation of mental, physical, or sensory health problems; services include public education or awareness programs intended to relieve or prevent any disease, injury, or disability;

d. Social welfare services including adoption placement, child care, community care for the elderly, and other social welfare services which clearly and substantially benefit a client population which is disadvantaged or suffers a hardship;

e. Medical research for the relief of disease, injury, or disability;

f. Legal services;

g. Food, shelter, or medical care for animals or adoption services, cruelty investigations, or education programs concerning animals;

h. Providing volunteer manpower to charitable institutions as defined in this subsection; or

i. Raising funds for "charitable institutions" as defined in this subsection.

3.a. For the purpose of this subsection the following terms and phrases shall have the meaning ascribed to them except when the context clearly indicates a different meaning:

I. "Persons unable to pay" means persons whose annual income is 150 percent or less of the current Federal Poverty Guidelines or whose uncompensated hospital charges exceed

25 percent of their annual family income for the preceding 12 months. A charity day shall be computed from the amount of uncompensated services to persons unable to pay. However, in no case shall any of the hospital's charges for an individual or family whose income exceeds four (4) times the Federal Poverty Level for a family of four be considered charity days.

II. Example: The Smith family (family of four) whose annual family income for 1986 was \$20,000 had a catastrophic illness affect one of their children. The hospital bill which their insurance did not cover amounted to \$7,000, which represented thirty-five (35) percent of their current salary.

b. The hospital may include those days stayed at the hospital by the child as a charity day if the outstanding balance is uncollectible. The hospital may include this total even though the family's income exceeds the Federal Poverty Level by over 170 percent because the uncompensated portion of the hospital bill exceeds 25 percent of the family's income.

e. For providers of low income housing, "persons unable to pay" means persons who qualify as "low income persons" pursuant to Florida's "State Housing Strategy Act."

d. "Substantially reduced cost" means the normal charge, market price, or fair market value to a purchaser or recipient, diminished in an amount of considerable quantity.

e. "Sole or primary function" means that a charitable institution, excluding hospitals, must establish and support its function as providing or raising funds for services as outlined in subparagraphs 1. and 2. above, by expending in excess of 50.0 percent of the charitable institution's operational expenditures towards "qualified charitable services", as defined in subparagraph 2.a. g., within the charitable institution's most recent fiscal year.

4.a. For charitable institutions other than hospitals, a "reasonable percentage" of the charitable services provided free or at a substantially reduced cost to those unable to pay will be determined by the particular circumstances of each institution. The following factors shall be considered in determining whether a nonprofit entity is providing a reasonable percentage of its charitable services free of charge or at a substantially reduced cost to persons, animals, or institutions unable to pay for such services:

I. services are provided free of charge;

II. services are provided at a substantially reduced cost to the recipient;

III. available services are provided to anyone who requests the service without regard to ability to pay;

IV. the ratio of services offered without cost or at a substantially reduced cost to the cost of all services provided;

V. the fair market value of the provided services offered free or at a substantially reduced cost compared to the amount of sales tax savings to the institution resulting from exemption;

VI. the likelihood that due to the nature of the services provided and the geographic area in which the services are provided, the services will be delivered to those unable to pay;

~~VII. medical research services and public education and awareness programs are intended to benefit the public in that they are directed toward or involve diseases, injuries, or disabilities which can affect members of the public.~~

~~b. If a charitable institution, other than a hospital, does not screen to determine whether its clientele are unable to pay, the institution may submit to the Department a statement signed by an officer or director of the institution which specifies the institution's best good faith estimate of the percentage of its services provided without charge or at a substantially reduced cost to persons unable to pay and the basis for the estimate.~~

~~c. For hospitals, meaning only those institutions as defined in Part I, Chapter 395, F.S., and subject to the licensing requirements of Part I, Chapter 395, F.S., a reasonable percentage of charitable services provided without cost to those unable to pay shall be computed by the hospital, using one of the following methods:~~

~~I. The ratio of uncompensated charity days and medicaid days (numerator) compared to total acute care inpatient days (denominator), should be greater than or equal to 2.5 percent.~~

~~II. The ratio of uncompensated charity days and medicaid days (numerator) compared to total acute care inpatient days minus medicare days (denominator) shall be greater than or equal to 5 percent. These figures used to compute charity days, medicaid days, total acute care inpatient days, and medicare days shall be those reported to and accepted by the Health Care Cost Containment Board.~~

~~(h) Political subdivisions of the state and public libraries which qualify for and maintain a current sales tax exemption certificate under s. 212.08(6) or (7), F.S., shall utilize their certificates to purchase, with funds provided by the following groups, equipment, supplies, and items necessary for the operation of the group or organization:~~

~~1. School districts shall purchase necessary goods and services requested by parent teacher organizations.~~

~~2. Counties and municipalities shall purchase necessary goods and services requested by REACT groups, neighborhood crime watch groups, and state or locally recognized organizations solely engaged in youth activities identical to those discussed in s. 212.08(7)(n), F.S.~~

~~3. Public libraries shall purchase necessary goods and services requested by groups solely engaged in fund-raising activities for such libraries.~~

~~(i) A sale or lease directly to or by a nonprofit corporation which holds a current exemption from federal corporate income tax pursuant to s. 501(e)(3), United States Internal Revenue Code, 1954, as amended, and which either qualifies as a home for the aged pursuant to s. 196.1975(2), F.S., or is licensed as a nursing home or hospice under the provisions of Chapter 400, F.S., is exempt from the tax imposed by Chapter 212, F.S., providing such entity holds a consumer's certificate of exemption. See Rules 12A 1.038 and 12A 1.039, F.A.C.~~

~~(j) Sales or leases to the state headquarters of veterans' organizations and the state headquarters of their auxiliaries, when used in carrying out their customary veterans organization activities, are exempt from payment of the tax imposed by Chapter 212, F.S., providing such organizations hold a consumer's certificate of exemption. If the organization or its auxiliary does not maintain a permanent state headquarters, the transactions involving sales or leases used to maintain the office of the highest ranking state official are exempt. See Rules 12A 1.038 and 12A 1.039, F.A.C. "Veterans' organizations" means nationally chartered or recognized veterans' organizations, including, but not limited to, Florida chapters of the Paralyzed Veterans of America, Catholic War Veterans of the U.S.A., Jewish War Veterans of the U.S.A., and the Disabled American Veterans, Department of Florida, Inc., which hold current exemptions from federal income tax under s. 501(e)(4) or s. 501(e)(19) of the Internal Revenue Code.~~

~~(k)1. The term "scientific organizations" means scientific organizations in Florida holding a current exemption from federal income tax under s. 501(e)(3) of the Internal Revenue Code. This term also means organizations whose purpose is to protect air and water quality or protect wildlife in Florida and which hold current exemptions from the federal income tax under s. 501(e)(3) of the Internal Revenue Code.~~

~~2. Sales or leases directly to nonprofit scientific organizations are exempt from the tax imposed by Chapter 212, F.S., providing such organizations hold a consumer's certificate of exemption. See Rules 12A 1.038 and 12A 1.039, F.A.C.~~

~~(l) A chamber of commerce is not entitled to exemption on its purchases as it is not a religious, educational, or charitable institution. The funds derived from the cities and counties by taxation paid to the chamber of commerce do not exempt it on the expenditure of those funds unless the purchases involved are made directly by the city or county.~~

~~(m) Unless qualified as hereinbefore provided, civic, commercial, cooperative, fraternal, social, labor, and veterans' organizations are not exempt organizations under Chapter 212, F.S. Sales and rentals made to or by them are taxable in the same manner as those made to or by other "dealers".~~

~~(n) Sales to or purchases by federally chartered and state chartered credit unions are exempt from the tax imposed by Chapter 212, F.S. Each credit union claiming the exemption should apply to the Department for a consumer's certificate of exemption.~~

~~(o) Nonprofit organizations incorporated in accordance with Chapter 617, F.S., which have qualified under s. 501(e)(3) of the Internal Revenue Code of 1954, as amended, and which have been designated as State Theater Contract Organizations as provided in s. 265.289, F.S., shall be exempt from any tax imposed by Chapter 212, F.S.~~

(p) Sales to or purchases by the Florida Retired Educators Association and Local Chapters of office supplies, equipment, and publications only are exempt from tax imposed by Chapter 212, F.S. See Rules 12A 1.038 and 12A 1.039, F.A.C.

(q) Nonprofit organizations providing special educational, cultural, recreational, and social benefits to minors which are incorporated pursuant to Chapter 617, F.S., or which hold a current exemption from federal corporate income tax pursuant to s. 501(e)(3) of the United States Internal Revenue Code whose primary purpose is providing activities which contribute to the development of good character, good sportsmanship, or to the educational or cultural development of minors are exempt from the tax imposed by Chapter 212, F.S. "Primary purpose" means that the applicant for this exemption must establish and support its function by expending in excess of 50% of the organization's total expenditures towards the referenced activities within the organization's most recent fiscal year. For purposes of making exempt purchases, such organizations must hold a consumer's certificate of exemption. (See Rules 12A 1.038 and 12A 1.039, F.A.C.) This exemption is extended only to that level of the organization that has a salaried executive officer or an elected non-salaried executive officer.

(r) Sales to nonprofit corporations which hold a current exemption from federal corporate income tax pursuant to s. 501(e)(3), United States Internal Revenue Code, 1954, as amended, whose primary purpose is to raise money for military museums are exempt from the payment of the tax imposed by Chapter 212, F.S., providing such nonprofit corporations hold a consumer's certificate of exemption. See Rules 12A 1.038 and 12A 1.039, F.A.C.

(s) On or after July 1, 1992, sales or leases directly to or purchases or use by Coast Guard auxiliaries are exempt from the tax imposed by Chapter 212, F.S., if the Coast Guard auxiliary holds a consumer's certificate of exemption and presents it to the dealer at the time of sale. For purposes of this paragraph, "Coast Guard auxiliaries" are defined as nonprofit organizations affiliated with the United States Coast Guard which are exempt from federal income tax under ss. 501(a) and 501(e)(3) of the U.S. Internal Revenue Code of 1986, as amended, and the primary purpose of which is to promote safe boating and to conduct free classes in basic seamanship. (See Rules 12A 1.038 and 12A 1.039, F.A.C.)

(t) On or after July 1, 1992, sales or leases directly to or purchases or use by a nonprofit corporation, operated for the purpose of maintaining a cemetery that was donated to the community by deed, that has qualified under s. 501(e)(13) of the U.S. Internal Revenue Code of 1986, as amended, are exempt from the tax imposed by Chapter 212, F.S., if the nonprofit corporation holds a consumer's certificate of exemption and presents it to the dealer at the time of sale. (See Rules 12A 1.038 and 12A 1.039, F.A.C.)

(4) through (8) No change.

(9) GOVERNMENTAL UNITS.

(a) All sales made directly to the United States Government, a state, or any county, municipality, or political subdivision of a state are exempt, except machines, equipment, parts, and accessories therefor used in the generation, transmission, or distribution of electricity. Except for purchases by employees of the United States Government, this exemption is not available for any taxable transaction when payment is made by a governmental employee by use of personal funds, including cash, checks, or credit cards, when the employee is subsequently reimbursed by the governmental entity. Payment must be made directly to the dealer by the governmental entity of a state, or any county, municipality, or political subdivision of a state. Purchases made by Federal employees on behalf of their agency are exempt even though the employee is subsequently reimbursed by the agency. Such governmental entities desiring to qualify for the exemption must obtain from the Department of Revenue a consumer's certificate of exemption (see Rule 12A 1.038 and 12A 1.039, F.A.C.). The exemption provided in this subsection shall be strictly defined, limited, and applied to each entity as provided herein.

(b) through (c) renumbered (a) through (b) No change.

(d) Vendors are required to document exempt sales. Federal employees, other government employees, and employees of nonprofit organizations described in subsection (3) of this rule shall provide the vendor with proper documentation of the exempt nature of the sale.

1. A suggested format of the document to be provided by Federal employees to their vendors is the following:

FEDERAL EMPLOYEE'S CERTIFICATE

DATE

SELLING DEALER'S NAME

SELLING DEALER'S ADDRESS

I, the undersigned, am an employee of the Federal agency identified below. The purchase or lease of tangible personal property or services or the rental of living accommodations on (DATE[S]) from the business identified above is in pursuit of my employer's affairs. The Government of the United States either will pay the seller directly, or will provide reimbursement to the employee for the actual cost of the purchase or lease of tangible personal property, services, or sleeping accommodations made on this date(s).

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true.

SIGNATURE OF EMPLOYEE

NAME OF FEDERAL AGENCY

ADDRESS OF FEDERAL AGENCY

THIS CERTIFICATE MAY NOT BE USED TO MAKE EXEMPT PURCHASES OR LEASES OF TANGIBLE PERSONAL PROPERTY OR SERVICES OR RENTAL OF LIVING ACCOMMODATIONS FOR THE PERSONAL USE OF ANY INDIVIDUAL EMPLOYED BY A UNITED STATES GOVERNMENT AGENCY. PROPER IDENTIFICATION IS REQUIRED BEFORE THIS CERTIFICATE MAY BE ACCEPTED BY THE SELLER.

2. A suggested format of the document to be provided by other government employees or employees of nonprofit organizations to their vendors is the following:

EMPLOYER'S AUTHORIZATION TO MAKE PURCHASES ON BEHALF OF AN EXEMPT GOVERNMENTAL OR NONPROFIT ORGANIZATION

DATE

TO: SELLING DEALER'S NAME

SELLING DEALER'S ADDRESS

I, the undersigned, am a representative of the exempt governmental or nonprofit organization identified below. The purchase or lease of tangible personal property or services or the rental of living accommodations made on (DATE[S]) from the business identified above is for use by the exempt governmental or nonprofit organization identified below. The charges for the purchase or lease of tangible personal property or services or the rental of living accommodations from the dealer identified above will be billed to and paid directly by the exempt governmental or nonprofit organization. Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true.

AUTHORIZED SIGNATURE ON BEHALF OF EXEMPT ENTITY

NAME OF EXEMPT ENTITY

ADDRESS OF EXEMPT ENTITY

CONSUMER'S CERTIFICATE OF EXEMPTION NUMBER

THIS CERTIFICATE MAY NOT BE USED TO MAKE PURCHASES OR LEASES OF TANGIBLE PERSONAL PROPERTY OR SERVICES OR RENTAL OF LIVING ACCOMMODATIONS FOR THE PERSONAL USE OF ANY INDIVIDUAL REPRESENTING THE EXEMPT ENTITY IDENTIFIED ABOVE.

(10) through (21) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 92-525, 212.02(10),(12),(16),(20),(21), 212.03, 212.031, 212.04, 212.05, 212.0515, 212.06(2),(9), 212.08(4),(5)(a),(e),(6),(7)(a),(b),(c),(d),(f),(g),(h),(i), (k),(l),(m),(n),(o),(p),(q),(r),(s),(u),(v),(x),(bb),(cc),(dd),(8), 212.085, 212.17, 212.18, 213.12(2), 213.37, 403.715 FS. History-Revised 1-7-68, 1-7-70, Amended 1-17-71, Revised 6-16-72, Amended 7-19-72, 12-11-74, 5-27-75, 10-21-75, 9-7-78, 9-28-78, 10-18-78, 9-16-79, 2-3-80, 6-3-80, 7-7-80, 10-29-81, 12-3-81, 12-31-81, 7-20-82, 11-15-82, 10-13-83, 4-12-84, Formerly 12A-1.01, Amended 7-9-86, 1-2-89, 12-1-89, 7-7-92, 9-14-93, 5-18-94, 12-13-94, 3-20-96, 4-2-00, 6-28-00.

12A-1.0161 Sales and Use Tax on Services; Sale for Resale.

(1) through (3) No change.

(4)(a) Sales of services made directly to the United States Government, a state, any county, municipality, or political subdivision of a state, or any qualifying nonprofit religious, nonprofit charitable, nonprofit educational, nonprofit veterans', or nonprofit scientific organization or institution, are exempt from tax.

(b) Also exempt are sales made to nonprofit corporations who hold a current federal exemption under section 501(c)(3) of the Internal Revenue Code, if the corporation's primary purpose is:

- 1. To raise funds for military museums;
2. To operate homes for the aged pursuant to s. 196.1975(2), Florida Statutes;
3. To operate nursing homes licensed under Chapter 400, Florida Statutes;
4. To provide special educational, cultural, recreational, and social benefits to minors; or
5. To operate a facility which has been designated as a State Theater Program facility by s. 265.287, Florida Statutes.

(c) Sales made to these governmental entities, nonprofit organizations, institutions, or corporations will be considered exempt only if the governmental entity, nonprofit organization, institution, or corporation holds a consumer's certificate of exemption and presents it to the service provider at the time of sale, except that such sales made to the United State Government are exempt with or without a consumer's certificate of exemption.

(d) The following is a suggested format for an exemption certificate to be used when making sales of services to governmental units or other exempt entities.

This is to certify that the service(s) purchased on or after _____ (date) from _____ (name) pursuant to _____ (contract number or other form of agreement) is purchased by a governmental entity, nonprofit organization, institution, or corporation which holds a consumer's certificate of exemption.

Purchaser _____
Address _____
By _____

(Signature)
Date _____

Consumer's Certificate of Exemption No. _____
Effective Date of Certificate _____
Expiration Date of Certificate _____

(4)(5)(a) A sale of a service is a sale for resale and is exempt from sales tax when the service is later sold under the following conditions:

(a)1- The service provides a direct and identifiable benefit to a single client or customer of the purchaser; and

(b)2- The purchaser of the service buys the service pursuant to a written contract (or other evidence sufficient for audit purposes) with the seller which specifically designates the client or customer on whose behalf the purchaser is buying the service; and

(c)3- The purchaser of the service separately states the value of the service in the charge for the service when it is subsequently sold to the purchaser's client or customer; and

4. The selling dealer obtains a resale certificate from a purchasing dealer who is primarily engaged in the business of selling taxable services. In order to purchase a service tax exempt as a sale for resale, the purchaser's sales tax number must end in digits 92 or 93.

(d)5- The selling dealer complies with the provisions of Rule 12A-1.039, F.A.C., with regard to documenting sales for resale. When a sale of a service is made to a person who claims to be entitled to purchase services for resale, the seller of the service being a duly registered dealer pursuant to Chapter 212, F.S., shall obtain from the purchaser of the service a resale certificate. The resale certificate, executed by the purchaser of the service, shall contain a statement to the effect that the service is being purchased exclusively for resale and the statement shall include the following information:

- a. The name of the person selling the service;
- b. The purchaser's Certificate of Registration Number;
- c. The effective date of the purchaser's Certificate of Registration;
- d. The purchaser's name and address;
- e. The signature of the person executing the statement; and
- f. The date of execution of the statement.

(b) The following is a suggested service resale certificate to be completed by the purchaser and presented to the seller on each purchase of a service for resale:

This is to certify that the service(s) purchased on _____ (date) from _____ (name) pursuant to _____ (contract number or other form of agreement) is purchased for resale.

Purchaser _____
Address _____
By _____

(Signature)
Date _____
Certificate of Registration No. _____
Effective Date of Certificate _____

(e) Any dealer who makes a sale for resale of a service which is not in compliance with the provisions of this subsection shall himself be liable for and pay the tax.

(6) through (13) renumbered (5) through (12) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.05(1)(b),(j), 212.054, 212.055, 212.0596(7), 212.06(1)(a),(2)(k), 212.07(1)(b),(8), 212.08(7)(v) FS. History--New 5-13-93, Amended 1-4-94, 10-17-94, 3-20-96, 4-2-00, _____.

(Substantial rewording of Rule 12A-1.038 follows. See Florida Administrative Code for present text.)

12A-1.038 Consumer's Certificate of Resale and Exemption; Exemption Certificates.

(1) It is the specific legislative intent that each and every sale, admission, use, storage, consumption, or rental is taxable, unless such sale, admission, use, storage, consumption, or rental is specifically exempt. The exempt nature of the transaction must be established by the selling dealer. Unless the selling dealer shall have taken from the purchaser the required documentation as provided in subsections (3), (4), or (5) of this rule, the sale shall be deemed to be taxable. Subsection (3) of this rule governs sales made to exempt entities (other than governmental units) that hold a Consumer's Certificate of Exemption. Subsection (4) of this rule governs sales made directly to governmental units. Subsection (5) of this rule governs sales exempt based on the use of the property or services.

(2) HOW TO OBTAIN A CONSUMER'S CERTIFICATE OF EXEMPTION.

(a)1. Any organization determined by the Internal Revenue Service to be currently exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, any state, county, municipality, or other political subdivision of a state, qualifying for the exemption provided in s. 212.08(6), F.S., any state chartered credit union qualifying for exemption under s. 213.12(2), F.S., and any other organization qualifying for exemption under s. 212.08(7), F.S., desiring to qualify for these exemptions must obtain a Consumer's Certificate of Exemption. Any limited liability company determined by the Internal Revenue Service to be currently exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as

amended, must obtain a separate Consumer's Certificate of Exemption, even though its parent corporation may currently hold a Consumer's Certificate of Exemption. The United States Government or any of its federal agencies is not required to obtain a Consumer's Certificate of Exemption.

2. To obtain a Consumer's Certificate of Exemption, the organization must file an Application for a Consumer's Certificate of Exemption (Form DR-5, incorporated by reference in Rule 12A-1.097, F.A.C.) and documentation sufficient to substantiate the applicant's claim for exemption with the Department. The Department will issue a Consumer's Certificate of Exemption (form DR-14) to each applicant qualifying for exemption under s. 212.08(6) or (7), F.S., or s. 213.12(2), F.S.

(b) A Consumer's Certificate of Exemption will be valid from its "Issue Date" through its "Expiration Date," as indicated on the certificate (form DR-14). Any dealer selling taxable property, services, or admissions to an exempt entity prior to the date of issue, or after the date of expiration, indicated on the exempt entity's Consumer's Certificate of Exemption, is required to collect tax. An entity whose Consumer's Certificate of Exemption has been revoked by the Department is prohibited from extending a copy of its certificate to purchase taxable property, services, or admissions exempt from tax. However, a selling dealer who accepts in good faith a copy of a Consumer's Certificate of Exempt that appears valid and current on its face will not be liable for any applicable tax due on sales to the entity or subject to other punitive actions.

(c) Pursuant to the requirements of s. 120.60(3), F.S., the Department will notify an applicant when it intends to deny the applicant a Consumer's Certificate of Exemption by issuing the applicant a Notice of Intent to Deny. The Notice of Intent to Deny notifies the applicant of the Department's intended action and the facts and legal authority which support that intended action.

(d) In order to challenge the denial of an application for a Consumer's Certificate of Exemption, the applicant receiving a Notice of Intent to Deny must request an administrative hearing under the provisions of s. 120.57, F.S. The Request for Hearing must be delivered to the Department by hand delivery or mail within 21 days from the date of issuance of the Notice of Intent to Deny. If the Request for Hearing is filed with the Department by mail, the date of the postmark will be the date the Request for Hearing is deemed filed for purposes of the 21-day time computation. The Request for Hearing must be delivered to:

Office of the General Counsel
Department of Revenue
501 South Calhoun Street
Carlton Building
Post Office Box 6668
Tallahassee, Florida 32314-6668.

(e) The Request for Hearing must contain the following:

1. The name and address of the entity opposing the denial of a Consumer's Certificate of Exemption;

2. The case number of the application for a Consumer's Certificate of Exemption;

3. A statement requesting an administrative hearing;

4. A statement specifying the factual allegations in the Notice of Intent to Deny that the entity disputes;

5. A statement setting forth any other factual or legal issues that the entity intends to raise in protest of the Department's intended action;

6. A statement that the entity will be substantially affected by the denial of the application for a Consumer's Certificate of Exemption and why the entity will be so affected;

7. A request for relief;

8. The name and title of the person submitting the Request for Hearing;

9. The signature of the person submitting the Request for Hearing; and

10. The date of the Request for Hearing.

(3) SALES MADE TO EXEMPT ENTITIES OTHER THAN GOVERNMENTAL UNITS.

(a) An entity that holds a valid Consumer's Certificate of Exemption (form DR-14) issued by the Florida Department of Revenue may extend a copy of its certificate to the selling dealer to purchase or rent taxable property, admissions, or services used for its authorized tax exempt purpose in lieu of paying sales tax. Purchases of property, admissions, or services used for the entity's authorized tax exempt purposes must be made with the purchasing entity's funds and may not be made with personal funds of the purchasing entity's authorized representative. When the payment for taxable property, admissions, or services is made with an authorized representative's personal funds, the purchase is subject to tax, even if the representative is subsequently reimbursed with the entity's funds.

