Section I
Notices of Development of Proposed Rules and Negotiated Rulemaking

DEPARTMENT OF LEGAL AFFAIRS

RULE TITLE: RULE NO.:
Addition of Alphamethyltryptamine (AMT) to Schedule I, Subsection 893.03(1), F.S. 2-40.006

PURPOSE AND EFFECT: The Department proposes the development of a rule to add Alphamethyltryptamine (AMT), to the list of Schedule I controlled substances.

SUBJECT AREA TO BE ADDRESSED: The addition of Alphamethyltryptamine (AMT), to the list of Schedule I controlled substances.

SPECIFIC AUTHORITY: 893.035 FS.

LAW IMPLEMENTED: 893.035 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Edwin Bayó, Senior Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

2-40.006 Addition of Alphamethyltryptamine (AMT) to Schedule I, Subsection 893.03(1), F.S.

(1) Under the authority of Section 893.035 (2)(a), Florida Statutes, the substance Alphamethyltryptamine (AMT), including any of its isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters ethers, and salts is possible within the specific chemical designation of Alphamethyltryptamine (AMT), is hereby a controlled substance added to Schedule I, subsection 893.03(1), F.S.

(2) All provisions of Chapter 893, F.S., applicable to controlled substances listed in Schedule I, subsection 893.03(1), F.S., shall be applicable to Alphamethyltryptamine (AMT), including any of its isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters ethers, and salts is possible within the specific chemical designation of Alphamethyltryptamine (AMT).

Specific Authority 893.035 FS. Law Implemented 893.035 FS. History–New _____.

DEPARTMENT OF INSURANCE

RULE TITLES:	RULE NOS.:
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Definitions	4-163.0017
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Filing Requirements	4-163.0045
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Effective Date	4-163.013

PURPOSE AND EFFECT: The purpose is to update prima facie rates regarding credit life and credit disability insurance based on a current study of statewide experience as required by Section 627.67, Florida Statutes. The rule also adds definitions of certain types of new products, and details rate filing requirements. A previous workshop on the proposed rules was held on July 22, 2002.

SUBJECT AREA TO BE ADDRESSED: Credit Life and Credit Disability Insurance.

SPECIFIC AUTHORITY: 624.308(1), 627.678 FS.

LAW IMPLEMENTED: 624.307(1), 624.424(1)(6), 627.553, 627.558(1), 627.569, 627.575, 627.676, 627.677, 627.678, 627.678(2), 627.6785, 627.6785(3), 627.681, 627.681(3), 627.682 FS.

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

TIME AND DATE: 9:