(b) To make purchases or rentals for the purposes of resale, the entity must be registered as a sales tax dealer and issue the selling dealer an Annual Resale Certificate (form DR-13), as provided in Rule 12A-1.039, F.A.C.

(c) It is the exempt entity's responsibility to determine whether the purchase or rental will be used for its authorized tax exempt purpose or for the purposes of resale and to provide the proper documentation to the selling dealer. In lieu of obtaining a copy of the entity's valid Consumer's Certificate of Exemption, the selling dealer may obtain a Transaction Authorization Number or a Vendor Authorization Number from the Department when making a tax exempt sale to the entity. A selling dealer who accepts in good faith a copy of an entity's valid Consumer's Certificate of Exemption or Annual Resale Certificate, or a Transaction Authorization Number or Vendor Authorization Number issued by the Department will not be held liable for any tax due on sales made to the entity

during the effective dates indicated on the certificate or the effective dates of the authorization number. The selling dealer must maintain the required authorization numbers and certificates in its books and records for the time period provided in subsection (6) of this rule.

(d) An exemption certificate granted by any other state, District of Columbia, or territory of the United States to the selling dealer is not sufficient to make tax-exempt purchases or rentals in Florida. The fact that an entity holds an exemption from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, is not sufficient to make tax exempt purchases or rentals in Florida.

(e) An entity holding a valid Consumer's Certificate of Exemption may not extend a copy of its certificate to a contractor to be applied to contracts for the construction or improvement of real property. See Rule 12A-1.094, F.A.C., for guidance on direct purchases by governmental entities of construction materials in real property projects.

(f) The validity of a Consumer's Certificate of Exemption may be verified by calling the Department of Revenue's touch tone telephone authorization system at 1-877-357-3725. Persons with hearing or speech impairments may call the Department's TDD, at 1-800-367-8331.

(g)1. TRANSACTION AUTHORIZATION NUMBER ISSUED AT POINT-OF-SALE – VALID FOR A SINGLE TRANSACTION ONLY. In lieu of obtaining a copy of the exempt entity's valid Consumer's Certificate of Exemption, the selling dealer may obtain a Transaction Authorization Number or a Vendor Authorization Number from the Department when making a tax exempt sale to the exempt entity or its authorized representative.

2. The selling dealer may obtain a transaction authorization number at the point-of-sale by calling the Department's automated nationwide toll-free verification system at 1-877-357-3725. Using a touch-tone telephone, the selling dealer is prompted to key in the purchaser's Consumer's Certificate of Exemption Number. The system will either issue a 13-digit transaction authorization number or alert the selling dealer that the purchaser does not have a valid Consumer's Certificate of Exemption. Selling dealers who do not have a touch-tone telephone will be connected to a live operator during the hours of 8:00 a.m. to 7:00 p.m. (Eastern Time), Monday through Friday. Persons with hearing or speech impairments may call the Department's TDD at 1-800-367-8331.

3. The selling dealer must document the transaction authorization number on the sales invoice, purchase order, or other document that is prepared by the purchaser or the selling dealer to document the tax exempt purchase by the exempt entity.

4. A transaction authorization number is valid for a single sales transaction and is not valid to properly document subsequent sales made to the same entity. The selling dealer must obtain a new vendor authorization number for subsequent tax exempt transactions.

(h)1. VENDOR AUTHORIZATION NUMBER FOR REGULAR CUSTOMERS – VALID FOR CALENDAR YEAR ISSUE. In lieu of obtaining a copy of the exempt entity's valid Consumer's Certificate of Exemption or a Transaction Authorization Number from the Department for each sale to the entity, the selling dealer may obtain a Vendor Authorization Number for that entity. This option is available to selling dealers throughout the calendar year without limitation.

2. The "vendor authorization number" is a customer-specific authorization number that will be valid for all sales made to an exempt entity during the calendar year.

3. To obtain vendor authorization numbers, the selling dealer must forward to the Department, using an electronic medium, a list of the dealer's regular customers for which the dealer has a Consumer's Certificate of Exemption number. The electronic format for sending the customer data may be obtained from the Department's web site at <http://sun6.dms.state.fl.us/dor/> or by calling the Department at 850-488-3516. In response to the request, the Department will issue to the selling dealer, using the same electronic medium, a list containing a unique vendor authorization number for each exempt entity who is a holder of a valid Consumer's Certificate of Exemption.

4. The selling dealer may make tax exempt sales to the exempt entity during the period in which the vendor authorization number for that entity is valid. Vendor authorization numbers are valid for the remainder of the calendar year during which they are issued. However, vendor authorization numbers issued by the Department in November or December are valid for the remainder of that calendar year and the next calendar year.

(4) SALES MADE DIRECTLY TO GOVERNMENTAL UNITS.

(a) Any state, or any county, municipality, or political subdivision of a state that holds a valid Consumer's Certificate of Exemption (form DR-14) issued by the Florida Department of Revenue may issue a copy of its certificate to the selling dealer to purchase or rent taxable items or services tax exempt in lieu of paying sales tax. The United States Government is not required to hold a Consumer's Certificate of Exemption to make tax exempt purchases and rentals.

(b) Payment for tax exempt purchases or rentals of property or services must be made directly to the selling dealer by the governmental unit of a state, or any county, municipality, or political subdivision of a state. Payments made with an authorized P-Card are considered to be made directly by the governmental unit. When the payment for

taxable property or services is made with the personal funds of an authorized representative of the governmental unit, the purchase is subject to tax, even if the representative is subsequently reimbursed with the governmental unit's funds. The authorized representative of any state, county, municipality, or political subdivision of a state, must CHOOSE ONE of the following methods to make tax exempt purchases or rentals:

1. Use an authorized Purchasing or Procurement Card ("P-Card") which indicates on its face that it is a Florida government purchasing card for official business only. Information printed on the front of the card will include the agency's name, the agency's Consumer's Certificate of Exemption number, the account number, the name of the cardholder (employee), and the expiration date. The selling dealer who accepts the "P-Card" should retain a copy of the face of the "P-card" to note the Consumer's Certificate of Exemption number, account number, and cardholder name for its books and records to properly document the exempt sale. When the selling dealer cannot copy the "P-Card," the dealer must retain the Consumer's Certificate of Exemption number, the account number, cardholder's name, and the expiration date of the "P-Card."

2. Issue a certificate containing the governmental unit's name, address, the Consumer's Certificate of Exemption Number, the effective date and expiration date of the Consumer's Certificate of Exemption, and the signature of an authorized representative of the governmental unit. The following is a suggested format of the certificate:

EMPLOYER'S AUTHORIZATION TO MAKE PURCHASES ON BEHALF OF AN EXEMPT GOVERNMENTAL UNIT

DATE

TO: _____
SELLING DEALER'S NAME

SELLING DEALER'S ADDRESS

I, the undersigned, am a representative of the exempt governmental unit identified below. The purchase or lease of tangible personal property or services or the rental of living quarters or sleeping accommodations made on or after _____ (DATE[S]) from the business identified above is for use by the exempt governmental unit identified below.

The charges for the purchase or lease of tangible personal property or services or the rental of living quarters or sleeping accommodations from the dealer identified above will be billed to and paid directly by the exempt governmental unit.

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true.

AUTHORIZED SIGNATURE ON BEHALF OF EXEMPT GOVERNMENTAL UNIT

NAME OF EXEMPT GOVERNMENTAL UNIT

ADDRESS OF EXEMPT GOVERNMENTAL UNIT

CONSUMER'S CERTIFICATE OF EXEMPTION NUMBER

THIS CERTIFICATE MAY NOT BE USED TO MAKE PURCHASES OR LEASES OF TANGIBLE PERSONAL PROPERTY OR SERVICES OR RENTAL OF LIVING ACCOMMODATIONS FOR THE PERSONAL USE OF ANY INDIVIDUAL REPRESENTING THE EXEMPT ENTITY IDENTIFIED ABOVE.

(c) The purchase or rental of property or services by employees authorized on behalf of a federal agency is exempt, even though the employee is subsequently reimbursed by the federal agency. The following is a suggested certificate format to be issued by federal employees to the selling dealer to make tax exempt purchases or rentals:

EXEMPTION CERTIFICATE TO BE USED BY FEDERAL EMPLOYEES

DATE

SELLING DEALER'S NAME

SELLING DEALER'S ADDRESS

I, the undersigned am an employee of the federal agency identified below. The purchase or lease of tangible personal property or services or the rental of living quarters or sleeping accommodations on or after _____ (DATE[S]) from the business identified above is in pursuit of my employer's affairs. The Government of the United States either will pay the seller directly or will provide reimbursement to the employee for the actual cost of the purchase or lease of tangible personal property, services, or living quarters or sleeping accommodations made on this date(s).

Under penalties of perjury, I declare that I have read the foregoing and the facts stated in it are true.

SIGNATURE OF EMPLOYEE

NAME OF FEDERAL AGENCY

ADDRESS OF FEDERAL AGENCY

THIS CERTIFICATE MAY NOT BE USED TO MAKE EXEMPT PURCHASES OR LEASES OF TANGIBLE PERSONAL PROPERTY OR SERVICES OR RENTAL OF LIVING ACCOMMODATIONS FOR THE PERSONAL USE OF ANY INDIVIDUAL EMPLOYED BY A UNITED STATES GOVERNMENTAL AGENCY. PROPER IDENTIFICATION IS REQUIRED BEFORE THIS CERTIFICATE MAY BE ACCEPTED BY THE SELLER.

(d) To make purchases or rentals for the purpose of resale, the state, county, municipality, or political subdivision of a state must be registered as a sales tax dealer and extend to the selling dealer a copy of its Annual Resale Certificate (form DR-13), as provided in Rule 12A-1.039, F.A.C.

(e) It is the responsibility of the authorized representative of any state, county, municipality, or political subdivision of the state to determine whether the purchase is for use by the governmental unit or for the purpose of resale and to provide the documentation required in this subsection to the selling dealer. A selling dealer who accepts in good faith the required documentation or an Annual Resale Certificate will not be held liable for any tax due on sales made to the governmental unit during the effective time period indicated on the certificate obtained from the purchaser. The selling dealer must maintain the required documentation in its books and records for the time period provided in subsection (6) of this rule.

(5) SALES EXEMPT BASED ON THE USE OF THE PROPERTY OR SERVICES.

(a)1. The provisions of this subsection apply only to persons (other than the United States Government or any federal agency) who do not hold a Consumer's Certificate of Exemption (form DR-14) that purchase, lease, license, or rent tangible personal property or purchase services exempt from tax imposed under Chapter 212, F.S., based on the use of the property or service.

2. The provisions of this subsection do not apply to exemption affidavits required under the provisions of Chapter 212, F.S., and Rule Chapter 12A-1, F.A.C.; suggested certificates provided in other rule sections in Rule Chapter 12A-1, F.A.C.; or suggested certificates provided in Taxpayer Information Publications issued by the Department. The provisions of Chapter 212, F.S., Rule Chapter 12A-1, F.A.C., and Taxpayer Information Publications are available on the Department's Tax Law Library provided to the public on its Internet site at <http://sun6.dms.state.fl.us/dor>. Dealers are required to maintain the exemption affidavits and exemption certificates, as well as the certificates and documentation required in this rule section, in their books and records for the time periods provided in subsection (6) of this rule.

3. The provisions of this subsection do not apply to the tax exempt sale of utilities that are used by the purchaser exclusively for residential household purposes. Guidelines regarding the sale of utilities are provided in Rules 12A-1.053 and 12A-1.059, F.A.C.

4. The provisions of this subsection do not apply to purchases or rentals that are for resale. A person who desires to make purchases or rentals for resale must comply with the provisions of Rule 12A-1.039, F.A.C.

(b) Any person who is purchasing, renting, leasing, or licensing tangible personal property or services that qualify for an exemption from tax imposed under Chapter 212, F.S., based on the use of the property or service, must extend an exemption certificate to the selling dealer in lieu of paying tax. The exemption certificate must contain the purchaser's name, address, the reason for which the use of the property or service qualifies for exemption based on its use, and the signature of the purchaser or an authorized representative of the purchaser. The selling dealer is only required to obtain one certificate for sales made for the purposes indicated on the certificate and is not required to obtain an exemption certificate for subsequent sales made for the exempt purpose indicated on the exemption certificate. The selling dealer must maintain the required exemption certificates in its books and records for the time period provided in subsection (6) of this rule.

(c) Selling dealers may contact the Department at 1-800-352-3671 to verify the specific exemption specified by the purchaser. Persons with hearing or speech impairments may call the Department's TDD, at 1-800-367-8331.

(d)1. The following is a suggested format of an exemption certificate to be issued by a purchaser who does not hold a Consumer's Certificate of Exemption, but who claims that the purchase, rental, lease, or license of the property, or the purchase of the services is for an exempt purpose. Exemption purposes listed on the suggested format that are not relevant to the purchaser may be eliminated from the certificate.

EXEMPTION CERTIFICATE

FOR EXEMPTIONS BASED ON THE PROPERTY'S USE
This is to certify that the tangible personal property purchased, leased, licensed, or rented, or services purchased, on or after
(date) from (Selling Dealer's
Business Name) is purchased, leased, licensed, or rented for
the following purpose as checked in the space provided. This is
not intended to be an exhaustive list:

() Materials, containers, labels, sacks, bags, or similar items intended to accompany a product for sale at other than retail, as provided in s. 212.02(14)(c), F.S., by persons who are not required to be registered under s. 212.18(3), F.S.

() Export of tangible personal property for use outside this state, as provided in Rule 12A-1.064(1), F.A.C.

() Incorporation into items of tangible personal property manufactured, produced, compounded, processed, or fabricated for one's own use, as provided in Rule 12A-1.043, F.A.C.

() Printing of a publication exempt under the provisions of s. 212.08(7)(w), F.S.

() Items, such as paper and ink, that will be incorporated into and become a component part of a publication exempt under the provisions of s. 212.08(7)(w), F.S.

() Educational materials that are used in the classroom and not used for its administration by child care facilities outlined in s. 402.305, F.S., that hold a current license under s. 402.308, F.S., holds a current Gold Seal Qualify Care designation as provided in s. 402.281, F.S., and provide all employees with basic health insurance as defined in s. 627.6699(12), F.S., as provided in s. 212.08(7)(m), F.S.

() Motor vehicle rented or leased by a dealer who will provide the motor vehicle at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the dealer, as provided in s. 212.0601(4), F.S.

() Other (include description and statutory citation): _____

I understand that if I use the property or service for any nonexempt purpose, I must pay tax on the purchase or lease price of the taxable property or service directly to the Department of Revenue.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

The exemption specified by the purchaser may be verified by calling 1-800-352-3671.

Purchaser's Name _____

Purchaser's Address _____

Name and Title of Purchaser's Authorized Representative _____

Sales and Use Tax Certificate of Registration No. (if applicable) _____

By _____

(Signature of Purchaser or Authorized Representative)

Title _____

(Title – only if purchased by an authorized representative of a business entity)

Date _____

2. As provided in subparagraph (a)2. of this subsection, there are other suggested formats for exemption certificates based on the use of the property or services that are provided in other sections of Rule Chapter 12A-1, F.A.C., and in Taxpayer Information Publications (TIPs) issued by the Department. The following is a list of these suggested formats of exemption and the applicable rule section or TIP number that suggests the exemption certificate format. This list is not intended to be an exhaustive list:

a. Printed Materials to be Mailed Partly Outside Florida. See Rule 12A-1.027, F.A.C.

b. Printed Materials Purchased by a Nonresident Dealer. See Rule 12A-1.027, F.A.C.

c. Purchases of Film and Other Printing Supplies. See Rule 12A-1.027, F.A.C.

d. Boiler Fuels Used to produce Tangible Personal Property for Sale. See Rule 12A-1.059, F.A.C.

e. Export of Tangible Personal Property Irrevocably Committed to the Exportation Process Outside of Florida. Rule 12A-1.064(1)(b), F.A.C., provides the documentation required to establish when tangible personal property is deemed to be committed to the exportation process.

f. Lease or License of Real Property Upon Which Certain Antennas, Equipment, and Structures are Placed. See Rule 12A-1.070, F.A.C.

g. Real Property Used or Occupied for Space Flight Business Purposes. See Rule 12A-1.070, F.A.C.

h. Items Sold to Advertising Agencies. See Rule 12A-1.072, F.A.C.

i. Items for Agricultural Use or for Agricultural Purposes and Certain Farm Equipment. Rule 12A-1.087, F.A.C.

j. Items Sold or Leased; or Real Property Licensed or Leased to Motion Picture Educational Entities. See TIP 99A01-32, dated August 31, 1999.

k. "Qualifying Property" and/or "Overhead Materials" Sold to or Purchased by Government Contractors. See TIP 99A01-21, dated July 2, 1999.

l. People Mover Systems and Parts. See TIP 00A01-18, dated July 11, 2000.

m. Railroad Roadway Materials. See TIP 00A01-19, dated July 11, 2000.

n. Solar Energy Systems and Components. See TIP 00A01-27, dated September 20, 2000.

(6) RECORDS REQUIRED. Selling dealers must maintain blanket resale and exemption certificates based on the Department's suggested format provided in Rule 12A-1.039, F.A.C., effective 12-13-94, as well as exemption affidavits, exemption certificates, copies of Consumer's Certificates of Exemption, Transaction Authorization Numbers, Vendor Authorization Numbers, and other documentation required under the provisions of this rule, other rule sections of Rule Chapter 12A-1, F.A.C., or suggested in Taxpayer Information Publications, until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under s. 95.091(3), F.S. Electronic storage by the selling dealer of the required affidavits, certificates, or other documentation through use of imaging, microfiche, or other electronic storage media will be sufficient compliance with the provisions of this subsection.

Specific Authority ~~212.07(1)(b)~~, 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented ~~95.091(3)~~, 120.57(1),(2), 120.60(3), 120.80(14), 212.02(14)(c), 212.05(1)(j)(*)~~, 212.06(1)(c)~~, 212.07(1), 212.08(6)(7) ~~212.084~~, 212.085, ~~212.13(5)(e)~~, 212.18(2)(3), 212.21(2), ~~213.053(7)(b)~~ FS. History—Revised 10-7-68, 6-16-72, Amended 9-28-78, 7-20-82, 4-29-85, Formerly 12A-1.38, Amended 8-10-92, 3-17-93, 9-14-93, 12-13-94.

(Substantial rewording of Rule 12A-1.039 follows. See Florida Administrative Code for present text.)

12A-1.039 Sales for Resale Suggested Forms.

(1)(a) It is the specific legislative intent that each and every sale, use, storage, consumption, or rental is taxable, unless such sale, use, storage, consumption, or rental is specifically exempt. The exempt nature of the transaction must be established by the selling dealer.

(b) A sale for resale is exempt from the tax imposed by Chapter 212, F.S., only when the sale for resale is in strict compliance with the provisions of this rule. For purposes of this rule, a "sale for resale" includes the following sales, leases, or rentals when made to a person who is an active registered dealer. This is not intended to be an exhaustive list.

1. The sale of tangible personal property to a dealer when such property will be resold to the dealer's customers.

2. The sale, lease, or rental of tangible personal property to a dealer when such property will be held exclusively for leasing or rental purposes, pursuant to Rule 12A-1.071(2)(a), F.A.C.

3. The sale of taxable services identified in Rule 12A-1.0161(1), F.A.C., to a dealer when such services are being resold to the dealer's customers under the conditions stated in Rule 12A-1.0161(4), F.A.C.

4. The lease or rental of real property to a dealer when such property will subsequently be leased, rented, or licensed by the dealer's tenants.

5. The lease or rental of real property to a dealer when such property will subsequently be leased, rented, or licensed as transient accommodations by the dealer's tenants.

6. The sale of tangible personal property to a dealer when such property will be incorporated as a material, ingredient, or component part of tangible personal property that is being produced for sale by manufacturing, processing, or compounding.

7. The sale of inserts of printed materials that are distributed as a component part of a newspaper or magazine, as provided in s. 212.05(1)(h), F.S.

8. The sale of tangible personal property to a repair dealer, when such property will be incorporated into and sold as part of a repair of tangible personal property by such dealer.

9. The alteration, remodeling, maintenance, adjustment, or repair of tangible personal property (when labor and materials are provided) that is held in inventory for resale or exclusively for leasing purposes by a dealer.

(c) For purposes of this rule, "active registered dealer" means a person who is registered with the Department as a dealer for sales tax purposes and who is required to file a sales and use tax return during each applicable reporting period, as provided in s. 212.11(1), F.S.

(2) ANNUAL RESALE CERTIFICATES ISSUED BY THE DEPARTMENT.

(a) For each calendar year, the Department of Revenue will issue to each active registered dealer an Annual Resale Certificate (form DR-13). A newly registered dealer will receive a Sales and Use Tax Certificate of Registration (form DR-11) and an Annual Resale Certificate. The business name and location address, the registration effective date, and the certificate number will be indicated on the Annual Resale Certificate.

(b) Dealers who lose their Annual Resale Certificate may request a replacement by contacting the Department at 1-800-352-3671. Persons with hearing or speech impairments may call the Department's TDD, at 1-800-367-8331. Written requests should be addressed to Central Registration, Florida Department of Revenue, 5050 West Tennessee Street, Building E, Tallahassee, Florida 32399-0100.

(3) Except as provided in subsection (4), a dealer making a sale for resale is required to document the exempt sale by CHOOSING ONE of the following three methods:

(a) COPIES OF ANNUAL RESALE CERTIFICATES OBTAINED BY THE SELLING DEALER. The selling dealer who makes a tax exempt sale for the purposes of resale must obtain a copy of the purchaser's current Annual Resale Certificate, or a Transaction Resale Authorization Number or Vendor Resale Authorization Number issued by the Department.

1. The copy of the Annual Resale Certificate must be signed by the purchaser or the purchaser's authorized representative.

2. A selling dealer may make sales for resale to a purchaser whose current Annual Resale Certificate is on file without seeking a new Annual Resale Certificate for each subsequent transaction during that calendar year. A new Annual Resale Certificate must be obtained each calendar year. Except for sales made to purchasers who purchase on account from the dealer on a continual basis, a selling dealer may only make exempt sales for resale to purchasers during the calendar year for which the purchaser's Annual Resale Certificate appears valid on its face.

3. For sales made to purchasers who purchase on account from a dealer on a continual basis, the selling dealer may rely upon the Annual Resale Certificate beyond the expiration date of the certificate and is not required to obtain a new Annual Resale Certificate each calendar year. For purposes of this paragraph, the phrase "purchase on account from a dealer on a continual basis" means that the selling dealer has a continuing business relationship with a purchaser and makes recurring sales on account to that purchaser in the normal course of business. For purposes of this paragraph, a sale "on account" refers to a sale where the dealer extends credit to the purchaser and records the debt as an account receivable, or where the dealer sells to a purchaser who has an established cash or C.O.D. account, similar to an "open credit account." For purposes of this paragraph, purchases are made from a selling

dealer on a "continual basis" if the selling dealer makes sales to the purchaser no less frequently than once in every twelve month period in the normal course of business.

(b) TRANSACTION RESALE AUTHORIZATION NUMBER ISSUED AT POINT-OF-SALE – VALID FOR SINGLE TRANSACTION ONLY. When making a tax exempt sale for the purposes of resale, the selling dealer may obtain a Transaction Resale Authorization Number from the Department in lieu of obtaining a copy of an Annual Resale Certificate from the purchaser or a Vendor Resale Authorization Number from the Department.

1. A "transaction resale authorization number" must be obtained by the selling dealer at the point-of-sale through use of an automated nationwide toll-free telephone verification system. The nationwide toll-free number to access the system is 1-877-357-3725.

2. The selling dealer must key in the purchaser's sales tax certificate of registration number through use of a touch-tone phone. The system will either issue a 13 digit transaction resale authorization number or alert the selling dealer that the purchaser does not have a valid resale certificate. Callers who do not have a touch-tone phone will be connected to a live operator. Persons with hearing or speech impairments may call the Department's TDD, at 1-800-367-8331.

3. A transaction resale authorization number is not valid to exempt subsequent resale purchases or rentals made by the same purchaser. A selling dealer must obtain a new transaction resale authorization number for each and every resale transaction.

4. The selling dealer must document the transaction resale authorization number on the sales invoice, purchase order, or a separate form that is prepared by either the purchaser or the selling dealer. The sales invoice, purchase order, or separate form must contain the following statement: "The purchaser hereby certifies that the property or services being purchased or rented are for resale." This statement must be followed by the signature of the purchaser. The signature may be obtained by the selling dealer through use of an electronic signature pad or other electronic method.

5. Alternatively, in lieu of meeting the requirements of subparagraph 4., the transaction resale authorization number may be documented on a properly completed Uniform Sales and Use Tax Certificate-Multijurisdiction, as provided in subsection (8) of this rule.

(c) VENDOR RESALE AUTHORIZATION NUMBER FOR REGULAR CUSTOMERS WHO HAVE PREVIOUSLY SUBMITTED DOCUMENTATION TO THE SELLING DEALER – VALID FOR CALENDAR YEAR ISSUED. When making a tax exempt sale for the purposes of resale, the selling dealer may obtain a Vendor Resale Authorization Number from the Department, in lieu of obtaining a Transaction Authorization Number or a copy of the

purchaser's Annual Resale Certificate. This option is available to selling dealers throughout the calendar year without limitation.

1. The "Vendor Resale Authorization Number" is a customer-specific authorization number that will be valid for all sales for resale made to a particular customer during the calendar year.

2. To obtain vendor resale authorization numbers, the selling dealer must send to the Department, using an electronic medium, a list of the dealer's regular customers for which the dealer has a resale certificate number or outdated Annual Resale Certificate on file. The request may be submitted on form DR-600013, Request for Verification that Customers are Authorized to Purchase for Resale, or by providing the following information: date of request; name of the dealer's business; return address; name and telephone number of a contact person. The written request, or completed form DR-600013, should be forwarded to: Florida Department of Revenue, Production Control, G30 Carlton Building, Tallahassee, Florida 32399-0100. The electronic format for sending the customer data is provided in form DR-600013 and may be obtained from the Department's web site at <http://sun6.dms.state.fl.us/dor/> or by calling the Department at 850-488-3516. In response to this request, the Department will issue to the selling dealer, using the same electronic medium, a list containing a unique vendor resale authorization number for each customer who is an active registered dealer.

3. The selling dealer may make exempt sales for resale to a customer during the period in which the vendor resale authorization number for that customer is valid. Vendor resale authorization numbers are valid for the remainder of the calendar year during which they are issued. However, vendor resale authorization numbers issued by the Department in November or December shall be valid for the remainder of the current calendar year and the next calendar year.

(4) SALES OF ALCOHOLIC BEVERAGES AND CERTAIN MOTOR VEHICLES; SALES TO OUT-OF-STATE DEALERS.

(a) The sale of alcoholic beverages by distributors licensed by the Division of Alcoholic Beverage and Tobacco, Department of Business and Professional Regulation, to others who are also licensed by the Division of Alcoholic Beverage and Tobacco, Department of Business and Professional Regulation, are deemed to be sales for resale. The distributors are not required to meet the documentation requirements provided in subsection (3) of this rule.

(b) The sale of motor vehicles or recreational vehicles through a motor vehicle auction licensed by the Department of Highway Safety and Motor Vehicles, pursuant to s. 320.27(1)(c)4., F.S., to other motor vehicle dealers licensed by the Department of Highway Safety and Motor Vehicles under

s. 320.27(2), F.S., are deemed to be sales for resale. The motor vehicle auction is not required to meet the documentation requirements provided in subsection (3) of this rule.

(c) A sale to a nonresident dealer who is not required to be registered in this state for resale outside this state is governed by Rule 12A-1.064(2)(b), F.A.C., or Rule 12A-1.007(6), F.A.C. However, blanket resale affidavits from out-of-state motor vehicle dealers are acceptable in lieu of individual affidavits in Rule 12A-1.007(6), F.A.C., for each sale of each motor vehicle to such out-of-state motor vehicle dealers.

(5) BURDEN OF ESTABLISHING EXEMPT NATURE OF SALES FOR RESALE.

(a) A selling dealer who makes a sale for resale in good faith, and who complies with the requirements of subsections (3) and (4) of this rule, has met the burden of proof for establishing the exempt nature of the sale, and is relieved from any liability for tax due on that sale. Submission of copies of Annual Resale Certificates to the Department that are obtained after the sale from purchasers who were active registered dealers at the time of the sale will be considered sufficient compliance with subsection (3) when submitted during audit or protest, but will not be acceptable if submitted during any proceeding under Chapter 120, F.S. or in any circuit court action under Chapter 72, F.S.

(b)1. A sale that is not in compliance with the requirements of subsections (3) and (4) of this rule is presumed to be a retail sale, and the selling dealer will be liable for any applicable sales tax not collected and remitted on that sale.

2. For a sale that is not in compliance with the requirements of subsections (3) and (4), but that is made to a person who was an active registered dealer at the time of the sale, and it would be reasonable to assume, based on the nature of the purchaser's business, that the sale was for the purposes of resale, the presumption that the sale is a retail sale can be overcome during an audit or protest.

3. A sale made to a person who was not an active registered dealer, other than a nonresident dealer, at the time of the transaction is a retail sale, and can never be considered a sale for resale. However, a selling dealer who accepts an Annual Resale Certificate that appears valid on its face will not be held liable for any tax due on this transaction, if it is later determined that the purchaser was not an active registered dealer at the time of the transaction.

(6) RECORDS REQUIRED. Resale certificates created and issued by purchasers that were based on the Department's suggested format provided in Rule 12A-1.039, F.A.C., effective 12-13-94, are valid only for the purpose of documenting sales for resale made prior to February 1, 2000. The selling dealer must also maintain copies of receipts, invoices, billing statements, or other tangible evidence of sales, copies of Annual Resale Certificates and other certificates, and Vendor Resale Authorization and Transaction Authorization Numbers until tax imposed by Chapter 212, F.S., may no

longer be determined and assessed under s. 95.091(3), F.S. Electronic storage by the selling dealer of the copy of the Annual Resale Certificate or other required documentation through use of imaging, microfiche, or other electronic storage media will be sufficient compliance with the provisions of this subsection.

(7) PROVISIONS APPLICABLE TO PERSONS CLAIMING THE RESALE EXEMPTION.

(a) Annual Resale Certificates may only be used by purchasers who hold a valid Sales and Use Tax Certificate of Registration (form DR-11) issued by the Department, and whose registration status is currently active. For dealers who have been in business for less than the full calendar year, the effective date of the Annual Resale Certificate (form DR-13) will be the postmark or hand delivered date of the Sales and Use Tax Application for Certificate of Registration. The effective date is found in the block labeled "Registration Effective Date" on the Sales and Use Tax Certificate of Registration (form DR-11).

(b) A dealer whose Sales and Use Tax Certificate of Registration has been revoked or whose registration status has been inactivated or canceled by the Department is prohibited from purchasing, leasing, or renting taxable property or services for the purposes of resale exempt from tax. However, a selling dealer who accepts an Annual Resale Certificate that appears valid on its face will not be held liable for tax on this transaction, if it is later determined that the purchaser was not an active registered dealer at the time of the transaction.

(c) A purchaser who files returns on a consolidated basis (80 code) may extend, and the selling dealer may accept, a copy of the Annual Resale Certificate bearing the purchaser's consolidated sales tax registration number (80 code number), in lieu of extending a copy of the Annual Resale Certificate for each active location that is reported under the consolidated sales tax registration number (80 code number).

(d) For dealers who report sales tax using a county-control number, the Annual Resale Certificate will only be issued to the active reporting number(s) within each county. Dealers who report using a county-control number must use the Annual Resale Certificate issued to the active reporting number(s) to make purchases for resale, except dealers who file returns under a consolidated sales and use tax registration number (80 code). Sales tax numbers issued to the individual locations within a county are inactive, and will not be issued an Annual Resale Certificate.

(e) Wholesalers and certain other sales tax dealers who are currently on an inactive reporting status will need to contact the Department at 800-352-3671 (Florida only) or 850-488-6800 (outside Florida) to have their sales tax registration number activated in order to obtain the Annual Resale Certificate and make exempt purchases for resale. By

activating the sales tax registration number, the dealer will then be required to file a sales tax return during each applicable reporting period, as provided in s. 212.11(1), F.S.

(f) Purchasers who are holders of a Direct Pay Permit, Temporary Tax Exemption Permit, or other permits or exemption certificates issued pursuant to Chapter 212, Florida Statutes, are not required to extend or provide copies of their Annual Resale Certificate to the selling dealer to make tax exempt purchases authorized under the Direct Pay Permit, Temporary Tax Exemption Permit, or other exemption certificates or permits issued pursuant to Chapter 212, F.S.

(g) Purchasers of vessels and parts thereof used to transport persons or property in interstate or foreign commerce must complete the affidavit as required in Rule 12A-1.064(5), F.A.C.

(h) A person who complied with the provisions of this rule when making a purchase or rental of tangible personal property that is intended for resale, but then uses, consumes, distributes, or stores for use or consumption in this state, the tangible personal property in a manner inconsistent with the purposes described in paragraph (1)(b) of this rule, is required to pay use tax as provided in s. 212.05(1)(b), F.S.

(i) Any person who, for the purpose of evading tax, uses an Annual Resale Certificate or signs a written statement claiming an exemption from sales tax knowing that tax is due on the property or services at the time of purchase or rental, is subject to the civil and criminal penalties provided in s. 212.085, F.S.

(j) The resale exemption shall also apply to the importation of tangible personal property into this state for resale in this state. A dealer who imports tangible personal property into this state for resale must be an active registered dealer at the time the property is imported into this state to meet the resale exemption requirements. The determination whether a particular item of tangible personal property imported into this state is for resale is based on the same criteria described in paragraph (1)(b) of this rule.

(8) USE OF UNIFORM SALES AND USE TAX CERTIFICATE – MULTIJURISDICTION. The Department will allow purchasers to use the Multistate Tax Commission's Uniform Sales and Use Tax Certificate-Multijurisdiction. However, the use of this uniform certificate must be in conjunction with the telephonic or electronic authorization number method described in paragraph (3)(b) or (c) of this rule.

Specific Authority 212.07(1)(b), 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 95.091(3), 212.02(14), 212.05(1)(b)(j), 212.06(1)(b), 212.07(1)(b), 212.08(3),(5)(a),(6),(7)(c),(9), 212.085, 212.13(5)(c),(d), 212.17(6), 212.18(2),(3), 212.21(2), 213.053(10) FS., ss. 21, 22, 23, 24, Ch. 99-208, L.O.F. History-Revised 10-7-68, 1-7-70, 6-16-72, 9-26-77, Amended 7-20-82, 4-12-84, Formerly 12A-1.39, Amended 1-2-89, 9-14-93, 12-13-94, _____.

12A-1.097 Public Use Forms.

(1) No change.		
Form Number	Title	Effective Date
(2) through (4) No change.		
(5)(a) DR-5	Sales and Use Tax Application for Consumer's Consumer Certificate of Exemption (r. 10/99 N-09/87)	___ 08/92
(b) DR-5N	Information and Instructions for Completing Application for Consumer's Certificate of Exemption (r. 10/00)	___
(b) DR-5R	Renewal Application for Consumer Certificate of Exemption (r. 04/88)	08/92
(6) through (27) No change.		
(28) DR-600013	Request for Verification that Customers are Authorized to Purchase for Resale (N. 01/00)	___

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.17(6), 212.18(2),(3) FS. History-New 4-12-84, Formerly 12A-1.97, Amended 8-10-92, 11-30-97, 7-1-99, 4-2-00, 6-28-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Vicki Allen, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4846

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Melton H. McKown, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone number (850)922-4721

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 16, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule 12A-1.0161, 12A-1.038, and 12A-1.097, F.A.C., and the proposed substantial rewording of Rule 12A-1.039, F.A.C., were noticed for a Rule Development Workshop in the Florida Administrative Weekly on December 17, 2001 (Vol. 25, No. 50, pp. 5721-5730). A rule development workshop was held on January 13, 2000, in the auditorium of the R. A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida. In response to comments received at the first workshop, changes were incorporated into the proposed rule text and incorporated into a second Notice of Proposed Rule Development Workshop.

The proposed amendments to Rules 12A-1.001, 12A-1.0161, 12A-1.038, and 12A-1.097, F.A.C., and the proposed substantial rewording of Rule 12A-1.039, F.A.C., were noticed for a Rule Development Workshop in the Florida

Administrative Weekly on April 7, 2000 (Vol. 26, No. 14, pp. 1612-1625). A second rule development workshop was held on April 25, 2000, in Room B-12, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida. Based on the comments received at the second workshop, changes were incorporated into the proposed rule text and incorporated into a third Notice of Rule Development Workshop.

The proposed amendments to Rules 12A-1.001, 12A-1.0161, 12A-1.097, F.A.C., and the proposed substantial rewording of Rules 12A-1.038 and 12A-1.039, F.A.C., were noticed for a Rule Development Workshop in the Florida Administrative Weekly on January 19, 2001 (Vol. 27, No. 3, pp. 139-147). A third rule development workshop was held on February 14, 2001, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida, regarding these proposed rule amendments. In response to comments received at the rule development workshop and written comments received by the Department, changes were made to the proposed rule text of Rules 12A-1.038 and 12A-1.039, F.A.C., and incorporated into the Notice of Proposed Rulemaking.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE TITLES:	RULE NOS.:
Manufacturing	12A-1.043
Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property	12A-1.051
Electric Power and Energy	12A-1.053
Fuels	12A-1.059
Rentals, Leases, and Licenses to Use Transient Accommodations	12A-1.061

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-1.043, F.A.C. (Manufacturing); Rule 12A-1.051, F.A.C. (Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property); Rule 12A-1.053, F.A.C. (Electric Power and Energy), Rule 12A-1.059, F.A.C. (Fuels); and Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations), is to: (1) incorporate the legislative changes to s. 212.07, F.S., that require dealers who purchase items for the purposes of resale to extend a copy of their Annual Resale Certificate to make tax exempt purchases; (2) incorporate the provisions of s. 4, Chapter 2000-276, L.O.F., which extends to corporations and affiliated groups the exclusion from the requirement to pay use tax on rock, shell, fill dirt, or similar materials that are secured from the property owned by the corporation and used on property owned by the corporation or a corporate member of the corporation's affiliated group; (3) provide guidelines for when the sale of electricity or the sale of fuels to be used in residential households, to owners of residential models, and to licensed family day care homes are exempt from tax; (4) remove obsolete provisions regarding the sale of motor fuel and special fuel that are provided in ss. 206.87(3)(f) and

212.0501, F.S., as amended, and Rule 12B-5.130(2), F.A.C.; (5) provide guidelines for the exemption provided for boiler fuels, including a suggested exemption certificate to be issued by the purchaser to purchase boiler fuels tax exempt; (6) provide that, to qualify for the exemption provided for military personnel on active duty and present in the community under official orders from the tax on transient rentals, the dealer may obtain a copy of an overflow certificate or a copy of the official orders of the purchaser; and (7) remove obsolete provisions and provide necessary technical correction to properly reference other rule sections.

SUMMARY: The proposed amendments to Rule 12A-1.043, F.A.C., Manufacturing: (1) incorporate the legislative changes to s. 212.07, F.S., that require dealers who purchase items for the purposes of resale to extend a copy of their Annual Resale Certificate to make tax exempt purchases; (2) provide that dealers who do not sell tangible personal property are not required to register as dealers and may extend an exemption certificate, as provided in Rule 12A-1.038, F.A.C., as amended, to purchase tax exempt items purchased for the purpose of manufacturing, producing, compounding, processing, or fabricating items of tangible personal property for their own use or consumption; and (3) provide a technical correction to properly reference Rule 12A-1.051(12), F.A.C., where guidelines for use tax due on asphalt manufactured for one's own use are provided.

The proposed amendments to Rule 12A-1.051, F.A.C., Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property: (1) provide that dealers are required to issue a copy of their Annual Resale Certificate to make tax exempt purchases for the purposes of resale; (2) provide reference to Rule 12A-1.038, F.A.C., as amended, for sales made to entities that hold a valid Consumer's Certificate of Exemption; and (3) incorporate the provisions of s. 4, Chapter 2000-276, L.O.F., which extends to corporations and affiliated groups the exclusion from the requirement to pay use tax on rock, shell, fill dirt, or similar materials that are secured from the property owned by the corporation and used on property owned by the corporation or a corporate member of the corporation's affiliated group.

The proposed amendments to Rule 12A-1.053, F.A.C., Electric Power and Energy: (1) provide guidelines for when the sale of electricity to be used in residential households, to owners of residential models, and to licensed family day care homes is exempt from tax; (2) provide guidelines for when a utility will be held liable for tax exempt sales of electricity that is used for a nonexempt purpose; and (3) remove obsolete provisions regarding imposition of obsolete tax rates.

The proposed amendments to Rule 12A-1.059, F.A.C.: (1) change the title to "Fuels" to reflect the removal of provisions for the sale of lubricants that are unnecessary; (2) provide guidelines regarding documentation requirements for dealers who make sales of fuels used in residential households, to

owners of residential models, and to licensed family day care homes that are exempt from tax: (3) provide guidelines for when a dealer will be held liable for tax exempt sales of fuel that is used for a non-exempt purpose; (4) remove obsolete provisions regarding the sale of motor fuel and special fuel that are provided in ss. 206.87(3)(f) and 212.0501, F.S., as amended, and Rule 12B-5.130(2), F.A.C.; (5) provide guidelines for the exemption provided for boiler fuels, including a suggested exemption certificate to be issued by the purchaser to purchase boiler fuels tax exempt; (6) remove redundant provisions regarding the sale of fuels and other items subject to the proration provisions in Rule 12A-1.064, F.A.C.; (7) remove redundant provisions regarding the sale of fuels used to generate electrical power or energy that are provided in Rule 12A-1.053, F.A.C.; and (8) remove examples of lubricants and other items for which an administrative rule to provide that the sale of tangible personal property is taxable is unnecessary.

The proposed amendments to Rule 12A-1.061, F.A.C., Rentals, Leases, and Licenses to Use Transient Accommodations: (1) provide that, to qualify for the exemption provided for military personnel on active duty and present in the community under official orders from tax on transient rentals, the dealer may obtain a copy of an overflow certificate or a copy of the official orders of the purchaser; (2) correct the reference to exemption certificates for purchases of transient accommodations made by government employees and representatives of exempt organizations that will be provided in Rule 12A-1.038, F.A.C., as amended; (3) remove the unnecessary repetition of record keeping requirements from subsection (13) that are provided in subsection (19) of the rule; and (4) clarify that exemption certificates are required to be maintained in a dealer's books and records.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Since these proposed rule amendments to Rules 12A-1.043, 12A-1.051, 12A-1.053, 12A-1.059, and 12A-1.061, F.A.C., only implement statutory provisions, no new regulatory costs are being created. Therefore, no statement of estimated regulatory costs has been prepared.

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

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1), FS.

LAW IMPLEMENTED: 92.525(1)(b), 212.02(2),(4), (7),(10)(a)-(g),(16),(19),(21), 212.03(1),(2),(3),(4),(5),(7), 212.031, 212.04(4), 212.05, 212.052, 212.06(1),(3),(14), (15)(a), 212.07(1),(8), 212.08(4),(6),(7)(b),(i),(j),(m),(o), 212.11(1),(2), 212.12(7),(9),(12), 212.13(2), 212.14(5), 212.18(2),(3), 212.183, 213.37, 213.756, 366.051 FS.

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

TIME AND DATE: 10:00 a.m., May 22, 2001

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least five (5) calendar days before such proceeding by contacting Jamie Phillips, (850)488-0717. If you are hearing or speech impaired, please contact the Department by calling 1(800)DOR-TDD1 (1(800)367-8331).

THE FULL TEXT OF THE PROPOSED RULES IS:

12A-1.043 Manufacturing.

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

(d) Persons who manufacture, produce, compound, process, or fabricate items of tangible personal property for resale or for their own use or consumption may purchase direct materials tax exempt but shall include the cost of the direct materials when computing tax on the cost of the items so manufactured, produced, compounded, processed, or fabricated for such persons' own use or consumption. If tax has been paid on the direct materials, the method described in paragraph (c) should be used when computing the tax on the cost of the items so manufactured, produced, compounded, processed, or fabricated.

(e)1. To purchase direct materials tax exempt, dealers registered with the Department to sell tangible personal property may extend a copy of their Annual Resale Certificate (form DR-13) to the selling dealer in lieu of paying tax at the time of purchase. The cost of such materials is subject to tax on the cost of the items so manufactured, produced, compounded, processed, or fabricated, as provided in paragraph (d).

2. Persons who do not sell tangible personal property are not required to register with the Department as a dealer. However, to purchase direct materials tax exempt, such persons may extend an Exemption Certificate, as provided in Rule 12A-1.038, F.A.C., to the selling dealer in lieu of paying tax at the time of purchase. The cost of such materials is subject to tax on the cost of the items so manufactured, produced, compounded, processed, or fabricated, as provided in paragraph (d).

~~(f)(e)~~ No change.

(2) through (3) No change.

(4) Any person who manufactures asphalt for his own use shall calculate and remit the use tax on such asphalt, as provided in Rule 12A-1.051(12)(6), F.A.C.

(5) through (6) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(4), (7), 212.052, 212.06(1), 212.12(12), 366.051 FS. History—Revised 10-7-68, 1-7-70, 6-16-72, Amended 1-19-74, 12-26-83, Formerly 12A-1.43, Amended 1-2-89, 2-28-90, 3-20-96, 7-27-99.

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

(1) through (4) No change.

(5) Rule for (3)(d) contractors. Contractors who perform retail sale plus installation contracts described in paragraph (3)(d), do sell tangible personal property. They should register as dealers and provide a copy of their Annual Resale Certificate (form DR-13) to the selling dealer to purchase tax exempt resale certificates for materials that are itemized and resold under paragraph (3)(d) contracts. They should not provide the certificate to purchase tax exempt 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. See Rule 12A-1.038, F.A.C., for tax exempt sales made to entities that hold a valid Consumer's Certificate of Exemption.

(6) through (8)(a) No change.

(b) If the predominant nature of a mixed contract is a contract for tangible personal property, taxability of the contract will be determined as if the contract were entirely for tangible personal property. For example, a vendor of a mechanical conveyor system for a warehouse provides reinforced concrete foundations and embeds steel plates in the concrete to permit installation of the equipment by bolting it to the plates. The contract is predominantly for the sale of equipment. The contractor should buy the equipment, concrete, and steel plates tax exempt by extending a copy of the contractor's Annual Resale Certificate (form DR-13) to the selling dealer using a resale certificate and charge tax on the full price charged to the customer.

(c) No change.

(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 by issuing a copy of the contractor's Annual Resale

Certificate (form DR-13) to the selling dealer 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 a mechanical conveyor system in a warehouse could state a separate charge in the contract for providing reinforced concrete with embedded steel plates in the warehouse floor to support the conveyor. The conveyor system is machinery or equipment and is therefore tangible personal property. The concrete 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 conveyor machinery itself.

(e) This subsection does not affect any exemption provided in Chapter 212, F.S., 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 by issuing a copy of the contractor's Annual Resale Certificate (form DR-13) to the selling dealer 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. See Rule 12A-1.038, F.A.C., for tax exempt sales made to entities that hold a valid Consumer's Certificate of Exemption.

(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 that they may either use themselves or that they may resell, they may issue a copy of the contractor's Annual Resale Certificate (form DR-13) to the selling dealer resale certificate. Florida tax should be remitted when a subsequent event determines the appropriate taxation of the materials. If the 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 to the ~~state~~ State instead.

(10) through (12) No change.

(13) Use tax on rock, shell, fill dirt, or similar materials. 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) When rock, shell, fill dirt, or similar materials are secured from a location owned by the contractor for use on his or her own property, the contractor does not owe tax on these materials. For purposes of this paragraph, a contractor that is a corporation is considered to own any location that is owned by any corporation in the same affiliated group as the contractor. "Affiliated group" shall have the meaning provided in s. 220.03(1), F.S.

~~(d)~~(e) 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) through (19) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(4),(7),(16),(19),(21), 212.06(1),(14),(15)(a), 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, 7-27-99, 3-30-00,_____.

12A-1.053 Electric Power and Energy.

(1)(a) The sale of electric power or energy by a electric utility private or public utilities and rural electric cooperative associations is taxable. ~~The sale of electric~~ Electric power or energy is exempt when it is separately metered and sold for use in residential households, to owners of residential models, or to licensed family day care homes (including trailer lots) direct to the actual consumer by utilities who are required to pay the gross receipts tax imposed by Chapter 203, F.S., is exempt Section 203.01, Florida Statutes. Such electric power or energy is exempt, even though metered and billed direct to the

~~landlord (master metered). However, if any part of the electric power or energy utility or fuel is used for a non-exempt purpose, the entire sale is subject to tax taxable. Landlords shall provide separate meters for non-exempt consumption of electric power and energy. This exemption shall also apply to electric power or energy sold to residents when separately metered and billed direct to them. Electric power or energy used in residential model homes or common areas of apartments, cooperatives and condominiums is exempt provided that none of the electric power or energy is used in residential model homes which are used as sales offices or for other non-exempt purposes. Hotels and motels cater primarily to transient guests and are not considered to be residential households. Therefore, this exemption shall not apply to electric power or energy sold for use in hotels and motels.~~

(b) An electric utility is not obligated to collect and remit tax on any sale of electric power or energy when all of the following factors are present: Effective May 1, 1982, the sale or use of electric power or energy that is subject to tax shall be taxed at the rate of 5 percent in lieu of the former rate of 4 percent. If a customer is billed for electric power or energy for a cycle ending on or after may 1, 1982, the 5 percent tax rate is applicable on the entire taxable transaction even though the billing may have been for electrical services received prior to May 1, 1982. Where no cycle date appears on the billing, the billing date will control the rate of tax applicable.

1. The property to which the electric power or energy is sold is coded "residential," based on tariffs filed by the utility with the Public Service Commission.

2. The electric utility has on file a writing or document evidencing a representation of the utility's customer that the electric power or energy is being purchased for residential household use, including licensed family day care homes. The writing or document may be a customer application, a certificate, or a series of billing statements to the customer that identifies the customer as holding a residential account and provides the customer a means to change its classification if the electric power or energy is no longer being purchased for residential household use. A "customer application" includes a record of information obtained electronically or orally from the customer in the ordinary course of business at the time of establishing the account. A commercial or business purpose does not include electric power or energy used in a licensed family day care home.

3. The electric utility must have acted in good faith in accepting the representation of the customer.

(c) Tax is due on electric power or energy purchased by a customer tax exempt for the purposes of residential household use that does not qualify for such exemption. In such instances, if the electric utility complies with the requirements of paragraph (b), the Department will look to the customer for any applicable tax, penalty, or interest due. The Department

will look to the electric utility for any applicable tax, penalty, or interest due when the utility's books and records indicates a failure to comply with the requirements of paragraph (b).

(2) through (3) No change.

~~(4) Effective June 1, 1982, the provision under 166.231(3), F.S., which provided that the municipal tax on electricity shall not be levied and collected on the first 50 kilowatt hours per month for residential use has been eliminated. Therefore, if a utility has a billing cycle which begins in May and ends in a subsequent month, the utility may deduct from their sales tax collects an amount equal to the municipal tax loss on the sale of electricity to residential customers. If a utility's billing cycle begins in June, the utility shall not deduct from their sales tax collections an amount equal to the municipal tax loss on the sale of electricity to residential customers.~~

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

Specific Authority 212.17(6), 212.18(2), 213.06 FS. Law Implemented 212.02(2),(19), 212.05(1)(e), 212.06(1)(a),(b),(c), 212.08(4),(7)(j), 212.18(2) FS. History—Revised 10-7-68, 6-16-72, Amended 12-11-74, 10-18-78, 6-3-80, 12-23-80, 7-20-82, Formerly 12A-1.53, Amended _____.

12A-1.059 Fuels and Lubricants.

~~(1)(a) The sale of fuel, including crude oil, fuel oil, kerosene, sterno, diesel oil, natural and manufactured gas, coke, charcoal briquets, cord wood, and other fuel products is taxable. The sale of natural or Natural and manufactured gas, such as butane, propane, and all other forms of liquefied petroleum (L.P.) gas, is exempt when separately metered and sold for use in residential households, to licensed family day care homes, or (including trailer lots) directly to owners of residential models the actual consumer by utilities who are required to pay the gross receipts tax imposed by Chapter 203, F.S., is exempt Section 203.01, Florida Statutes. The sale of exemption for residential households (including trailer lots) also includes L.P. gas, crude oil, fuel oil, kerosene, diesel oil, coke, charcoal briquets, cord wood, and other household fuels for the purposes of heating, cooking, lighting, and refrigeration in residential households, to owners of residential models, or to licensed day care homes is exempt. However, Such sales of utilities and fuels are exempt regardless of whether such sales are billed to the landlord; provided, however, that if any part of the utility or fuel is used for a non-exempt purpose, the entire sale is subject to tax taxable. Landlords shall provide separate meters for any non-exempt consumption of utilities or fuels. This exemption shall also apply to the sale of utilities and fuels used in residential model homes or common areas of apartments, cooperatives and condominiums provided that none of the utilities or fuels are used in residential model homes which are used as sales offices or for other non-exempt purposes. No exemption certificate or affidavit is required to be obtained by a dealer of special fuel or a dealer of liquefied petroleum gases when the fuel is sold and delivered into the customer's storage facility located on the customer's residential premises, when the fuel is for the purposes of home cooking or~~

~~home heating. Hotels and motels cater primarily to transient guests and are not considered to be residential households. Therefore, this exemption shall not apply to utilities or fuels sold for use in hotels and motels.~~

(b) Any dealer who sells manufactured gas that is delivered to the customer's storage facility located on the customer's residential premises to be used for home heating or cooking is not obligated to collect and remit tax or obtain a certificate from the customer. However, the dealer must document on the customer's delivery ticket, sales invoice, or billing statement that the fuel being sold and delivered is for the purposes of home heating or cooking.

(c) Any person who sells natural or manufactured gas or other fuels for residential household purposes or for use in a licensed family day care home, but does not deliver the gas or fuel directly to a storage facility located on the customer's residential premises, is not obligated to collect and remit tax on any sale of gas when:

1. The selling dealer has on file a writing or document evidencing a representation of the customer that the natural or manufactured gas or other fuel is being purchased for residential household use or for use in a licensed family day care home. The writing or document may be a customer application, a certificate, or a series of billing statements to the customer that identifies the customer as holding a residential account and provides the customer a means to change its classification if the fuel is no longer being purchased for residential household use. A "customer application" includes a record of information obtained electronically or verbally from the customer in the ordinary course of business at the time of establishing the account. A business or commercial purpose does not include gas or fuel used in a licensed family day care home; and

2. The selling dealer must have acted in good faith in accepting the representation of the customer.

(d) Tax is due on any natural or manufactured gas or other fuel purchased by a customer tax exempt for the purposes of residential household use, or for use in a licensed family day care home, that does not qualify for such exemption. In such instances, if the selling dealer complies with the requirements of paragraph (b), the Department will look to the customer for any applicable tax, penalty, or interest due. The Department will look to the selling dealer for any applicable tax, penalty, or interest due when the dealer's books and records indicates a failure to comply with the requirements of paragraph (b).

~~(e)(b) The charge Where the amount of the sale exceeds two dollars, and except for the filling of liquefied petroleum (L.P.) gas tanks in excess of twenty pounds, including tanks used in recreational vehicles, is exempt when the L.P. gas will be used by the purchaser for the purposes of residential heating or cooking twenty-pound tanks, the dealer must support his claim for exemption from the tax with a copy of an invoice which contains the date of sale, quantity and description of the~~

fuel, license number, and state of issue of the travel trailer. Twenty-pound L.P. gas tanks are used exclusively for residential household purposes and the charge for filling of such tanks with L.P. gas is exempt under the law. The dealer must document on the customer's invoice or other written evidence of sale that the charge is for filling a twenty pound tank, or the gas is sold for the purposes of residential household cooking or heating.

(f) Any person who sells charcoal briquets or cord wood to be used for residential household cooking or heating is not required to obtain a certificate from the purchaser to make tax exempt sales of these items.

~~(2)(a) Motor fuels or special fuels, other than liquefied petroleum gases, on which the tax is imposed by Chapter 206 or by Part II, Chapter 212, F.S., are exempt from the tax imposed by Part I, Chapter 212, F.S. Motor fuels or special fuels exempt from tax under Chapter 206 or Part II, Chapter 212, F.S., are taxable under Part I, Chapter 212, F.S., unless specifically exempted therein.~~

~~(b) Butane gas, propane gas, and all other forms of liquefied petroleum gases are not defined as special fuels under Chapter 212, F.S. Such fuels are taxable under Part I, Chapter 212, F.S., at the rate of 6 percent of the total selling price, unless specifically exempted therein.~~

~~(c) Natural gas and liquefied petroleum gases, when such gases are used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm and no part of which is used in any vehicle or equipment driven or operated on the public highways of this state are exempt. This restriction shall not apply to the movement of farm vehicles or farm equipment between farms.~~

~~(d) Natural gas and liquefied petroleum gases used in the transporting of bees by water and the operating of equipment used in the apiary of a beekeeper are also exempt.~~

~~(e) In order to obtain the exemption on natural gas or liquefied petroleum gases, the purchaser shall furnish the seller a certificate stating that the natural gas or liquefied petroleum gases are used for agricultural purposes.~~

~~(3) All fuels used by public or private utilities, including municipal corporations and rural cooperative associations in the generation of electric power or energy for sale, are exempt.~~

~~(4) Fuels used or consumed in vessels or railroad locomotives which are used to transport persons or property in interstate or foreign commerce are taxable under Part I, Chapter 212, F.S., subject to the provisions contained in Rule 12A-1.064. Fuels, other than liquefied petroleum gases, used or consumed in other vessels or railroad locomotives and any other vehicle including, but not limited to, motor vehicles and aircraft are exempt from tax under Part I, Chapter 212, F.S. However, such fuels are taxable under Part II, Chapter 212, F.S.~~

~~(5) Lubricating oils, including machine oils and thread lubricating oil and greases are taxable, and the tax is due on the total selling price paid by the purchaser, including any other state and federal taxes which are a part thereof.~~

~~(6) The sale of lubricating oils and greases, motor additives, friction proofing oils, solvents, driers, and all other lubricants for use on or by commercial fishing vessels or on or by ships, vessels, aircraft, trucks, and other vehicles is taxable based on the total selling price, including any other state and federal taxes which are a part thereof. (See Rule 12A-1.064, F.A.C., for proration of tax on these items when used in or on vehicles, vessels, or aircraft engaged in interstate or foreign commerce.)~~

~~(7) The entire lump sum charges made for grease jobs, wheel packs, etc., are taxable and are payable by the customer to the dealer.~~

~~(8) Naphtha, mineral spirits and lighter fluids are taxable.~~

~~(9) Liquefied petroleum gas or other fuel used to heat a structure in which starter pullets or broilers are raised is exempt.~~

~~(2)(a)(4) "Boiler" fuels. When purchased as a combustible fuel, purchases of natural gas, residual oil, recycled oil, waste oil, solid waste material as defined in s. 403.703(13), F.S., coal, sulfur, wood, wood residues, or wood bark used in an industrial manufacturing, processing, compounding, or production process at a fixed location in this state is shall be exempt from the taxes imposed by this chapter; provided, however, that this exemption shall not apply to such fuels that are not used in manufacturing, processing, compounding, or producing items of tangible personal property for sale, or to the boiler fuels used by any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business Regulation. For the purpose of this exemption, the term "residual oil" means shall mean ASTM Grades No. 5 and No. 6, heavy diesel, and bunker C. Purchase invoices must indicate the type of residual oil purchased. This exemption does not shall NOT apply to any type of liquefied petroleum gases, naphtha, kerosene, or distillate fuel oil, such as including but not limited to diesel fuels, No. 1 and No. 2 heating oils, and No. 4 fuel oil. The term "fixed location" means shall mean being permanently affixed to one location or plant site, or any portable plant which may be set up for a period of not less than six months in a stationary manner so as to perform the same industrial manufacturing, processing, compounding, or production process that could be performed at a permanent location or plant site. To be entitled to this This exemption at the time of purchase, shall not be allowed, however, unless the purchaser must issue furnishes the seller a certificate stating that the combustible fuel is used in an industrial manufacturing, processing, compounding, or production process. The following is a suggested format of a certificate to be used for this purpose:~~

**EXEMPTION CERTIFICATE
BOILER FUELS USED TO PRODUCE TANGIBLE
PERSONAL PROPERTY FOR SALE**

_____, incorporated in the State of _____, its undersigned officer who is duly authorized, hereby certifies to that purchases of residual oil, recycled oil, waste oil, solid waste material as defined in s. 403.703(13), F.S., coal, sulfur, wood, wood residues, or wood bark under account number will be exclusively used as a combustible fuel in the manufacturing, processing, compounding, or production of tangible personal property for sale. This industrial process is located at in _____, Florida, County of _____. Further, it is certified that is not subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. The purchase of the combustible fuel pursuant to this certification is exempt from tax, pursuant to s. 212.08(7)(b), F.S.

Dated at _____, Florida, this ____ day of _____, _____.

AUTHORIZED OFFICER OF COMPANY
BY: _____
TITLE: _____

(b) The sale of boiler fuels that are not used in manufacturing, processing, compounding, or producing items of tangible personal property for sale is subject to tax. The sale of boiler fuels used by any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation is subject to tax.

(11) Special fuel may be purchased tax exempt when the fuel is consumed by a power take off or engine exhaust for the purpose of unloading bulk cargo by pumping or turning a concrete mixer drum used in the manufacturing process or for compacting solid waste by a motor vehicle designed to carry such waste and such vehicles have no separate fuel tank or power unit. An invoice or delivery ticket, which shall be signed by the person operating the motor vehicle, shall be made at the time each motor vehicle is refueled and shall provide accurate information as to the date, the number of gallons placed in the fuel tanks of the motor vehicle, the motor vehicle number, or tag number in the event the motor vehicle is not numbered. All internal records which provide information as to fuel consumption by the concrete mixer trucks, trucks in which bulk cargo is unloaded by pumping, and trucks used to compact solid waste shall continue to be maintained for audit review. In order to purchase the fuel tax exempt, the purchaser:

(a) must obtain a license as a dealer of special fuel and as a sales tax dealer; and

(b) compute the tax on the special fuel consumed by each motor vehicle using a power take off unit for turning a concrete drum or for compacting solid waste based on the actual number of gallons consumed during the turning or compacting operation taxable under Part I Chapter 212, F.S., and the remaining gallons taxable under Parts II of Chapters

206 and 212, and Chapter 336, F.S., or on a percentage factor of 65 percent taxable under Parts II of Chapters 206 and 212, and Chapter 336, F.S., and 35 percent taxable under Part I, Chapter 212, F.S.; or

(c) compute the tax on special fuel consumed by each motor vehicle using a power take off unit or engine exhaust for unloading bulk cargo by pumping based on the actual number of gallons consumed during the pump off operation or on the industry's standard of 10 gallons per pump off taxable under Part I Chapter 212, F.S., and the remaining gallons taxable under Parts II of Chapters 206 and 212, and Chapter 336, F.S.
Cross Reference: Rules 12A-1.087 and 12B-5.130(2), F.A.C.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 206.87(3)(f); 212.05, 212.06(3), 212.08(4), (5)(a), (c); (7)(b), (j) FS. History—Revised 10-7-68, 6-16-72, Amended 7-19-72, 12-11-74, 10-18-78, 7-3-79, 6-3-80, 12-23-80, 8-26-81, 12-31-81, 7-20-82, 10-13-83, Formerly 12A-1.59, Amended 12-13-88, 5-19-93, 9-14-93, 3-20-96.

12A-1.061 Rentals, Leases, and Licenses to Use Transient Accommodations.

(1) through (10) No change.

(11) MILITARY PERSONNEL ON ACTIVE DUTY.

(a) Rental charges or room rates paid by military personnel currently on active duty and present in the community under official orders are exempt. This includes rental charges or room rates for transient accommodations paid by military personnel while traveling to a destination designated by their official orders. The exemption does not include rental charges or room rates for transient accommodations paid by military personnel that are in the community, but are not under official orders to be present in the community.

(b) To qualify for this exemption, military personnel must present either of the following documents to the owner or owner's representative of the transient accommodation:

1. A written declaration stating that he or she is currently serving on active duty in the U.S. Armed Services; and

2. A copy of the official orders supporting the active duty status of the military personnel and making it necessary to occupy the transient accommodation; or-

2. A copy of an overflow certificate issued to military personnel on active duty status by any unit of the U.S. Armed Services.

(c) The following is a suggested written declaration to be completed and presented to the owner or owner's representative of the transient accommodation:

The undersigned hereby declares that he or she is currently serving on active duty in the U.S. Armed Services and that it is necessary to reside at the named facility to carry out official orders.

Name _____ and _____ Address _____ of _____ Facility: _____

Name: _____

Rank/Rate: _____ Serial No. _____

Address: _____ (Place of duty) _____

Dated this _____ day of _____, 19____

(Signature of Military Personnel)

(12) No change.

(13) GOVERNMENTAL EMPLOYEES AND REPRESENTATIVES OF EXEMPT ORGANIZATIONS.

(a) Employees of the federal government or its agencies are exempt from tax on rental charges or room rates for transient accommodations, even though the employee may be reimbursed by the federal government or its agencies, only when:

1. The federal government or its agencies pays the rental charges or room rates directly to the owner or the owner's representative of the transient accommodations or reimburses the employee for the actual rental charges or room rates;

2. The employee does not use the transient accommodations for personal purposes; and

3. The employee provides the owner or the owner's representative of the transient accommodations with the proper documentation. See Rule 12A-1.038(4) ~~12A-1.001(9)(d)1~~, F.A.C., for the ~~information and suggested formats of the~~ proper documentation to be provided by the employee.

(b)1. Employees of governmental units other than the federal government or its agencies (i.e., state, county, city, or any other political subdivision of the State) and authorized representatives of organizations that hold a Consumer's Certificate of Exemption issued by the Department ~~exempt from tax under s. 212.08(7)(m) or (o), F.S.~~, are exempt from tax on rental charges or room rates for transient accommodations only when:

a. The rental charges or room rates are billed directly to and paid directly by the governmental unit or the exempt organization;

b. The employee or representative does not use the transient accommodations for personal purposes; and

c. The employee or representative provides the owner or the owner's representative of the transient accommodations with proper documentation. See Rule 12A-1.038(3) and (4) ~~12A-1.001(9)(d)2~~, F.A.C., for the ~~information and suggested formats of the~~ proper documentation to be provided by the employee or representative.

2. Rental charges or room rates paid with personal funds of any individual representing an exempt organization or of any employee of a governmental unit, other than the federal government or its agencies, are subject to tax, even though the representative may receive an advance or reimbursement from the exempt organization or governmental unit.

~~(e) To exempt rental charges or room rates to government employees and representatives of exempt organizations, the owner or owner's representative of the transient accommodations must maintain a copy of the documents required under paragraphs (a) or (b) in their records until the tax imposed by Chapter 212, F.S., may no longer be~~

~~determined and assessed under s. 95.091(3), F.S. Upon request, a copy of the documents must be made available to the Department.~~

(14) through (18) No change.

(19) RECORDS REQUIRED. Any person who collects rental charges or room rates for transient accommodations must maintain adequate records, including copies of all lease or rental agreements, duplicate copies of receipts issued for the payment of rental charges or room rates, and any exemption certificates until the tax imposed by Chapter 212, F.S., may no longer be determined and assessed under s. 95.091(3), F.S. Upon request, records must be made available to the Department.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 92.525(1)(b), 212.02(2),(10)(a)-(g),(16), 212.03(1),(2),(3),(4),(5),(7), 212.031, 212.04(4), 212.08(6),(7)(i),(m),(o), 212.11(1),(2), 212.12(7),(9),(12), 212.13(2), 212.18(2),(3), 213.37, 213.756 FS. History-Revised 10-7-68, 1-7-70, Amended 1-17-71, Revised 6-16-72, Amended 7-19-72, 4-19-74, 12-11-74, 5-27-75, 10-18-78, 4-11-80, 7-20-82, 1-29-83, 6-11-85, Formerly 12A-1.61, Amended 10-16-89, 3-17-94, 1-2-95, 3-20-96, 11-30-97, 7-1-99, 3-4-01,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone number (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 16, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed rule amendments were noticed for a Rule Development Workshop in the Florida Administrative Weekly on January 19, 2001 (Vol. 27, No. 3, pp. 147-154). A rule development workshop was held on February 14, 2001, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida, regarding these proposed rule amendments. In response to comments received at the rule development workshop and written comments received by the Department, changes were made to the proposed amendments to Rules 12A-1.053 and 12A-1.059, F.A.C., to clarify the exemption provided for the sale of electric power or energy or fuels for use in residential households. These changes are incorporated into the Notice of Proposed Rulemaking.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE TITLE: Registration
RULE NO.: 12A-1.060

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-1.060, F.A.C., is to provide clear guidance to taxpayers and tax administrators regarding the Department's sales tax registration requirements and guidance for when the \$100 registration fee will apply.

SUMMARY: The proposed amendments to Rule 12A-1.060, F.A.C.: 1) correct the title of form DR-1, Application to Collect and/or Report Tax in Florida; 2) define the term "place of business"; 3) provide guidelines for when the Department will treat a single contiguous location as separate places of business and require a taxpayer to obtain separate registration certificates; 4) provide examples of when a single registration is sufficient and examples of when the Department will require separate registration certificates for multiple activities carried on within a single contiguous location; and 5) provide that only one failure to register penalty would apply to a single, contiguous location, regardless of the type or number of identifiable activities the taxpayer may carry on at that location.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Since these proposed rule amendments to Rule 12A-1.060, F.A.C., only implement statutory provisions, no new regulatory costs are being created. Therefore, no statement of estimated regulatory costs has been prepared.

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

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1) FS.

LAW IMPLEMENTED: 212.03(1),(2), 212.04(4), 212.06(2), 212.12(2),(5),(6), 212.16(1),(2), 212.18(3) FS.

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

TIME AND DATE: 10:00 a.m., May 22, 2001

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Linda W. Bridges, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9412

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least five (5) calendar days before such proceeding by contacting Jamie Phillips, (850)488-0717. If you are hearing or speech impaired, please contact the Department by calling 1(800)DOR-TDD1 (1(800)367-8331).

THE FULL TEXT OF THE PROPOSED RULE IS:

12A-1.060 Registration.

(1)(a)1. Except as provided in paragraphs (f), (g), or (h), every person must file an Application to Collect and/or Report Tax in Florida for Sales and Use Tax Registration (form Form DR-1, incorporated by reference in Rule 12A-1.097, F.A.C.)

with the Department of Revenue for a dealer's certificate of registration before engaging in any one of the following businesses:

a. through i. No change.

2. A separate application must be filed to obtain a separate dealer's certificate of registration for each place of business. Each application must be accompanied by a \$5 registration fee, except as provided in subparagraphs ~~3~~ or 4. or 5.

3. For purposes of this rule, a "place of business" is a location where a dealer engages in an activity or activities described in subparagraph 1. A place of business includes the entire contiguous area in which the dealer carries on an activity or activities that require registration. A dealer that engages in more than one activity requiring registration within a contiguous area generally is required to obtain only one registration certificate for that location. The department will, however, treat areas within a single contiguous location as separate places of business and require a dealer to obtain separate registration certificates if the activities carried on in those areas are subject to taxation under different provisions of Chapter 212, F.S., the activities are not functionally related, and the efficient administration of the taxes imposed by Chapter 212, F.S., is facilitated by multiple registrations. The department will permit a dealer to obtain separate registrations for activities carried on at a single contiguous location at the dealer's request if the dealer keeps separate financial records for the activities and the activities are not functionally related. Under no circumstances will a dealer be subject to more than one penalty for failure or refusal to obtain a registration certificate for a single contiguous location, even if the dealer could be required or permitted to obtain separate registration certificates for multiple activities carried on at the location. The following examples illustrate the application of this rule in determining whether more than one place of business exists at a single contiguous location.

a. A taxpayer operates a shopping mall with 100 retail outlets that are leased to stores and restaurants, parking and common areas, and offices where management and accounting functions are performed. The taxpayer is required to register as a dealer because the rental of real property to the retailers is taxable under s. 212.031, F.S. The entire shopping mall is a single place of business for purposes of registration by the taxpayer.

b. A taxpayer owns a parcel of land with a building and a parking area. The building is divided into three areas. In one area, the taxpayer operates a retail building supply store. In the second area, which has a separate customer entrance, the taxpayer operates a retail store where custom furniture is made and sold. The third area in the building is used as warehouse and office space serving both stores. When ordering inventory, Taxpayer combines orders of lumber, hardware, paints, and stains from suppliers for the building supply store and for the furniture store. All inventory is purchased for resale and no

records are maintained of whether materials are sold in the building supply store or incorporated into furniture for sale in the furniture store. The taxpayer records sales for both activities in the same accounting records. The parcel of land and the building are a single place of business for registration purposes. Separate registration cannot be required because both the sale of the building supplies and the sale of furniture are taxable under Section 212.05(1), F.S. In addition, because of shared inventory and sales records, the two activities are functionally related. Because the activities are functionally related and separate records are not kept, the taxpayer would not be permitted to treat them as separate places of business for registration purposes.

c. A taxpayer owns a parcel of land with a building and a parking area. The building is divided into three areas. In one area, the taxpayer operates a retail building supply store. In the second area, which has a separate customer entrance, the taxpayer operates a retail store where custom clothing is made and sold. The third area in the building is used as warehouse and office space serving both stores. Separate sales and other accounting records are maintained for the two stores. Unless the taxpayer applies for separate registration certificates, the parcel of land and the buildings are a single place of business for registration purposes. Separate registration cannot be required because both the sale of the building supplies and the sale of clothing are taxable under s. 212.05(1), F.S. If the taxpayer applies for separate certificates of registration for the two activities, the Department then would treat the building supply store and the clothing store as separate places of business because they are not functionally related and separate accounting is done for each.

d. A taxpayer owns a large tract of land. The taxpayer operates an amusement park on part of the land. The taxpayer charges admission for entrance to the park. In addition to amusement rides, the park facilities include restaurants and a gift shop operated by the taxpayer and concession stands throughout the park where concessionaires sell snacks and beverages. The taxpayer also operates a resort hotel adjacent to the amusement park on the same tract of land. Because of its proximity to the park, the hotel caters primarily to park visitors. The hotel contains several restaurants and a gift shop operated by the taxpayer as well retail stores that taxpayer leases to other merchants. The hotel also contains offices from which the taxpayer manages the entire amusement park and hotel complex and centralized storage areas serving the entire complex. The taxpayer orders food for all its restaurants and other materials and supplies on combined purchase orders, regardless of where in the park and hotel complex the food, materials, or supplies will be used. Employees may be assigned to work anywhere throughout the entire park and hotel complex as needed. The taxpayer treats the entire complex as a single business for purposes of financial accounting. The taxpayer would be entitled to treat the entire tract of land with amusement park and hotel facility as a single place of business

for registration purposes. Even though the taxpayer's activities are taxable pursuant to several different sections of Chapter 212, F.S., all of the activities are functionally related parts of a single tourism/resort business under the taxpayer's operational methods and accounting practices.

e. A taxpayer owns a large tract of land. The taxpayer operates an amusement park on part of the land. The taxpayer charges admission for entrance to the park. In addition to amusement rides, the park facilities include restaurants and a gift shop operated by the taxpayer and concession stands throughout the park where concessionaires sell snacks and beverages. The taxpayer also operates a resort hotel adjacent to the amusement park on the same tract of land. Because of its proximity to the park, the hotel caters primarily to park visitors. The hotel contains several restaurants and a gift shop operated by the taxpayer as well retail stores that taxpayer leases to other merchants. The hotel also contains offices from which the taxpayer manages the entire amusement park and hotel complex and centralized storage areas serving the entire complex. The taxpayer orders food for amusement park restaurants and other materials and supplies for the amusement park separately from food, materials, and supplies for the hotel complex. Employees may be assigned to work anywhere in the entire amusement park or anywhere in the hotel complex but no employee is assigned to work in both areas. The taxpayer treats the amusement park as one business and the hotel complex as a separate business for purposes of financial accounting. The taxpayer would be entitled to treat the entire tract of land with amusement park and hotel facility as a single place of business for registration purposes. Even though the taxpayer's activities are taxable pursuant to several different sections of Chapter 212, F.S., and the amusement park and hotel are not operated as functionally related activities, requiring two registration certificates would not facilitate efficient administration of Chapter 212, F.S. If the taxpayer applied for two registration certificates, the Department then would treat the amusement park and the hotel complex as separate places of business because they are not functionally related and separate accounting is done for each.

f. A taxpayer owns a large tract of land. The taxpayer operates an amusement park on part of the land. The taxpayer charges admission for entrance to the park. In addition to amusement rides, the park facilities include restaurants and a gift shop operated by the taxpayer, concession stands throughout the park where concessionaires sell snacks and beverages, and maintenance and storage buildings. The taxpayer manages the amusement park activities, including purchasing and payroll functions from taxpayer's corporate headquarters in another city. The taxpayer also owns a resort hotel adjacent to the amusement park on the same tract of land. The hotel contains several restaurants and retail stores that are leased to other merchants. Because of its proximity to the park, the hotel caters primarily to park visitors. The taxpayer has entered into a management agreement with a third party

management company. The management company is responsible, under its contract with the taxpayer, for all aspects of operating the hotel, including purchasing, paying suppliers, personnel, leasing retail stores to merchants, financial record keeping, and tax matters. The management company collects sales taxes in regard to the hotel operations and remits those taxes on taxpayer's behalf to the state. All records in regard to the hotel operations are maintained by the management company at the hotel premises. The taxpayer will be required to treat the amusement park and the hotel as separate places of businesses. The two activities are not functionally related in terms of operations or accounting. In addition, because a separate return will be prepared and filed for the hotel operations, it will facilitate administration of Chapter 212, F.S., if a separate registration and reporting number is assigned.

g. A taxpayer operates a manufacturing facility and a retail outlet on the same tract of land. Statutes have been enacted to provide sales and use tax exemptions to businesses manufacturing the type of product the taxpayer manufactures. Those statutes require the department to make annual reports to the legislature and the office of the governor on the volume of sales made by manufacturers claiming the exemption. The department will require separate registration of the manufacturing business to facilitate compiling the required annual report.

~~4.3-~~ The Department is authorized to impose a \$100 registration fee for each place of business in lieu of the \$5 registration fee for the failure or refusal of any person to file an Application to Collect and/or Report Tax in Florida for Sales and Use Tax Registration (form Form DR-1) prior to engaging in or conducting business in this state as hereinbefore provided in subparagraph 1. Persons who have failed or refused to register are those that the Department seeks to register as a result of information supplied by an informant under s. 213.30, F.S., or as a result of enforcement programs administered by the Department. In making the determination as to whether the \$100 registration fee shall be required in lieu of the \$5 registration fee, the Executive Director or the Executive Director's designee in the responsible process division shall consider and be guided by:

a. The prior history, if any, of the applicant's compliance or noncompliance with the revenue laws administered by the Department of Revenue pursuant to s. 213.05, F.S.;

b. The applicant's ability to demonstrate the exercise of ordinary care and prudence through facts and circumstances presented to the Department indicating that a diligent attempt to meet the registration requirements of the law was made. An applicant with limited business knowledge, limited education, or limited experience with Florida tax matters may establish a basis for the existence of reasonable cause when there is reasonable doubt as to whether or not the applicant is required to register;

c. Reliance upon the erroneous advice of a competent advisor that the applicant did not meet the State's registration requirements. To establish a reasonable cause for noncompliance with the registration requirements, the applicant must demonstrate that advice was sought in a timely manner from the competent advisor, all necessary information was provided to the competent advisor, and that the applicant acted in good faith on the information received from the competent advisor;

d. The applicant's ability to demonstrate that he relied upon another person to comply with the State's registration requirements on his behalf; or

e. Whether the applicant, his agent, or employee can demonstrate that he exercised ordinary care and prudence in meeting the registration requirements once he had actual or constructive knowledge of such requirements.

~~5.4-~~ No registration fee is required to accompany any application to engage in or conduct business or to make mail order sales. Additionally, no registration fee is required to accompany any application for out-of-state dealers who have no business location in Florida.

(b)1. Owners of transient accommodations, as defined in Rule 12A-1.061, F.A.C., including owners of time-shares whose time-shares are not registered under the provisions of subparagraph 2. must file an Application to Collect and/or Report Tax in Florida for Sales and Use Tax Registration (form Form DR-1) with the Department of Revenue for a separate dealer's certificate of registration for each property or time-share period rented, leased, let, or in which a license to use has been granted to others, except as provided in paragraph (c).

2. No change.

(c) through (3) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.03(1),(2), 212.04(4), 212.06(2), 212.12(2),(5),(6), 212.16(1),(2), 212.18(3) FS. History—Revised 10-7-68, 1-7-70, 6-16-72, Amended 3-21-77, 5-10-77, 10-18-78, Formerly 12A-1.60, Amended 6-10-87, 1-2-89, 11-12-90, 3-17-94, 1-2-95, 3-20-96, 11-30-97, 4-2-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Linda W. Bridges, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9412

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mark Zych, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone number (850)488-2576

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 16, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed rule amendments were noticed for a Rule Development Workshop in the Florida Administrative Weekly on February 9, 2001 (Vol. 27, No. 6,

pp. 536-539). A rule development workshop was held on February 26, 2001, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida, regarding these proposed rule amendments. No comments were received regarding these proposed rule amendments. The Department announced at the workshop that it would replace the word "may" with the word "will" in the portion of the rule discussing the conditions under which multiple registrations would be considered for activities at a single contiguous location. That change has been made.

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE TITLE: Public Use Forms
 RULE NO.: 12B-7.026

PURPOSE AND EFFECT: These proposed rule changes add form DR-146 (Miami-Dade County Lake Belt Mitigation Fee Monthly Return) to the list of forms used by the public to remit the mitigation fee to the Department. The effect of this proposed rule is to ensure taxpayers successfully remit the Miami-Dade County Lake Belt Mitigation Fee.

SUMMARY: The proposed amendments to Rule 12B-7.026, F.A.C. (Public Use Forms) implement the statute requirement in s. 373.41492(4)(b), F.S., that the Department publish forms necessary to implement the Miami-Dade County Lake Belt Mitigation Fee. The suggested changes add form DR-146 (Miami-Dade County Lake Belt Mitigation Fee Monthly Return) to the list of forms used by the public for remitting taxes and fees imposed by the statute.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Since these proposed rule amendments reduce the administrative burden and potential confusion taxpayers may experience when they attempt to submit the Miami-Dade County Lake Belt Mitigation Fee, no new administrative costs are being created. Therefore, no statement of estimated regulatory cost has been prepared.

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

SPECIFIC AUTHORITY: 211.33(6), 213.06(1), 373.41492(4)(b) FS.

LAW IMPLEMENTED: 211.30, 211.31, 211.3103, 211.3106, 211.33, 373.41492 FS.

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

TIME AND DATE: 10:00 a.m., May 22, 2001
 PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Larry Green, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, Post Office Box 7443, Tallahassee, Florida 32314-7443, or by telephone at (850)922-4830

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least five (5) calendar days before such proceeding by contacting Jamie Phillips, (850)922-4726. If you are hearing or speech impaired, please contact the Department by calling 1(800)DOR-TDD1 (1(800)367-8331).

THE FULL TEXT OF THE PROPOSED RULE IS:

12B-7.026 Public Use ~~Forms~~ ~~Form~~.

The following public-use ~~forms~~ ~~form~~ and instructions are used by the Department in its dealings with the public. These forms ~~are~~ ~~This form is~~ hereby incorporated and made a part of this rule by reference. Copies of these forms ~~this form~~ are available by one or more of the following methods: 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/revenue.html>). Persons with hearing or speech impairments may call the Department's TDD at 1-800-367-8331.

Form	Title	Effective Date
(1) DR-142	Producers Severance Tax Return (r. 12/98 2/93)	<u>12/94</u>
(2) DR-146	<u>Miami-Dade County Lake Belt Mitigation Fee Monthly Return (n. 7/99)</u>	___

Specific Authority 211.33(6), 213.06(1), 373.41492(4)(b) FS. Law Implemented 211.30, 211.31, 211.3103, 211.3106, 211.33, ~~213.06~~, 373.41492 FS. History--New 12-18-94, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Larry Green, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, Post Office Box 7443, Tallahassee, Florida 32314-7443, or by telephone at (850)922-4830

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, Post Office Box 7443, Tallahassee, Florida 32314-7443, telephone number (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 16, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Rule Development Workshop was published in the Florida Administrative Weekly on February 9, 2001 (Vol. 27, No. 6, p. 539)

DEPARTMENT OF REVENUE

Corporate, Estate and Intangible Tax

RULE TITLES:	RULE NOS.:
Property Subject to Tax – Annual and Nonrecurring	12C-2.002
Exemptions	12C-2.003
Levy of Tax – Annual and Nonrecurring	12C-2.004
Due Date – Payment of Tax – Discounts Allowed	12C-2.005
Taxable Situs – Reporting Requirements – Who Shall File a Return	12C-2.006
Intangible Personal Property Held in Trusts	12C-2.0063
Penalties and Interest	12C-2.007
Information Reports	12C-2.008
Valuations	12C-2.010
Tax Credits	12C-2.0105
Public Use Forms	12C-2.0115

PURPOSE AND EFFECT: These amendments conform the rules in Chapter 12C-2, F.A.C., to statutory revisions made to Chapter 199, Florida Statutes, during the 1998, 1999, and 2000 legislative sessions. The effect of these proposed rules is to ensure taxpayers are adequately informed of the rule changes necessary to implement these statutory revisions.

SUMMARY: The following is a brief discussion of the specific changes: A) The proposed amendments to Rule 12C-2.002, F.A.C., clarify for which tax year specific intangible property is subject to tax; B) The suggested changes to Rule 12C-2.003, F.A.C., explain the applicable exemption for accounts receivable; C) The recommended revisions to Rule 12C-2.004, F.A.C., clarify the current tax rate and provide guidance on how to correctly calculate the tax; D) The proposed changes to Rule 12C-2.005, F.A.C., remove and update information on the threshold for required payment of tax, remove obsolete provisions on international banking, and provide guidance on when tax is due on a line of credit secured by a lien on Florida real property; E) The proposed revisions to Rule 12C-2.006, F.A.C., update information on forms to be used when reporting tax on intangible property, clarify what entities may be included as a member of an affiliated group, explain for which tax periods trustees were required to file intangible tax returns, and remove obsolete information regarding the requirement for banks to file intangible tax returns; F) The suggested amendments to Rule 12C-2.0063, F.A.C., remove references to trustees or their agents being required to file intangible tax returns for property held in trusts; G) The recommended changes to Rule 12C-2.007, F.A.C., conform the penalty provisions in the Administrative Code with the statutory provisions; H) The proposed revisions to

Rule 12C-2.008, F.A.C., remove and update information on the requirement that corporations must provide information concerning the value of their stock held by Florida shareholders and remove an obsolete provision regarding banks claiming an international banking exemption; I) The suggested changes to Rule 12C-2.010, F.A.C., add a cross reference to give guidance to taxpayers on the appropriate periods for which accounts receivable were subject to intangible tax; J) The recommended revisions to Rule 12C-2.0105, F.A.C., give guidance to taxpayers on the period for which tax credits for banks and savings associations apply; and K) The proposed amendments to Rule 12C-2.0115, F.A.C., remove obsolete forms no longer used by the public to report tax information to the Department of Revenue.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Since these proposed rule amendments reduce the administrative burden and potential confusion taxpayers may experience when attempting to comply with the intangible personal property tax statutes, no new administrative costs are being created. Therefore, no statement of estimated regulatory cost has been prepared.

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

SPECIFIC AUTHORITY: 199.202, 213.06(1), 213.21 FS.

LAW IMPLEMENTED: 196.199, 199.023, 199.032, 199.042, 199.052, 199.057, 199.062, 199.103, 199.104, 199.106, 199.133, 199.135, 199.143, 199.145, 199.155, 199.175, 199.183, 199.185, 199.202, 199.222, 199.232, 199.282, 199.292, 213.12(2), 213.235, 607.1622, 731.111, 733.604 FS.

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

TIME AND DATE: 10:00 a.m., May 22, 2001

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Joe Parramore, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, Post Office Box 7443, Tallahassee, Florida 32314-7443, or by telephone at (850)922-4709.

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least five (5) calendar days before such proceeding by contacting Mary Herring, (850)922-4704. If you are hearing or speech impaired, please contact the Department by calling 1(800)DOR-TDD1 (1(800)367-8331).

THE FULL TEXT OF THE PROPOSED RULES IS:

12C-2.002 Property Subject to Tax – Annual and Nonrecurring.

(1) The following are examples of property subject to annual taxation:

(a) Accounts Receivable – a debt which is owed by another which is not supported by a negotiable paper. For tax years beginning on or after January 1, 2001, accounts receivable arising out of normal trade or business are exempt from tax.

(b) through (c) No change.

(d) Charitable Unitrust – such trusts are taxable while trust corpus is held by a nonexempt trustee. For tax years beginning on or after January 1, 2001, charitable unitrusts are exempt from tax.

(e) through (h) No change.

(i) Custody Account – custody account is taxable only if the custodian is exercising discretionary powers over the assets held in the custody account. For tax years beginning on or after January 1, 2001, custody accounts are exempt.

(j) through (l) No change.

(m) Insurance Premiums

1. Insurance premiums for the year ~~that~~ ~~which~~ are financed; are accounts receivable.

2. Due, but uncollected, premiums (those premiums ~~that~~ ~~which~~ are in a grace period) are not taxed.

3. For tax years beginning on or after January 1, 2000, insurance companies are exempt from tax.

(n) through (o) No change.

(p) Line of Credit – based on the outstanding balance on January 1 of each tax year when not evidenced by a note secured by a mortgage or other lien on Florida real property. When secured by a lien on real property in Florida, the maximum amount allowed under the line each advance is subject to the nonrecurring tax.

(q) No change.

(r) Margin Accounts –

1. Receivables arising from margin accounts are taxable to the broker. For tax years beginning on or after January 1, 2001, margin account receivables are exempt from tax.

2. Stocks bought on margin are the property of the purchaser and are to be reported for taxation by the purchaser.

(s) through (z) No change.

(aa) Stock – shares or units of incorporated or unincorporated companies, limited liability companies, business trusts, mutual funds, and money market funds.

(bb) through (dd) No change.

(ee) Trust – a trust having a taxable situs in Florida is primarily taxable to the trustee. For tax years beginning on or after January 1, 2001, trustees are no longer required to file

returns or pay the tax. A beneficiary, having a taxable beneficial interest, ~~where there is no Florida trustee,~~ is responsible for filing a return for the taxable trust assets.

(2) The following are examples of property subject to the nonrecurring tax:

(a) No change.

(b) Agreements not to encumber real property if the agreement attaches as a lien on the real property.

(c) through (d) No change.

~~(e) Guarantee-~~

~~1. An unconditional guarantee when secured by a lien on Florida real property.~~

~~2. A conditional guarantee is also subject to the tax, but not taxed until the condition is met or removed.~~

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.023, 199.032, 199.042, 199.052, 199.057, 199.062, 199.103, 199.133, 199.135, 199.143, 199.145, 199.155, 199.175, 199.183, 199.185, 199.202 FS. History–New 4-17-72, Revised 12-20-73, Amended 11-17-74, Formerly 12C-2.02, Amended 11-21-91,_____.

12C-2.003 Exemptions.

The following intangible property shall be exempt from the tax:

(1) through (8) No change.

(9) Accounts Receivable:

(a) For tax years beginning January 1, 2001, and thereafter, all accounts receivable arising from normal trade or business are exempt from tax.

(b) For the tax year beginning January 1, 2000, two-thirds of the taxable accounts receivable arising from normal trade or business are exempt from tax.

(c) For the tax year beginning January 1, 1999, one-third of the taxable accounts receivable arising from normal trade or business are exempt from tax.

(d) For the tax year beginning January 1, 1998, and all prior years, all accounts receivable are subject to tax.

(10) A charitable trust is exempt from tax. For the purpose of this exemption, a charitable trust is a trust that is paying 95 percent or more of its income to one or more organizations exempt from federal income tax under s. 501(c)(3), IRC.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.183, 199.185, 213.12(2) FS. History–New 4-17-72, Revised 12-20-73, Amended 11-17-74, 4-21-75, Formerly 12C-2.03, Amended 11-21-91,_____.

12C-2.004 Levy of Tax – Annual and Nonrecurring.

(1) Annual Tax – An annual tax on the just value of intangible property having a taxable situs in Florida is levied as follows:

(a)1. All firms, partnerships, joint ventures, associations, corporations, estates, trusts, trustees, personal representatives, receivers, guardians, custodians, and other fiduciaries are subject to the full tax rate of \$1 2.00 per thousand dollars (1 mill 2 mills) of just value of intangible property having a taxable situs in Florida.

2. Example: Artificial entities and fiduciaries.

Accounts Receivable	\$75,000.00
Stocks	50,000.00
Bonds	25,000.00
Loans to Stockholders (outstanding balances)	50,000.00
Total	\$125,000.00 200,000.00
Tax Rate	x .001 2
Tax Due	\$ 125.00 400.00

(b) Charitable trusts are those trusts paying 95 percent of their income to organizations exempt from federal income tax under s. 501(c)(3), IRC, and are subject to a tax rate of \$1.00 per thousand dollars (1 mill) of just value of intangible personal property.

Example: Charitable trusts:

Stocks	\$100,000.00
Mutual Funds	150,000.00
Futures Contracts	75,000.00
Bonds	125,000.00
Total	\$450,000.00
Tax Rate	x .001
Tax Due	\$ 450.00

(b)(c) Natural persons filing an individual or joint return are subject to the tax rate of \$1.00 ~~2.00~~ per thousand dollars (1 mill) of just value of intangible property in the following manner: The first \$1.00 (1 mill) of tax per thousand dollars of the just value of intangible personal property applies to the property value of individuals in excess of \$20,000 (\$40,000 for a married couple filing a joint return). The additional \$1.00 (1 mill) of tax per thousand dollars of the just value of intangible personal property applies to the property value of individuals in excess of \$100,000 (~~\$200,000 for a married couple filing a joint return~~).

Examples:

1. Individual having taxable assets valued at \$75,000 ~~100,000 or less~~.

	(first mill tax)	(second mill tax)
Taxable Assets	\$75,000.00 50,000.00	\$50,000.00
Exemption	- 20,000.00	-
Net Taxable Assets	\$55,000.00 30,000.00	0
Tax Rate	x .001	x .001
Tax Due	\$ 55.00 30.00	No tax is due
Total Tax Due	\$0 30.00	(tax due is less than \$60.00)

2. Individual having taxable assets valued at greater than \$200,000 ~~100,000~~.

	(first mill tax)	(second mill tax)
Taxable Assets	\$200,000.00	\$200,000.00
Exemption	- 20,000.00	-
Net Taxable Assets	\$180,000.00	\$100,000.00

Tax Rate	x .001	x .001
Tax Due	\$180.00	\$100.00
Total Tax Due	\$180.00 + \$100.00 =	\$280.00

3. Married couple filing jointly having taxable assets valued at \$95,000 ~~200,000 or less~~.

	(first mill tax)	(second mill tax)
Taxable Assets	\$95,000.00 50,000.00	\$50,000.00
Exemption	- 40,000.00	-
Net Taxable Assets	\$55,000.00 10,000.00	\$0
Tax Rate	x .001	x .001
Tax Due	\$55.00 10.00	No tax is due
Total Tax Due	\$0 10.00	(tax due is less than \$60.00)

4. Married couple filing jointly having taxable assets valued at \$300,000.00 ~~greater than \$200,000.00~~.

	(first mill tax)	(second mill tax)
Taxable Assets	\$300,000.00	\$300,000.00
Exemption	- 40,000.00	-
Net Taxable Assets	\$260,000.00	\$100,000.00
Tax Rate	x .001	x .001
Tax Due	\$ 260.00	\$ 100.00
Total Tax Due	\$260.00 + \$100.00 =	\$360.00

(2) Nonrecurring tax:

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

2.a. A line of credit secured by a mortgage on Florida real property the equity in a borrower's home is subject to nonrecurring tax on the maximum amount of the line. Subsequent borrowings under the line are not subject to nonrecurring tax.

b. Example: A borrower establishes a \$50,000 line of credit with a bank and secures the line with a Florida real property mortgage on the equity in his home. The borrower initially draws the full line of \$50,000 and pays nonrecurring tax on this maximum amount. The borrower later repays \$30,000 of the initial amount borrowed and then draws another \$15,000. The \$15,000 draw of funds under the line is not subject to nonrecurring tax, since the nonrecurring tax was already paid on \$50,000, the maximum credit limit under the line.

(d) No change.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.032, 199.133, 199.143, 199.185 FS. History—New 4-17-72, Revised 12-20-73, Amended 5-8-79, Formerly 12C-2.04, Amended 11-21-91, 5-18-93.

12C-2.005 Due Date – Payment of Tax – Discounts Allowed.

(1)(a) No change.

(b) No person subject to the annual tax shall be required to file a return or pay a tax if the tax due, before discount, is less than sixty five ~~50~~ dollars (\$60.00 ~~5.00~~).

~~2. An annual return is required to be filed by agents or fiduciaries. International banking organizations claiming the international banking exemption must also file a completed tax return.~~

~~2.3.~~ No change.

(2) Nonrecurring Tax

(a) through (b) No change.

(c) If a mortgage, deed of trust, or other instrument evidencing a lien subject to the nonrecurring tax secures a revolving line of credit, a line of credit, or future advances, the tax shall be paid as provided in paragraphs (a) and (b) of this subsection on the initial debt or obligation, excluding future advances. Thereafter, each time a future advance shall be taxed when it is made under a future advance mortgage additional nonrecurring tax shall be paid.

(3) Extension of time for filing annual tax –

(a) through (b) No change.

(c) Examples:

1. A taxpayer requested and was granted an extension of time to file an intangible tax return and paid the tax. On September 30 of the tax year, intangible tax in the amount of \$100 is paid. No penalties are due because of the approved extension of time to file. However, interest in the amount of \$3.00 is due. (See Rule 12C-2.007, F.A.C.)

Tax Due With Return	\$100
Penalties	0
Interest	3
Total Due With Return	\$103

2. A taxpayer is granted an extension of time to file an intangible tax return and pay paid the tax. The extension was granted through September 30 of the tax year. On October 1 of the tax year a return is filed and the intangible tax is paid. On this date the extension of time to file is void. The taxpayer is liable for all penalties and interest from the due date until the date paid. (See Rule 12C-2.007, F.A.C.)

Tax Due With Return	\$100
Penalties: Delinquency (40%)	20
Late Filing (40%)	15
<u>[Maximum delinquency and late filing Penalty (40%)]</u>	<u>40</u>
Interest	3
Total Due With Return	<u>\$143</u> \$138

Specific Authority 199.202, 213.06(1) FS. Law Implemented ~~199.202,~~ 199.042, 199.052, 199.135, 199.202, 607.1622 FS. History—New 4-17-72, Revised 12-20-73, Amended 11-17-74, Formerly 12C-2.05, Amended 11-21-91, _____.

12C-2.006 Taxable Situs – Reporting Requirements – Who Shall File a Return.

(1)(a) No change.

(b)1. Individuals, married couples filing jointly, and guardians filing on behalf of their ward shall file on form DR-601I ~~or DR-601AI.~~ Intangible Tax Return (~~DR-601AI or~~

DR-601I); is incorporated in Rule 12C-2.0115, F.A.C. The form entitled Intangible Tax Return (~~DR-601AI or~~ DR-601I); is available by one or more of the following methods: 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.

2. Corporations, partnerships, affiliated groups, and fiduciaries shall file on form DR-601C ~~or DR-601AC.~~ Intangible Tax Return (~~DR-601AC or~~ DR-601C); is incorporated in Rule 12C-2.0115, F.A.C. The form entitled Intangible Tax Return (~~DR-601AC or~~ DR-601C); is available by one or more of the following methods: 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.

3. A group of corporations, Subchapter S corporations, or limited liability companies may choose to file as an affiliated group ~~of corporations~~ if they meet the following criteria:

a. An affiliated group has a common parent ~~corporation~~ that directly owns at least 80% of all classes of stock or membership interest in a limited liability company and at least 80% of each class of nonvoting stock or membership interest in a limited liability company of one or more of the corporations or limited liability companies in the group. As used here, the term nonvoting stock or membership interest does not include stock or membership interests in a limited liability company that which is limited and preferred as to dividends.

b. No change.

c. The election to file as an affiliated group must be made each year. A notice of the election must be filed with the Department on or before June 30 of the tax year. The election and notice is made by selecting the affiliated group filing status

on form ~~DR-601AC~~ or DR-601C. Failure to file the notice of the election shall bar the filing of a consolidated return except as provided in this rule. An affiliated group of corporations which ~~does~~ ~~do~~ not intend to file a consolidated return shall indicate ~~its~~ ~~their~~ intent by filing separate returns for each ~~entity corporation~~ subject to the intangible tax.

d. An affiliated group of corporations which has failed to file any returns for one year may choose to file a consolidated intangible tax return for one delinquent year provided the group has filed consolidated returns for the three immediate prior years. If timely returns were filed by members of the group, the group may not file a consolidated return after the due date for filing a consolidated return.

e. The parent ~~entity corporation~~ files a consolidated return. This parent ~~entity corporation~~ does not have to have a taxable situs in Florida. All subsidiaries ~~that which~~ meet the stock ownership rule must be included in the consolidated group. Subsidiary ~~entities that corporations which~~ are foreign to the United States must be included in the consolidated group if the stock ownership test is met. When a consolidated return is filed, all accounts receivable between the ~~entities that corporations which~~ are part of the consolidated group return are to be eliminated. Also, the parent ~~entity's corporation's~~ investments in subsidiaries ~~that which~~ are included as part of the consolidated group are to be eliminated. Accounts receivable and the parent ~~entity's corporation's~~ investments in subsidiaries ~~that which~~ are not part of the consolidated group remain as items subject to the intangible tax. The capital ~~investment stock~~ of the parent ~~entity corporation~~, owned by a member of the consolidated group, is not eliminated from taxation.

f. An affiliated group of corporations filing a consolidated return must include the following with the intangible tax return:

(I) A consolidated balance sheet for the group identifying the taxable items and the eliminated items.

(II) A separate balance sheet for each ~~entity corporation~~ included in the consolidated group.

(III) A list identifying the parent ~~entity's corporation's~~ name, Employer Identification Number, state of charter and charter number, and mailing address (including city, state and zip code) and the name, Employer Identification Number, state of charter and charter number, and mailing address (including city, state and zip code) for each ~~entity corporation~~ included in the consolidated return.

4. No change.

(2) A person will be required ~~subject~~ to file completed returns even though that person may owe less than sixty five ~~sixty~~ dollars (~~\$60.00~~ ~~5.00~~) tax, if providing that person is under audit, examination, or investigation by the Department ~~department~~.

(3) Trustees.

(a) For tax years beginning after December 31, 2000, trustees are no longer required to file intangible tax returns or pay a tax.

(b) For tax year 2000 and previous tax years, the ~~The~~ taxable situs of a trust shall be in Florida if the trustee's usual place of business where the books and records pertaining to the trust are kept is in Florida; or, ~~or,~~ if the trustee has no principal place of business, then taxable situs shall be determined as follows:

1. ~~(a)~~ If a Florida resident is sole trustee of a foreign trust, the trust is deemed to have a taxable situs in Florida and the corpus is subject to tax.

2. ~~(b)~~ If there is more than one trustee, and all are Florida residents, only one return is to be filed.

3. ~~(c)~~ When trustees are both residents and nonresidents and management and control of the trust is with the Florida trustee, then a return for the trust is to be filed by the Florida trustee.

4. ~~(d)~~ When trustees are both residents and nonresidents, and management or control is with an out of state trustee, then no return is necessary by the Florida trustee.

5. ~~(e)~~ When there are two trustees, one is a resident and one a nonresident and they share equally in management and control of the trust, the assessment of property shall be apportioned between them.

6. ~~(f)~~ When there are three or more trustees, and they are residents and nonresidents and they share equally in the management and control, the trust has a taxable situs in this state if the majority of the trustees are residents of this state. In such a case, only one return is to be filed for the trust. If the majority of the trustees are nonresidents, the trust does not have a taxable situs in this state and no return is to be filed.

(4) through (6) No change.

~~(7) Banking Organizations: Banking organizations claiming an exemption for international banking transactions as provided in s. 199.185(1)(h), F.S., shall file a return and list all intangibles arising out of international banking activities whether or not any tax is due. The form to be used is the intangible tax return (DR-601AC or DR-601C). The form entitled Intangible Tax Return (DR-601C or DR-601AC) is incorporated in Rule 12C-2.0115, F.A.C. The form entitled Intangible Tax Return (DR-601AC or DR-601C), is 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.~~

- ~~(7)(8)~~ Taxpayer Identification Number Required.
- (a) through (b) No change.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.057, 199.062, 199.175, 199.202 FS. History—New 4-17-72, Revised 12-20-73, Amended 11-17-74, 9-27-76, 9-6-77, Formerly 12C-2.06, Amended 11-21-91, 1-5-94, 6-2-98, _____.

12C-2.0063 Intangible Personal Property Held in Trusts.

- (1) through (2) No change.

~~(3) All trustees must be domiciled and located outside of Florida.~~

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

~~(6)(7)~~ If the trust includes any of the following powers, an item of intangible personal property constituting trust principal is not within the guidelines of this rule that describe certain, but not all, circumstances in which items of intangible personal property would not have taxable situs in Florida:

- (a) through (b) No change.

~~(c) The trust has an employee or agent in the state managing or controlling trust assets.~~

- ~~(7)(8)~~ No change.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.175 FS. History—New 6-2-98, Amended _____.

12C-2.007 Penalties and Interest.

- (1) through (2) No change.

(3) Beginning with tax year 1999 and thereafter, when a tax payment is delinquent and the tax return is filed after June 30 of the tax year, the maximum for the combined penalties shall be 10 percent per month, not to exceed a maximum of 50 percent of the tax due with the return.

- (3) through (7) renumbered (4) through (8) No change.

Specific Authority 199.202, 213.06(1), 213.21 FS. Law Implemented 199.052, 199.282, 213.235 FS. History—New 4-17-72, Revised 12-20-73, Amended 9-27-76, 4-2-78, Formerly 12C-2.07, Amended 11-21-91, 5-18-93, 4-2-00, _____.

12C-2.008 Information Reports.

(1)(a) Each tax year every corporation qualified or doing business in this state shall provide its Florida shareholders and the department a written notification where applicable of the following:

1. The corporation's election to pay the tax as agent for its Florida shareholders. The notice shall be filed on an Intangible Tax Return (~~DR-601AC~~ or DR-601C) by completing Schedule E and checking the notification box. A copy of the notice given to Florida shareholders is to be attached to the return.

- 2. through 3. No change.

~~4. Corporations claiming the international banking exemption must notify the department and file an information return listing all intangible property for which the exemption is claimed.~~

(b) The form entitled Intangible Tax Return (~~DR-601AC~~ or DR-601C); is incorporated in Rule 12C-2.0115, F.A.C. The form entitled Intangible Tax Return (~~DR-601AC~~ or DR-601C); is available by one or more of the following methods: 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.

(c) A representative copy of the notices required to be given to shareholders by subparagraphs 2. and 3. of paragraph (a) above shall be attached to the corporation's intangible tax return. The notices required to be given to the department by paragraph (a) above shall be given by marking the appropriate box or boxes on the ~~face of the~~ Intangible Tax Return (~~DR-601C~~ or ~~DR-601AC~~).

- (2) through (5) No change.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.057, 199.062, 199.185, 607.1622, 731.111, 733.604 FS. History—New 4-17-72, Revised 12-20-73, Amended 4-21-75, Formerly 12C-2.08, Amended 7-31-90, 11-21-91, 1-5-94, _____.

12C-2.010 Valuations.

- (1) Annual Tax.

- (a) through (g) No change.

(h) Accounts receivable shall be valued at their outstanding balance as of the close of business on the last day of the previous calendar year, less a deduction of a reasonable amount for uncollectible accounts. Such deduction shall be established by actual amounts or shown by the history of uncollectible ~~uncollectable~~ accounts. This provision shall apply even if the business is on a cash basis accounting system. Cross Reference – Rule 12C-2.003(9), F.A.C.

- (i) through (3) No change.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 196.199, 199.023, 199.052, 199.103, 199.155 FS. History—New 4-17-72, Revised 12-20-73, Amended 9-27-76, 8-8-78, 12-31-80, Formerly 12C-2.10, Amended 11-21-91, 5-18-93, _____.

12C-2.0105 Tax Credits.

- (1) through (2)(b) No change.

(c) The credit provided by this subsection applies only to tax year 1999 and previous tax years.

Specific Authority 199.202(2), 213.06(1) FS. Law Implemented 199.104, 199.106 FS. History—New 5-18-93, Amended _____.

12C-2.0115 Public Use Forms.

The following public use forms and instructions are employed by the Department in its dealings with the public related to administration of the intangible tax. These forms are hereby incorporated and made a part of this rule by reference. Copies of these forms are available by one or more of the following methods: 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.

Form Number	Title	Effective Date
(1) DR-301	Preliminary Notice and Report-Estate Tax (r. 05/93)	1/94
(2) DR-601-AI	Intangible Tax Return (Flat sheet) (Individual and Fiduciary) (r. 12/92)	1/94
(3) DR-601-AC	Intangible Tax Return (Flat Sheet) (Corporation and Partnership) (r. 12/92)	1/94
(2)(4) DR-601-C	Intangible Personal Property Tax Return (Corporation and Partnership) (r. 12/00 12/92)	1/94
(3) DR-601CN	Instructions for Filing Form DR 601C (r.01/01)	—
(4) DR-601CS	Accompanying Schedules for Form DR 601C (r. 01/01)	—
(5) DR-601-G	Government Leasehold Intangible Tax Return (r. 12/00 01/93)	1/94
(6) DR-601-I	Intangible Personal Property Tax Return (Individual and Fiduciary) (r. 01/01 12/92)	1/94
(7) DR 601IN	Instructions for Filing Form DR 601I (r.01/01)	—
(8) DR 601CS	Accompanying Schedules for Form DR 601I (r. 01/01)	—
(9)(7) DR-602	Application for Extension of Time to File Florida Intangible Tax Return (r. 02/93)	1/94

(10)(8) DR-609	Clerk's Monthly Intangible Tax Transmittal Form (r. 10/87)	10/87
(11)(9) DR-610-B	Intangible Personal Property Tax Receipt (bookstyle) (r. 04/87)	4/87
(12)(40) DR-610-US	Intangible Personal Property Receipt (unit set snap-out style) (r. 05/86)	5/86
(11) DR-615	Application for Exemption (r. 7/90)	7/90
(13)(42) DR-618-TPS	Intangible Tax Input Document (Third Party Source Billing Document) (r. 07/82)	7/82
(14)(43) DR-629-C	Florida Intangible Personal Property Tax Letter of Inquiry (r. 11/92)	1/94
(15)(44) DR-629-I	Florida Intangible Personal Property Tax Letter of Inquiry (r. 03/93)	1/94
(16)(45) DR-629-S	individual and Fiduciary Intangible Personal Property Tax Letter of Inquiry (r. 9/91)	1/94

Specific Authority 199.202(2), 213.06(1) FS. Law Implemented 199.023, 199.032, 199.042, 199.052, 199.062, 199.103, 199.135, 199.222, 199.232, 199.292 FS. History—New 11-21-91, Amended 1-5-94.

NAME OF PERSON ORIGINATING PROPOSED RULE: Joe Parramore, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, Post Office Box 7443, Tallahassee, Florida 32314-7443, or by telephone at (850)922-4709

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, Post Office Box 7443, Tallahassee, Florida 32314-7443, telephone number (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 16, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Rule Development Workshop was published in the Florida Administrative Weekly on February 9, 2001 (Vol. 27, No. 6, pp. 539-546)

WATER MANAGEMENT DISTRICTS
Southwest Florida Water Management District

RULE TITLE: Forms and Instructions
RULE NO.: 40D-1.659

PURPOSE AND EFFECT: The purpose and effect of the proposed rulemaking is to incorporate new and modified forms relating to water well construction and water well contractor licensing into the District's rules.

SUMMARY: Forms which the District uses in dealings with the public must be formally adopted by rule pursuant to Section 120.55(1)(a)4., Florida Statutes. The District currently uses an Application for a Water Well Contractor's License and a Well Grouting/Abandonment Form. Each of these forms has been updated to include several revisions since last incorporated into the District's rules. The District also uses an Application for Renewal of a Water Well Contractor's License, which has not previously been incorporated into the District's rules. Each of the Licensing Forms includes an acknowledgment by the applicant that he or she understands the responsibilities under the applicable statutes and rules relating to the licensing, permitting and construction of water wells.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A Statement of Estimated Regulatory Cost is not being prepared based on the District's determination that the proposed revisions to Rule 40D-1.659, F.A.C., will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

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: 373.044, 373.113, 373.149, 373.171 FS.

LAW IMPLEMENTED: 373.116, 373.206, 373.207, 373.209, 373.216, 373.219, 373.229, 373.239, 373.306, 373.308, 373.309, 373.313, 373.323, 373.324, 373.339, 373.413, 373.414, 373.416, 373.419, 373.421 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Karen E. West, Deputy General Counsel, Office of General Counsel, Southwest Florida Water Management District, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, Extension 4651

THE FULL TEXT OF THE PROPOSED RULE IS:

40D-1.659 Forms and Instructions.

The following forms and instructions have been approved by the Governing Board and are incorporated by reference into this Chapter. Copies of these forms may be obtained from the District.

GROUND WATER

(1) APPLICATION FOR WATER WELL CONTRACTOR'S LICENSE FORM NO. ~~WWCL (7/99)~~ 42.00-044 (5/00).

(2) APPLICATION FOR RENEWAL OF A WATER WELL CONTRACTOR'S LICENSE FORM NO. 41.10-109 ().

(2) through (3) renumbered (3) through (4) No change.

(5)(4) WELL GROUTING/ABANDONMENT FORM FORM NO. 41.10-410 (8/96) ().

(5) through (18) renumbered (6) through (19) No change.

SURFACE WATER

Application for Permit – Used for Docks or Piers and Bulkheads

(1) through (13) No change.

Specific Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.116, ~~373.206, 373.207, 373.209~~, 373.216, 373.219, 373.229, 373.239, ~~373.306, 373.308, 373.309, 373.313, 373.323, 373.324, 373.339~~, 373.413, 373.414, 373.416, 373.419, 373.421 FS. History–New 12-31-74, Amended 10-24-76, Formerly 16J-0.40, 40D-1.901, Amended 12-22-94, 5-10-95, 10-19-95, 5-26-95, 7-23-96, 2-16-99, 7-12-99, 7-15-99, 12-2-99, 5-31-00, 10-26-00.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tony Gilboy, Well Const. Reg. Mgr., Well Const. Perm., Southwest Florida Water Management District, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, Extension 4651

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Governing Board of the Southwest Florida Water Management District

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 20, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 20, 2001

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: Ambulatory Surgical Center Services

RULE NO.: 59G-4.020

PURPOSE AND EFFECT: The purpose of the proposed rule is to incorporate by reference the Florida Medicaid Ambulatory Surgical Center Services Coverage and Limitations Handbook, January 2001. Appendix A of the handbook contains the 2001 procedure codes and payment groups in effect for dates of service beginning on January 1, 2001. The effect will be to incorporate in the rule the current Florida Medicaid Ambulatory Surgical Center Services Coverage and Limitations Handbook.

SUMMARY: The proposed rule incorporates by reference the Florida Medicaid Ambulatory Surgical Center Services Coverage and Limitations Handbook, January 1, 2001. The handbook update consists of covered code and payment group revisions to Appendix A, Ambulatory Surgical Center Procedure Codes and Groups, routinely updated every year at this time. The revised code list is effective for dates of service beginning on January 1, 2001.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.906, 409.908 FS.

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

TIME AND DATE: 9:00 – 10:00 a.m., May 21, 2001

PLACE: Agency for Health Care Administration, 2728 Ft. Knox Boulevard, Building 3, Conference Room C, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Ouida Mazzoccoli, Medical/Health Care Program Analyst, Medicaid Program Development Office, 2728 Fort Knox Boulevard, Building 3, Tallahassee, Florida 32308, (850)922-7351

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-4.020 Ambulatory Surgical Center Services.

(1) No change.

(2) All ambulatory surgical center providers enrolled in the Medicaid program must be in compliance with the Florida Medicaid Ambulatory Surgical Center Services Coverage and Limitations Handbook, January 2001 ~~April 2000~~, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, HCFA-1500 and Child Health Check-Up 221, which is incorporated in Rule 59G-5.020, F.A.C. Both handbooks are available from the Medicaid fiscal agent.

Specific Authority 409.919 FS. Law Implemented 409.906, 409.908 FS. History—New 10-25-84, Formerly 10C-7.531, Amended 5-13-92, 7-12-92, 7-27-93, Formerly 10C-7.0531, Amended 9-8-94, 7-3-95, 11-18-97, 10-27-98, 1-1-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ouida Mazzoccoli

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Elizabeth Dudek for Ruben King-Shaw, Jr.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 12, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 2, 2001

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DOCKET NO.: 01-12R

RULE CHAPTER TITLE: Stationary Sources – General Requirements
RULE CHAPTER NO.: 62-210

RULE TITLES:	RULE NOS.:
Permits Required	62-210.300
Reports	62-210.370
Forms and Instructions	62-210.900
Notification Forms for Air General Permits	62-210.920

PURPOSE AND EFFECT: The Department is proposing to amend the non-Title V air general permit notification forms to incorporate general procedures and conditions added to Rule 62-210.300(4), F.A.C., in a recent rule amendment, add new categorical exemptions from air permitting for relocatable screening-only operations and for brownfield site remediation, add a new non-Title V air general permit for nonmetallic mineral processing plants, remove public notice requirements for relocation of concrete batching plants with air general permits, add language allowing multiple concrete batching plants with air general permits to operate at the same location, add language allowing concrete batching plants with air general permits and nonmetallic mineral processing plants with air general permits to operate at the same location, add language allowing a single facility to hold air general permits for both human and animal crematories, and change the Notification of Intent to Relocate Air Pollutant Emitting Facility (DEP Form No. 62-210.900(6)) and associated rule language.

SUMMARY: The proposed amendments would affect categorical exemptions from air permitting, air general permits, and relocatable facilities.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding a 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: 403.061 FS.

LAW IMPLEMENTED: 403.031, 403.061, 403.087, 403.0872, 403.814 FS.

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

If accommodation for a disability is needed to participate in this activity, please notify the Personnel Services Specialist in the Bureau of Personnel, (850)488-2996 or 1(800)955-8771 (TDD), at least seven days before the meeting.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ms. Wendy Alexander, Department of Environmental Protection, Division of Air Resource Management, 2600 Blair Stone Road, Mail Station 5500, Tallahassee, Florida 32399-2400, (850)921-9559

THE FULL TEXT OF THE PROPOSED RULES IS:

62-210.300 Permits Required.
(1) through (2) No change.

(3) Exemptions. A facility, emissions unit or pollutant-emitting activity shall be exempt from the permitting requirements of this chapter, Chapter 62-212, F.A.C., and Chapter 62-4, F.A.C., if it satisfies the applicable criteria of Rule 62-210.300(3)(a) or (b), F.A.C., or if it has been exempted from permitting pursuant to Rule 62-4.040, F.A.C. Failure of a facility, emissions unit or activity to satisfy the exemption criteria of Rule 62-210.300(3)(a) or (b), F.A.C., does not preclude such facility, unit or activity from being considered for exemption pursuant to Rule 62-4.040, F.A.C. Emissions units and pollutant-emitting activities exempt from permitting under this rule shall not be exempt from the permitting requirements of Chapter 62-213, F.A.C., if they are contained within a Title V source; however, such emissions units and activities shall be considered insignificant for Title V purposes provided they also meet the criteria of Rule 62-213.300(2)(a)1. or 62-213.430(6)(b), F.A.C. Any proposed new emissions unit or activity that would be exempt from permitting under this rule shall not be required to obtain an air construction permit pursuant to this chapter, Chapter 62-212, F.A.C., or Chapter 62-4, F.A.C., even if such unit or activity would be contained within a Title V source. No emissions unit shall be entitled to an exemption from permitting under this rule if its emissions, in combination with the emissions of other units and activities at the facility, would cause the facility to emit or have the potential to emit any pollutant in such amount as to make the facility a Title V source. Neither shall any emissions unit be entitled to an exemption from permitting under this rule if it would be subject to any unit-specific applicable requirement. Notwithstanding its exemption from air permitting, an exempt emissions unit or activity shall be subject to any general, facility-level applicable requirements, and its emissions shall be considered in determining the applicability of permitting requirements to other emissions units at the facility or to the facility as a whole.

(a) Categorical Exemptions.

1. through 36. No change.

37. Relocatable screening-only operations, provided:

a. The screening operation is not connected to a nonmetallic mineral processing plant subject to 40 CFR Part 60, Subpart OOO, adopted and incorporated by reference at Rule 62-204.800, F.A.C.;

b. No dry material is processed; and

c. No hazardous waste or toxic waste, as defined in Department rules, is processed.

38. Brownfield site remediation, as described at Rule 62-785.700, F.A.C., provided that the total volatile organic compounds in the air emissions from all onsite remediation equipment does not exceed 13.7 pounds per day.

(b) No change.

(c) Conditional Exemptions from Title V Air Permitting.

The following facilities are exempt from the requirement to obtain a Title V air operation permit under the provisions of

Chapter 62-213, F.A.C., but are not exempt from the requirement to obtain any other air permit as may be required under this rule unless also exempt from permitting under Rule 62-210.300(3)(a) or (b), F.A.C., or Rule 62-4.040, F.A.C. A facility is not entitled to an exemption from Title V permitting under this rule if it is a Title V source pursuant to paragraph (f), (g), or (h) of the definition of "major source of air pollution" or ~~it contains other emissions units which would cause the facility would~~ would ~~to~~ be classified as a Title V source as a result of their combined potential to emit regulated pollutants of all emissions units at the facility.

1. No change.

2. Bulk gasoline plants, provided the following conditions are met:

a. The facility operates no emissions units other than the bulk gasoline plant and emissions units which are exempt from permitting pursuant to the criteria of Rule 62-210.300(3)(a) or (b), F.A.C., or have been exempted from permitting under Rule 62-4.040, F.A.C.;

b. through f. No change.

3. Facilities comprising heating units and general purpose internal combustion engines, provided the following conditions are met:

a. The facility operates no emissions units other than the heating units and general purpose internal combustion engines and emissions units which are exempt from permitting pursuant to the criteria of Rule 62-210.300(3)(a) or (b), F.A.C., or have been exempted from permitting under Rule 62-4.040, F.A.C.

b. through f. No change.

4. Facilities comprising surface coating operations, provided the following conditions are met:

a. The facility operates no emissions units other than the surface coating operations and emissions units which are exempt from permitting pursuant to the criteria of Rule 62-210.300(3)(a) or (b), F.A.C., or have been exempted from permitting under Rule 62-4.040, F.A.C.

b. through f. No change.

5. Facilities comprising polyester resin plastic products fabrication activities, provided the following conditions are met:

a. The facility operates no emissions units other than the polyester resin plastic products fabrication units and emissions units which are exempt from permitting pursuant to the criteria of Rule 62-210.300(3)(a) or (b), F.A.C., or have been exempted from permitting under Rule 62-4.040, F.A.C.

b. through e. No change.

6. Facilities comprising cast polymer operations, provided the following conditions are met:

a. The facility operates no emissions units other than the cast polymer operations and emissions units which are exempt from permitting pursuant to the criteria of Rule 62-210.300(3)(a) or (b), F.A.C., or have been exempted from permitting under Rule 62-4.040, F.A.C.

b. through e. No change.

(4) Air General Permits.

(a) Title V Sources. Certain facilities are eligible to operate under the terms of an air general permit pursuant to the procedures and general conditions of Rule 62-213.300, F.A.C., Title V Air General Permits. These facilities are specified in Rule 62-213.300, F.A.C. Unless otherwise specified in Rule 62-213.300, F.A.C., the responsible official of any facility that is eligible and has submitted notification to use an air general permit pursuant to Rule 62-213.300, F.A.C., and who operates the facility in compliance with the terms and conditions of the air general permit shall not be required to obtain an air construction permit pursuant to Rule 62-210.300(1), F.A.C. In addition, such responsible official shall not be required to obtain a regular air operation permit pursuant to Rule 62-210.300(2), F.A.C., or a regular Title V air operation permit pursuant to Chapter 62-213, F.A.C.

(b)(*) Facilities with Conditional Exemptions from Title V Air Permitting. Non Title V Air General Permits. No facility which contains an emissions unit, other than a unit described in an air general permit under this paragraph or a unit exempted from permitting pursuant to Rule 62-210.300(3)(a) or (b), F.A.C., or Rule 62-4.040, F.A.C. shall be eligible to use any air general permit in this paragraph. No facility is eligible to use more than one air general permit under this paragraph. The following facilities are eligible to operate under the terms of an air general permit issued pursuant to the procedures and general conditions of Rules 62-210.300(4)(d)(e) through (e)(f), F.A.C., provided all existing air permits authorizing operation of the facility are surrendered, all requirements of this paragraph are met, and the facility complies with the terms and conditions of the particular air general permit throughout the term of the air general permit:

1. Volume reduction, mercury recovery, and mercury reclamation processes as defined in and subject to the requirements of Rule 62-296.417, F.A.C., provided the owner or operator submits a completed Volume Reduction, Mercury Recovery or Mercury Reclamation Air General Permit Notification Form (DEP Form No. 62-210.920(1)) to the Department at least 30 days prior to beginning operations under the general permit and, throughout the term of the general permit:

a. The facility operates no emissions units other than volume reduction, mercury recovery and mercury reclamation processes and emissions units which are exempt from permitting pursuant to the criteria of Rule 62-210.300(3)(a) or (b), F.A.C.; and

b. The facility does not emit or have the potential to emit 10 tons per year or more of mercury.

2. through 6. renumbered 1. through 5. No change.

7. Concrete Batching Plants as subject to the requirements of Rule 62-296.414, F.A.C., provided the owner or operator timely submits a completed Concrete Batching Plant Air General Permit Notification Form (DEP Form No. 62-210.920(7)) to the Department. Proposed new concrete batching plants, or existing relocatable concrete batching plants which are proposing to change location, shall: publish a notice of intent to use the general permit in a newspaper of general circulation in the area affected by the proposed project no more than 60 days prior to submitting a completed notification form to the Department; and submit a completed notification form with proof of notice publication to the Department at least 30 days prior to beginning construction or relocation. The Department shall provide the format for the notice of intent. Existing concrete batching plants which are not proposing to change location shall submit a completed notification form to the Department at least 30 days prior to the expiration date of any existing air operation permit or air general permit. Also, throughout the term of the general permit:

a. The facility operates no emissions units other than the concrete batching plant and emissions units which are exempt from permitting pursuant to the criteria of Rule 62-210.300(3)(a) or (b), F.A.C.;

b. If the facility proposes to change location, the owner or operator submits a completed concrete batching plant air general permit notification form to the Department, publishes a notice of intent to use a general permit, and submits proof of publication to the Department pursuant to the conditions of Rule 62-210.300(4)(a)7., F.A.C.;

e. The facility is not subject to a particulate matter Reasonably Available Control Technology (RACT) emission limiting standard of Rules 62-296.701 through .712, F.A.C.; and

d. The facility is not a Title V source as defined in Rule 62-210.200, F.A.C.

8. Human crematories as subject to the requirements of Rule 62-296.401(5), F.A.C., provided the owner or operator obtains an air construction permit pursuant to Rule 62-210.300(1), F.A.C., and at least 30 days prior to the expiration date of any air construction or existing air operation permit the owner or operator submits a completed Human Crematory Air General Permit Notification Form (DEP Form No. 62-210.920(8)) to the Department. Also, throughout the term of the general permit:

a. The facility operates no emissions units other than the human crematory and emissions units which are exempt from permitting pursuant to the criteria of Rule 62-210.300(3)(a) or (b), F.A.C.; and

b. The facility is not a Title V source as defined in Rule 62-210.200, F.A.C.

9. ~~Animal crematories with aggregate design capacity to cremate 500 pounds per hour or less, as subject to the requirements of Rule 62-296.401(6), F.A.C., provided the owner or operator obtains an air construction permit pursuant to Rule 62-210.300(1), F.A.C., and at least 30 days prior to the expiration date of any air construction or existing air operation permit the owner or operator submits a completed Animal Crematory Air General Permit Notification Form (DEP Form No. 62-210.920(9)) to the Department. Also, throughout the term of the general permit:~~

a. ~~The facility operates no emissions units other than the animal crematory and emissions units which are exempt from permitting pursuant to the criteria of Rule 62-210.300(3)(a), F.A.C.; and~~

b. ~~The facility is not a Title V source as defined in Rule 62-210.200, F.A.C.~~

~~(b) Title V Air General Permits. Certain facilities are eligible to operate under the terms of an air general permit issued pursuant to the procedures and general conditions of Rule 62-213.300, F.A.C., Title V Air General Permits. These facilities are specified in Rule 62-213.300, F.A.C. Unless otherwise specified in Rule 62-213.300, F.A.C., the responsible official of any facility that is eligible and has submitted notification to use an air general permit pursuant to Rule 62-213.300, F.A.C., and who operates the facility in compliance with the terms and conditions of the air general permit shall not be required to obtain an air construction permit pursuant to Rule 62-210.300(1), F.A.C. In addition, such responsible official shall not be required to obtain a regular air operation permit pursuant to Rule 62-210.300(2), F.A.C., or a regular Title V air operation permit pursuant to Rule 62-213, F.A.C.~~

~~(c) Other Non-Title V Air General Permits. No facility which contains an emissions unit, other than a unit described in an air general permit under this paragraph or a unit exempted from permitting pursuant to Rule 62-210.300(3)(a) or (b), F.A.C., or Rule 62-4.040, F.A.C., shall be eligible to use any air general permit in this paragraph. Unless specifically authorized by the particular air general permit, no facility is eligible to use more than one air general permit under this paragraph. In no event, however, shall any emissions unit be eligible to use any air general permit in this paragraph if the unit would be a Title V source as defined in Rule 62-210.200, F.A.C., be located at or relocated to a Title V source, or create a Title V source with other facilities or emissions units. The following facilities are eligible to operate under the terms of an air general permit pursuant to the procedures and general conditions of Rules 62-210.300(4)(d) through (e), F.A.C., provided all existing air permits authorizing operation of the facility are surrendered, all requirements of this paragraph are~~

met, and the facility complies with the terms and conditions of the particular air general permit throughout the term of the air general permit:

1. Volume reduction, mercury recovery, and mercury reclamation processes as defined in and subject to the requirements of Rule 62-296.417, F.A.C., provided the owner or operator submits a completed Volume Reduction, Mercury Recovery or Mercury Reclamation Air General Permit Notification Form (DEP Form No. 62-210.920(1)) to the Department at least 30 days prior to beginning operations under the general permit and, throughout the term of the general permit, the facility does not emit or have the potential to emit 10 tons per year or more of mercury.

2. Concrete batching plants as subject to the requirements of Rule 62-296.414, F.A.C. provided:

a. The owner or operator timely submits a completed Concrete Batching Plant Air General Permit Notification Form (DEP Form No. 62-210.920(7)) to the Department. The owner or operator of any proposed new concrete batching plant shall publish a notice of intent to use the general permit in a newspaper of general circulation in the area affected by the proposed project no more than 21 days prior to submitting a completed notification form to the Department, shall submit a completed notification form with proof of notice publication to the Department at least 30 days prior to beginning construction, and shall demonstrate compliance no more than 30 days after beginning operation. The Department shall provide the format for the notice of intent;

b. Throughout the term of the air general permit, the owner or operator complies with the requirements of Rule 62-296.414, F.A.C.;

c. The owner or operator of any relocatable concrete batching plant proposing to change location shall submit a Facility Relocation Notification Form (DEP Form No. 62-210.900(6)) to the Department at least 30 days prior to relocation;

d. The owner or operator of a stationary concrete batching plant using an air general permit may operate a stationary nonmetallic mineral processing plant using an air general permit at the same location provided all concrete batching plant units operate under a single concrete batching plant air general permit, all nonmetallic mineral processing plant units operate under a single nonmetallic mineral processing plant air general permit, and the resultant facility contains no additional nonexempt units and would not be a Title V source;

e. The owner or operator of a stationary concrete batching plant using an air general permit may operate, or allow the operation of, one or more relocatable nonmetallic mineral processing plants using individual air general permits at the same location as the concrete batching plant provided the resultant facility contains no additional nonexempt units, the total combined annual facility-wide fuel oil usage of all plants is less than 240,000 gallons per calendar year, the material

processed is less than 10 million tons per calendar year, and the fuel oil sulfur content does not exceed 0.5%, by weight. The owner or operator of the concrete batching plant shall maintain a log book to account for fuel consumption and material processed on a monthly basis. Fuel supplier certifications shall be maintained to account for the sulfur content of the fuel being burned; and

f. The owner or operator of multiple relocatable concrete batching plants using individual concrete batching plant air general permits may operate more than one such plant at the same location provided the resultant facility contains no additional nonexempt units and would not be a Title V source.

3. Human crematories as subject to the requirements of Rule 62-296.401(5), F.A.C., provided:

a. The owner or operator obtains an air construction permit pursuant to Rule 62-210.300(1), F.A.C., and at least 30 days prior to the expiration date of any air construction or existing air operation permit the owner or operator submits a completed Human Crematory Air General Permit Notification Form (DEP Form No. 62-210.920(8)) to the Department;

b. Throughout the term of the air general permit, the owner or operator complies with the requirements of Rule 62-296.401(5), F.A.C.; and

c. The owner or operator may use a human crematory air general permit and an animal crematory air general permit at the same facility provided all human crematory units operate under a single human crematory air general permit and all animal crematory units operate under a single animal crematory air general permit.

4. Animal crematories with aggregate facility design capacity to cremate 500 pounds per hour or less, as subject to the requirements of Rule 62-296.401(6), F.A.C., provided:

a. The owner or operator obtains an air construction permit pursuant to Rule 62-210.300(1), F.A.C., and at least 30 days prior to the expiration date of any air construction or existing air operation permit the owner or operator submits a completed Animal Crematory Air General Permit Notification Form (DEP Form No. 62-210.920(9)) to the Department;

b. Throughout the term of the air general permit, the owner or operator complies with the requirements of Rule 62-296.401(6), F.A.C.; and

c. The owner or operator may use a human crematory air general permit and an animal crematory air general permit at the same facility provided all human crematory units operate under a single human crematory air general permit and all animal crematory units operate under a single animal crematory air general permit.

5. Nonmetallic mineral processing plants, provided the owner or operator timely submits a completed Nonmetallic Mineral Processing Plant Air General Permit Notification Form (DEP Form No. 62-210.920(10)) to the Department, and, throughout the term of the general permit complies with the following terms and conditions:

a. For purposes of this rule, the definitions of 40 CFR 60.671, adopted and incorporated by reference at Rule 62-204.800, F.A.C., shall apply:

b. The owner or operator of any relocatable nonmetallic mineral processing plant proposing to change location shall notify the Department by phone prior to changing location and submit a Facility Relocation Notification Form (DEP Form No. 62-210.900(6)) to the Department no later than one (1) business day following relocation;

c. For all relocatable nonmetallic mineral processing plants, except those located at mines or quarries and processing only material from onsite natural deposits, and for all stationary nonmetallic mineral processing plants processing dry material, the owner or operator shall have a water suppression system with spray bars located at the feeder(s), the entrance and exit of the crusher(s), the classifier screens, and the conveyor drop points;

d. The owner or operator shall comply with Rule 62-296.320(4)(c), F.A.C., using the following reasonable precautions:

(i) Unconfined emissions that might be generated from various activities throughout a nonmetallic mineral processing plant processing dry material shall be controlled by using a water suppression system with spray bars located at the feeder(s), the entrance and exit of the crusher(s), the classifier screens, and the conveyor drop points.

(ii) Unconfined emissions that might be generated by vehicular traffic or wind shall be controlled by applying water (by water trucks equipped with spray bars) or effective dust suppressant(s) on a regular basis to all stockpiles, roadways and work-yards where this nonmetallic mineral processing plant is located;

e. The owner or operator shall comply with the following emissions standards, as applicable:

(i) Stack emissions from any crusher, grinding mill, screening operation, bucket elevator, transfer point on belt conveyors, bagging operation, storage bin, enclosed truck or railcar loading station, or any other affected emission point subject to 40 CFR Part 60, Subpart OOO, adopted and incorporated by reference at Rule 62-204.800, F.A.C., shall not contain particulate matter in excess of 0.05 grams per dry standard cubic meter (g/dscm) nor exceed 7% opacity, unless the stack emissions are discharged from a wet scrubbing control device.

(ii) Stack emissions from any baghouse that controls emissions from only an individual, enclosed storage bin subject to 40 CFR Part 60, Subpart OOO, adopted and incorporated by reference at Rule 62-204.800, F.A.C., shall not exceed 7% opacity.

(iii) Visible emissions from any grinding mill, screening operation, bucket elevator, transfer point on belt conveyors, bagging operation, storage bin, enclosed truck or railcar loading station, or any other affected emission point subject to

40 CFR Part 60, Subpart OOO, adopted and incorporated by reference at Rule 62-204.800, F.A.C., shall not exceed 10% opacity; and visible emissions from any crusher without a capture system subject to 40 CFR Part 60, Subpart OOO, shall not exceed 15% opacity.

(iv) If any crusher, grinding mill, screening operation, bucket elevator, transfer point on belt conveyors, bagging operation, storage bin, enclosed truck or railcar loading station, or any other emission point subject to 40 CFR Part 60, Subpart OOO, adopted and incorporated by reference at Rule 62-204.800, F.A.C., is enclosed in a building, then each enclosed emission point must comply with the emission limits in Rule 62-210.300(4)(c)5.e.(i) through (iii), F.A.C., or the building enclosing the emission point(s) shall not discharge any visible fugitive emissions, except emissions from a vent, and the vent emissions shall not exceed the stack emissions limits of Rule 62-210.300(4)(c)5.e.(i), F.A.C.

(v) Visible emissions from any crusher, grinding mill, screening operation, bucket elevator, transfer point on belt conveyors, bagging operation, storage bin, enclosed truck or railcar loading station, or any other emission point not subject to 40 CFR Part 60, Subpart OOO, adopted and incorporated by reference at Rule 62-204.800, F.A.C., shall be less than 20% opacity, pursuant to Rule 62-296.320(4)(b)1., F.A.C.

(vi) Truck dumping of nonmetallic minerals into any screening operation, feed hopper, or crusher subject to 40 CFR Part 60, Subpart OOO, adopted and incorporated by reference at Rule 62-204.800, F.A.C., is exempt from the emissions standards of Rule 62-210.300(4)(c)5.e., F.A.C.:

f. The owner or operator shall ensure that wet screening operations and subsequent screening operations, bucket elevators, and belt conveyors that process saturated material in the production line up to the next crusher, grinding mill or storage bin and are subject to 40 CFR Part 60, Subpart OOO, adopted and incorporated by reference at Rule 62-204.800, F.A.C., do not discharge any visible emissions. The owner or operator shall also ensure that screening operations, bucket elevators, and belt conveyors in the production line downstream of wet mining operations, where such screening operations, bucket elevators, and belt conveyors process saturated materials up to the first crusher, grinding mill, or storage bin in the production line and are subject to 40 CFR Part 60, Subpart OOO, adopted and incorporated by reference at Rule 62-204.800, F.A.C., do not discharge any visible emissions;

g. The owner or operator of a nonmetallic mineral processing plant subject to 40 CFR Part 60, Subpart OOO, adopted and incorporated by reference at Rule 62-204.800, F.A.C., and using a wet scrubber to control emissions shall comply with the monitoring requirements of 40 CFR 60.674, adopted and incorporated by reference at Rule 62-204.800, F.A.C.:

h. The owner or operator shall provide a compliance demonstration with the emission standards of Rule 62-210.300(4)(c)5.e., F.A.C., along with a request for renewal of authorization for use of the air general permit. The owner or operator of any new facility shall demonstrate initial compliance with the emission standards of Rule 62-210.300(4)(c)5.e., F.A.C., prior to beginning commercial operation and shall demonstrate renewal compliance with the emission standards of Rule 62-210.300(4)(c)5.e., F.A.C., within 60 days prior to the anniversary of the initial air general permit notification form submittal date. The owner or operator of any existing facility shall demonstrate compliance with the emission standards of Rule 62-210.300(4)(c)5.e., F.A.C., within 60 days prior to submitting an air general permit notification form and shall demonstrate renewal compliance within 60 days prior to the anniversary of the initial air general permit notification form submittal date. For purposes of the testing requirements of this rule, the visible emission reference test method shall be EPA Method 9, the visible fugitive emission reference test method shall be EPA Method 22, the particulate matter reference test method shall be either EPA Method 5 or 17, and the test procedures shall meet all applicable requirements of Chapter 62-297, F.A.C., 40 CFR 60.675, and 40 CFR Part 60, Appendix A, adopted and incorporated by reference at Rule 62-204.800, F.A.C.:

i. The owner or operator shall meet all applicable reporting and recordkeeping requirements of Chapter 62-297, F.A.C. and 40 CFR 60.676, adopted and incorporated by reference at Rule 62-204.800, F.A.C.:

j. The owner or operator of a stationary nonmetallic mineral processing plant using an air general permit may operate a stationary concrete batching plant using an air general permit at the same location provided all nonmetallic mineral processing plant units operate under a single nonmetallic mineral processing plant air general permit, all concrete batching plant units operate under a single concrete batching plant air general permit, and the resultant facility contains no additional nonexempt units and would not be a Title V source;

k. The owner or operator of a stationary nonmetallic mineral processing plant using an air general permit may operate, or allow the operation of, one or more relocatable concrete batching plants using individual air general permits at the same location as the nonmetallic mineral processing plant provided the resultant facility contains no additional nonexempt units and would not be a Title V source;

l. The owner or operator of multiple relocatable nonmetallic mineral processing plants using individual nonmetallic mineral processing plant air general permits may operate more than one such plant at the same location provided the resultant facility contains no additional nonexempt units, the total combined annual facility-wide fuel oil usage of all plants is less than 240,000 gallons per calendar year, the

material processed is less than 10 million tons per calendar year, and the fuel oil sulfur content does not exceed 0.5%, by weight. The owner or operator of the nonmetallic mineral processing plants shall maintain a log book to account for fuel consumption and material processed on a monthly basis. Fuel supplier certifications shall be maintained to account for the sulfur content of the fuel being burned; and

m. If a relocatable nonmetallic mineral processing plant is used to perform a routine function of a facility subject to regular air permitting, such as crushing recycled asphalt (rap) at an asphalt plant, it shall not operate under the authority of an air general permit. In such case, the regularly permitted facility air construction or air operation permit(s) must provide for operation of the nonmetallic mineral processing plant as an emission unit. If a relocatable nonmetallic mineral processing plant is used at a regularly permitted facility for a non-routine activity, such as destruction of a building, it may do so under the authority of its air general permit. In either case, the resultant facility shall not be a Title V source.

~~(d)(e)~~ General Procedures.

1. Eligibility Determination. The owner or operator of the facility or emissions unit shall determine its eligibility for an air general permit pursuant to the applicability criteria of Rule 62-210.300(4)(b) or (c)(~~a~~), F.A.C.

a. Unless otherwise specified in Rule 62-210.300(4)(b) or (c)(~~a~~), F.A.C., the owner or operator of any facility or emissions unit that is eligible and has submitted notification to use an air general permit pursuant to Rule 62-210.300(4)(b) or (c)(~~a~~), F.A.C., and who operates the facility or emissions unit in compliance with the terms and conditions of the air general permit shall not be required to obtain an air construction permit pursuant to Rule 62-210.300(1), F.A.C. In addition, such owner or operator shall not be required to obtain a regular air operation permit pursuant to Rule 62-210.300(2), F.A.C.

b. No change.

c. For each facility or emissions unit intending to operate under the provisions of an air general permit, the owner or operator must complete and submit the correct notification form for the specific general permit to be utilized, as set forth in Rules 62-210.300(4)(b) through (c)(~~a~~), F.A.C., to give notice to the Department of intent to use one of the air general permits listed in this rule.

2. through 7. No change.

~~(e)(d)~~ No change.

(5) through (7) No change.

Specific Authority 403.061 FS. Law Implemented 403.031, 403.061, 403.087, 403.814 FS. History—Formerly 17-2.210, Amended 11-28-93, Formerly 17-210.300, Amended 11-23-94, 4-2-95, 4-18-95, 10-16-95, 1-2-96, 3-13-96, 3-21-96, 5-13-96, 8-15-96, 10-7-96, 5-20-97, 11-13-97, 2-5-98, 2-11-99, 4-16-01,_____.

62-210.370 Reports.

(1) Facility Relocation Notification of Intent to Relocate Air Pollutant Emitting Facility. An air permit for a relocatable facility shall be amended upon each change of location of the

facility. Unless otherwise provided by rule or more stringent permit condition, ~~t~~The owner or operator of a relocatable ~~the~~ facility must submit a Facility Relocation Notification Form of ~~Intent to Relocate Air Pollutant Emitting Facility~~ (DEP Form No. 62-210.900(6)) to the Department at least seven ~~(7)~~ days prior to the change, if the facility would be relocated to a county in which public notice of the proposed operation of the facility had been given within the previous five years pursuant to Rule 62-210.350(1), F.A.C., or otherwise thirty (30) days prior to the relocation change. A separate form shall be submitted for each facility in the case of the relocation of multiple facilities which are jointly owned or operated.

(2) through (3) No change.

Specific Authority 403.061 FS. Law Implemented 403.021, 403.031, 403.061, 403.087 FS. History—New 2-9-93, Amended 11-28-93, Formerly 17-210.370, Amended 11-23-94, 3-21-96, 2-11-99,_____.

62-210.900 Forms and Instructions.

The forms used by the Department in the stationary source control program are adopted and incorporated by reference in this section. The forms are listed by rule number, which is also the form number, with the subject, title and effective date. Forms 62-210.900(1),(3),(4) and (5), F.A.C., including instructions, are available from the Department as hard-copy documents or executable files on computer diskettes. Copies of forms (hard-copy or diskette) may be obtained by writing to the Department of Environmental Protection, Division of Air Resources Management, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400. Notwithstanding the requirement of Rule 62-4.050(2), F.A.C., to file application forms in quadruplicate, if an air permit application is submitted using the Department's electronic application form, only one copy of the diskette and signature pages is required to be submitted.

(1) through (5) No change.

(6) Facility Relocation Notification Form of Intent to Relocate Air Pollutant Emitting Facility, Form and Instructions (Effective _____ ~~11-23-94~~).

(7) No change.

Specific Authority 403.061 FS. Law Implemented 403.061, 403.087 FS. History—New 2-9-93, Amended 11-28-93, Formerly 17-210.900, Amended 11-23-94, 7-6-95, 3-21-96, 1-6-98, 2-11-99, 4-16-01,_____.

62-210.920 Notification Forms for Air General Permits.

The notification forms used by the Department for air general permits issued pursuant to the procedures of Rule ~~62-210.300(4)~~ ~~62-4.530~~, F.A.C., are adopted and incorporated by reference in this section. The forms are listed by rule number, which is also the form number, with the subject, title and effective date. Copies of the forms may be obtained by writing to the Department of Environmental Protection, Division of Air Resources Management, ~~MS 5510~~, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

(1) Volume Reduction, Mercury Recovery or Mercury Reclamation Air General Permit Notification Form (Effective _____ ~~2-11-99~~).

(2) Bulk Gasoline Plant Air General Permit Notification Form (Effective 2-11-99).

(3) Heating Units and General Purpose Internal Combustion Engines Air General Permit Notification Form (Effective 2-11-99).

(4) Surface Coating Operations Air General Permit Notification Form (Effective 5-25-98).

(5) Polyester Resin Plastic Products Fabrication Air General Permit Notification Form (Effective 2-11-99).

(6) Cast Polymer Operations Air General Permit Notification Form (Effective 2-11-99).

(7) Concrete Batching Plant Air General Permit Notification Form (Effective 2-11-99).

(8) Human Crematory Air General Permit Notification Form (Effective 2-11-99).

(9) Animal Crematory Air General Permit Notification Form (Effective 2-11-99).

(10) Nonmetallic Mineral Processing Plant Air General Permit Notification Form (Effective).

Specific Authority 403.061 FS. Law Implemented 403.031, 403.061, 403.087, 403.814 FS. History--New 10-16-95, Amended 1-2-96, 3-21-96, 5-13-96, 8-15-96, 11-13-97, 5-25-98, 2-11-99, .

NAME OF PERSON ORIGINATING PROPOSED RULE: Howard L. Rhodes, Director, Division of Air Resource Management

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kirby B. Green, Deputy Secretary, Department of Environmental Protection

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 2, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 23, 2001

DEPARTMENT OF HEALTH

Board of Optometry

RULE TITLE: Criteria for Selection of Examiners and Consultants

RULE NO.:

64B13-4.005

PURPOSE AND EFFECT: The proposed rule amendments are intended to add additional requirements for examiners and clarify that licensees engaged in professional education may not serve as examiners for the practical portion of the licensure examination.

SUMMARY: The proposed rule amendments clarify requirements for examiners and consultants for the licensure examination.

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

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

SPECIFIC AUTHORITY: 456.017(1)(b) FS.

LAW IMPLEMENTED: 456.017(1)(b) FS.

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

TIME AND DATE: 10:00 a.m., May 23, 2001

PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Optometry/MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B13-4.005 Criteria for Selection of Examiners and Consultants.

The following criteria are hereby established for the selection of examiners and consultants:

(1) All prospective examiners and consultants must have received approval of the Board prior to their selection as examiners by the Department of Health. The Department shall submit annually the curricula vitae of new examiners or consultants, and shall submit updated curricula vitae of all previously approved examiners or consultants every three years.

(2) In order to receive approval of the Board, a prospective examiner or consultant must comply with the following minimum requirements:

(a) Licensure as an optometrist ~~a licensed practitioner~~ in this State for at least three years preceding the date of the examination or examination development meeting at which they will serve as an examiner or consultant, as needed, and

(b) The absence of any finding by the Board that the prospective examiner or consultant has violated Chapter 456, Chapter 463, Florida Statutes, or the rules promulgated thereunder or current investigation by the Department or the Agency for Health Care Administration.

(3) In addition to the minimum requirements, a licensee may not serve as an examiner if the licensee has externs at his/her place of practice, currently supervises doctors in a residency or fellowship, or is a faculty member or adjunct professor in a school of optometry.

(4)~~(3)~~ The examination of patients for the purpose of determining findings against which the performance of candidates will be compared must be conducted by certified optometrists ~~licensed practitioners~~ licensed in this State who meet the requirements stated in subsections (1), ~~and~~ (2)(b) and (3) of this rule.

Specific Authority 456.017(1)(b) FS. Law Implemented 456.017(1)(b) FS. History--New 10-6-81, Formerly 21Q-4.05, Amended 7-21-86, 11-20-86, Formerly 21Q-4.005, 61F8-4.005, 59V-4.005, Amended 2-7-01,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Optometry
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Optometry
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 30, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 26, 2001

**DEPARTMENT OF HEALTH
Division of Environmental Health**

RULE TITLES:	RULE NOS.:
Definitions	64E-5.101
Special Requirements for a Specific License to Manufacture, Assemble, Repair or Distribute Commodities, Products or Devices Which Contain Radioactive Material	64E-5.210
License Required	64E-5.601
Notification	64E-5.603
Radiation Safety Committee	64E-5.606
Use of Radiopharmaceuticals for Uptake, Dilution, or Excretion Studies	64E-5.626
Use of Radiopharmaceuticals, Generators, and Reagent Kits for Imaging and Localization Studies	64E-5.627
Use of Radiopharmaceuticals for Therapy	64E-5.630

PURPOSE AND EFFECT: The purpose of the proposed rules is permit the use of radiopharmaceuticals prepared by nuclear pharmacists. The effect is the continued compatibility of the department’s radioactive materials licensing rules with those of the U.S. Nuclear Regulatory Commission.

SUMMARY: The proposed rule amends which radiopharmaceuticals can be used for diagnosis and therapy to include those prepared by licensed manufacturers and nuclear pharmacists.

SPECIFIC AUTHORITY: 404.022, 404.042, 404.051, 404.061, 404.071, 404.081, 404.141 FS.

LAW IMPLEMENTED: 404.022, 404.051, 404.061(2),(3), 404.071(1), 404.081, 404.141 FS.

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

TIME AND DATE: 9:00 a.m., May 30, 2001
PLACE: 4042 Bald Cypress Way, Room 210J, Tallahassee, FL 32311

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: William A. Passetti, Chief, Bureau of Radiation Control, (850)245-4266

THE FULL TEXT OF THE PROPOSED RULES IS:

**PART I
GENERAL PROVISIONS**

64E-5.101 Definitions.

As used in these rules, these terms have the definitions set forth below. Additional definitions used only in a certain part are defined in that respective part.

(1) through (174) No change.

(175) “Authorized nuclear pharmacist” means a pharmacist who is actively licensed as a nuclear pharmacist by the Board of Pharmacy as specified in Rule 64B16-28.903, F.A.C., and is authorized on a radioactive materials license by the department.

Specific Authority 404.042, 404.051, 404.061 FS. Law Implemented 404.051 FS. History--New 7-17-85, Amended 4-4-89, 5-12-93, 1-1-94, 5-15-96, Formerly 10D-91.102, Amended 5-18-98, 10-8-00,_____.

**PART II
LICENSING OF RADIOACTIVE MATERIAL**

64E-5.210 Special Requirements for a Specific License to Manufacture, Assemble, Repair or Distribute Commodities, Products or Devices Which Contain Radioactive Material.

(1) through (9) No change.

(10) Manufacture and Distribution of Radiopharmaceuticals Containing Radioactive Material for Medical Use. An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Part VI for the uses listed in Rules 64E-5.626, 64E-5.627, and 64E-5.630, F.A.C., will be approved if:

(a) The applicant satisfies the general requirements specified in Rule 64E-5.208, F.A.C.;

(b) The applicant submits evidence that:

1. The applicant is registered or licensed with the U.S. Food and Drug Administration as a drug manufacturer; The radiopharmaceutical containing radioactive material will be manufactured, labeled and packaged in accordance with the Federal Food, Drug and Cosmetic Act or the Public Health Service Act, such as a new drug application (NDA) approved by the Food and Drug Administration (FDA), or a “Notice of Claimed Investigational Exemption for a New Drug” (IND) that has been accepted by the FDA; or

2. The applicant is registered or licensed as a drug manufacturer as specified in Chapter 499, F.S.; The manufacture and distribution of the radiopharmaceutical containing radioactive material is not subject to the Federal Food, Drug and Cosmetic Act and the Public Health Service Act; or

3. The applicant has a nuclear pharmacy permit as specified in Section 465.0193, F.S.

(c) The applicant submits information on the radionuclide, chemical and physical form, packaging including maximum activity per package, and shielding provided by the packaging of the radioactive material which is appropriate for safe handling and storage of radiopharmaceuticals by medical use group licensees; and

(d) The applicant satisfies the following labeling requirements:

1. The label affixed to each transport radiation shield of any material of a radioactive drug transferred for commercial distribution includes the radiation symbol and the words "Caution, Radioactive Material" or "Danger, Radioactive Material"; the name of the radioactive drug or its abbreviation; and the quantity of the radioactive material at a specified date and time. The time can be omitted for radioactive drugs with a half life greater than 100 days. The label affixed to each package of the radiopharmaceutical contains information on the radionuclide, quantity and date of assay and the label affixed to each package contains a statement that the radiopharmaceutical is licensed by the department for distribution to persons licensed pursuant to Part VI and Rules 64E-5.626, 64E-5.627, 64E-5.630, F.A.C., as appropriate, or under equivalent licenses of the U.S. Nuclear Regulatory Commission, an agreement state or a licensing state.

2. A label affixed to each syringe, vial, or other container used to hold a radioactive drug transferred for commercial distribution includes the words "Caution, Radioactive Material" or "Danger, Radioactive Material" and an identifier that correlates the syringe, vial, or other container with the information on the transport radiation shield label. The labels, leaflets or brochures required by (10)(d)1., above, are in addition to the labeling required by the Federal Food and Drug Administration (FDA) and they may be separate from or, with the approval of FDA, may be combined with the labeling required by FDA.

(e) A licensee specified in Rule 64E-5.210(10)(b)3., F.A.C., can prepare radioactive drugs for medical use if prepared by an authorized nuclear pharmacist as specified in Rule 64E-5.101(175), F.A.C., or an individual supervised by an authorized nuclear pharmacist.

(f) A licensee shall possess and use instruments to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instruments. The licensee shall measure by direct measurements or by combination of measurements and calculations the amount of radioactivity in doses of alpha-emitting, beta-emitting, or photon-emitting radioactive drugs before transfer for commercial distribution. In addition, the licensee shall:

1. Perform tests before initial use, periodically, and following repair on each instrument for accuracy, linearity, and geometry dependence appropriate for the use of the instrument and make adjustments when needed; and

2. Check each instrument for constancy and proper operation at the beginning of each day of use.

(11) through (14) No change.

Specific Authority 404.051, 404.061, 404.071, 404.081, 404.141 FS. Law Implemented 404.022, 404.051(1),(4),(6),(9),(10),(11), 404.061(2), 404.081(1), 404.141 FS. History--New 7-17-85, Amended 8-25-91, 5-12-93, 1-1-94, 5-15-96, Formerly 10D-91.311, Amended.

PART VI

USE OF RADIONUCLIDES IN THE HEALING ARTS

64E-5.601 License Required.

(1) through (3) No change.

(4) Unless authorized by the department, no individual shall manufacture, produce, acquire, receive, possess, use, or transfer radioactive materials for medical use unless:

(a) That individual is listed on the licensee's specific license as an authorized user or an authorized nuclear pharmacist;

(b) Authorized by Rule 64E-5.609, F.A.C.;

(c) Authorized by Rule 64E-5.601(2), F.A.C., with approval of the radiation safety committee at medical institutions or by management for licensees that are not medical institutions; or

(d) Authorized by Rule 64E-5.601(3), F.A.C., and subpart I of Part VI.

Specific Authority 404.022, 404.051, 404.061, 404.071, 404.081, 404.141 FS. Law Implemented 404.022, 404.051(1),(4),(5),(6),(8),(9),(10),(11), 404.061(2), (3), 404.071(1), 404.081, 404.141 FS. History--New 8-25-91, Amended 5-12-93, Formerly 10D-91.707, Amended.

64E-5.603 Notification.

A licensee shall notify the department in writing within 30 days when an authorized user, radiation safety officer, authorized nuclear pharmacist, or teletherapy physicist permanently discontinues performance of these duties for the licensee.

Specific Authority 404.022, 404.051, 404.061, 404.071, 404.081, 404.141 FS. Law Implemented 404.022, 404.051(1),(4),(5),(6),(8),(9),(10),(11), 404.061(2), (3), 404.071(1), 404.081, 404.141 FS. History--New 8-25-91, Formerly 10D-91.709, Amended.

Subpart A

General Administrative Requirements

64E-5.606 Radiation Safety Committee.

Each medical institution licensee shall establish a radiation safety committee to oversee the use of radioactive material.

(1) through (5) No change.

(6) The committee shall review and approve any individual to be an authorized user, an authorized nuclear pharmacist, the radiation safety officer, or teletherapy physicist based on safety and the training and experience standards of this part before sending a license application or request for amendment or renewal.

(7) through (11) No change.

Specific Authority 404.022, 404.051, 404.061, 404.071, 404.081, 404.141 FS.
 Law Implemented 404.022, 404.051(1),(4),(5),(6),(8),(9),(10),(11),
 404.061(2),(3), 404.071(1), 404.081, 404.141 FS. History–New 8-25-91,
 Formerly 10D-91.712, Amended _____.

Subpart C

Uptake, Dilution, and Excretion

64E-5.626 Use of Radiopharmaceuticals for Uptake, Dilution, or Excretion Studies.

A licensee is allowed to may use any radioactive material in a radiopharmaceutical for a diagnostic use involving measurements of uptake, dilution, or excretion for medical use that is either: which the Food and Drug Administration has accepted an Investigational New Drug Application or approved a New Drug Application.

(1) Obtained from a manufacturer or pharmacy licensed as specified in Rule 64E-5.210(10), F.A.C., or in equivalent U.S. Nuclear Regulatory Commission or Agreement State regulations; or

(2) Prepared by an authorized nuclear pharmacist as specified in Rule 64B16-28.903, F.A.C., or by a physician who is an authorized user.

Specific Authority 404.022, 404.051, 404.061, 404.071, 404.081, 404.141 FS.
 Law Implemented 404.022, 404.051(1),(4),(5),(6),(8),(9),(10),(11),
 404.061(2),(3), 404.071(1), 404.081, 404.141 FS. History–New 8-25-91,
 Formerly 10D-91.733, Amended _____.

Subpart D

Imaging and Localization

64E-5.627 Use of Radiopharmaceuticals, Generators, and Reagent Kits for Imaging and Localization Studies.

(1) A licensee is allowed to may use any radioactive material in a diagnostic radiopharmaceutical, except in an aerosol or gaseous form, or any generator or reagent kit for preparation and diagnostic use of a radiopharmaceutical containing radioactive material for medical use that is either: which the Food and Drug Administration has accepted an Investigational New Drug Application or approved a New Drug Application.

(a) Obtained from a manufacturer or pharmacy licensed as specified in Rule 64E-5.210(10), F.A.C., or in equivalent U.S. Nuclear Regulatory Commission or Agreement State regulations; or

(b) Prepared by an authorized nuclear pharmacist as specified in Rule 64B16-28.903, F.A.C., or by a physician who is an authorized user.

(2) No change.

Specific Authority 404.022, 404.051, 404.061, 404.071, 404.081, 404.141 FS.
 Law Implemented 404.022, 404.051(1),(4),(5),(6),(8),(9),(10),(11),
 404.061(2),(3), 404.071(1), 404.081, 404.141 FS. History–New 8-25-91,
 Amended 5-12-93, Formerly 10D-91.735, Amended _____.

Subpart E

Radiopharmaceuticals for Therapy

64E-5.630 Use of Radiopharmaceuticals for Therapy.

A licensee is allowed to may use any radioactive material in a radiopharmaceutical and for a therapeutic medical use that is either: for which the Food and Drug Administration has accepted an Investigational New Drug Application or approved a New Drug Application.

(1) Obtained from a manufacturer or pharmacy licensed as specified in Rule 64E-5.210(10), F.A.C., or in equivalent U.S. Nuclear Regulatory Commission or Agreement State regulations; or

(2) Prepared by an authorized nuclear pharmacist as specified in Rule 64B16-28.903, F.A.C., or by a physician who is an authorized user.

Specific Authority 404.022, 404.051, 404.061, 404.071, 404.081, 404.141 FS.
 Law Implemented 404.022, 404.051(1),(4),(5),(6),(8),(9),(10),(11),
 404.061(2),(3), 404.071(1), 404.081, 404.141 FS. History–New 8-25-91,
 Amended 5-12-93, Formerly 10D-91.739, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
 William A. Passetti

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Sharon Heber, Dr.P.H.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 11, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 23, 2001

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Family Safety and Preservation

RULE TITLE: Healthy Families Florida
 RULE NO.: 65C-23.002

PURPOSE AND EFFECT: This rule establishes requirements that Health Families Florida provide services designed to prevent or reduce out-of-wedlock births.

SUMMARY: This rule clarifies the full scope of service objectives provided by the Healthy Families Florida program that are in accordance with the Temporary Assistance for Needy Families (TANF) program objectives. These include efforts to help children be cared for in their own home, reduce families' dependence on assistance, and to prevent or reduce out-of-wedlock births.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 414.158 FS.

LAW IMPLEMENTED: 414.158 FS.

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

TIME AND DATE: 9:00 a.m., May 18, 2001

PLACE: 1317 Winewood Blvd., Building 8, Conference Room, Tallahassee, FL 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rae Hendlin, Specialist, 1317 Winewood Blvd., Building 8, Tallahassee, FL 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

WAGES HARDSHIP EXEMPTION AND PREVENTION SERVICES

65C-23.002 Healthy Families Florida.

Healthy Families Florida will provide services designed to prevent or reduce out-of-wedlock births.

Specific Authority 414.158 FS. Law Implemented 414.158 FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE: Rae Hendlin, Specialist, 1317 Winewood Blvd., Building 8, Tallahassee, FL 32399

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Darcy Abbott, 1317 Winewood Blvd., Building 8, Tallahassee, FL 32399

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 21, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 30, 2001

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Family Safety and Preservation

RULE TITLES: Definitions 65C-27.001
Timeframes 65C-27.002

PURPOSE AND EFFECT: These rules are to clarify timeframes in subsection 39.407(5), F.S. The timeframes apply to all qualified evaluators that provide initial suitability assessments for children that are referred for residential treatment placement. They also apply to the 3-month independent reviews for children in residential treatment.

SUMMARY: Subsection 39.407(5), F.S., requires that if the department believes that a child in its legal custody is emotionally disturbed and may need residential treatment that the child must receive an examination and suitability assessment by a qualified evaluator appointed by the Agency for Health Care Administration.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 39.407(5)(i) FS.

LAW IMPLEMENTED: 39.407(5)(i) FS.

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

TIME AND DATE: 9:00 a.m., May 18, 2001

PLACE: 1317 Winewood Blvd., Building 8, Conference Room, Tallahassee, FL 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Darcy Abbott, Specialist, 1317 Winewood Blvd., Building 8, Tallahassee, FL 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

CHAPTER 65C-27
SUITABILITY ASSESSMENTS

65C-27.001 Definitions.

(1) “Qualified Evaluator” means a psychiatrist or psychologist licensed in Florida who has at least 3 years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents and who has no actual or perceived conflict of interest with any inpatient facility or residential treatment center or program.

(2) “Suitability Assessment” means assessment by a qualified evaluator that includes a personal examination and assessment of the child that includes written findings.

(3) “3-Month Independent Review” means assessment by a qualified evaluator that includes a personal examination and assessment of the child in residential treatment. The assessment includes evaluation of the child's progress toward achieving the goals and objectives of the treatment plan, which must be submitted to the court.

(4) “Residential Treatment” as defined in s. 39.407(5)(a)(1).

Specific Authority 39.407(5)(i) FS. Law Implemented 39.407(5) FS. History—New

65C-27.002 Timeframes.

(1) When the department believes that a child is in need of an initial suitability assessment for residential treatment, a representative of the department must make a request to the Agency for Health Care Administration contract provider that coordinates the qualified evaluator registry.

(2) The Agency for Health Care Administration contracted provider shall refer the initial suitability assessment request to a registered qualified evaluator and notify the department's representative who made the referral of the time and place for

the evaluation. It is the responsibility for the department to transport the child and required clinical records to the appointment with the selected qualified evaluator.

(3) The qualified evaluator will set the appointment within 5 working days of the referral. Following the assessment of the child, the qualified evaluator will submit written findings to the Agency for Health Care Administration contracted provider within 3 days of the assessment. The Agency for Health Care Administration contracted provider will review the findings and submit copies of the findings to the agency and the department within 3 days of receipt of at the findings from the qualified evaluator. Within these time frames, the department will receive the findings within 12 working days of the initial referral to the agency's contracted provider. Written findings will be submitted by the contracted provider to the Agency for Health Care Administration, the Department of Children and Families and the child's guardian ad litem.

(4) For all children in the custody of the department that are residing in residential treatment, a 3 month independent review must be conducted at least every 90 days after the child's initial placement. It is the department's responsibility to notify the Agency for Health Care Administration contracted provider no later than the 60th day of the child's placement in residential treatment to request a 3 month independent review. The Agency for Health Care Administration contracted provider must contact a qualified evaluator to perform the 3 month independent review and must submit the completed independent review to the Agency for Health Care Administration, the department and court at least 6 days prior to the 90th day in residential treatment. The 3-month independent review process must continue every 90 days for as long as the child resides in a residential treatment center.

Specific Authority 39.407(5)(i) FS. Law Implemented 39.407(5) FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Darcy Abbott, Specialist, 1317 Winewood Blvd., Building 8, Tallahassee, FL 32399

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ralph Harmsen, 1317 Winewood Blvd., Building 7, Tallahassee, FL 32399

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 28, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 6, 2001

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF INSURANCE

Division of Insurer Services

RULE CHAPTER NO.: RULE CHAPTER TITLE:

4H-2 Florida Casualty Insurance Risk
 Management Trust Fund

SECOND NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., Florida Statutes, published in Vol. 26, No. 43, October 27, 2001, of the Florida Administrative Weekly, and a Notice of Change published in Vol. 27, No. 11, March 16, 2001, of the Florida Administrative Weekly:

4H-2003(3)(b) Form DI4-1392, the title will be changed to read "Statutory EBI Community Service Participants" the authority reference will be changed to "445.024(1)(d), F.S.", and the revision date to "rev. 3/01".

4H-2.003(3)(c) Change to revision date on form DI4-1393 to "rev. 3/01".

4H-2.003(3)(g) Change to revision date on form DI4-1397 to read "rev. 3/01" and the authority reference will be changed to read "948.03(8)(a)".

4H-2.004(2) The title of the form and revision date will be changed to read "Form DI4-867, "State Employee Workers' Compensation and Employer's Liability Certificate of Coverage," rev. 3/01".

4H-2.004(3) Change revision date on form DI4-863 to read "3/01".

4H-2.004(4) Change revision date on form DI4-864 to read "3/01".

4H-2.004(5) Change revision date on form DI4-865 to read "3/01".

4H-2.004(6) Change revision date on form DI4-862 to read "3/01".

4H-2.008(1)(a) Delete form DI4-280, "Release of All Claims".

4H-2.008(1)(b) Delete form DI4-262. "State of Claim".

4H-2.008(1)(c) Change (c) to "(a)"

4H-2.008(1)(d) Change (d) to "(b)" and change revision date on form DI4-866 to read "3/01".

4H-2.008(1)(e), Delete form DI4-868, "Employer's Supplement Report of Injury".

4H-2.008(1)(f), Change (f) to "(c)".

4H-2.008(1)(g) Change (g) to "(d)" and change revision date on form DI4-1404 to read "3/01".

4H-2.008(1)(h) Delete form DI4-1405, "Personal Property Affidavit".

4H-2.008(1)(i) Change (i) to "(e)".

4H-2.008(1)(j) Change (j) to "(f)".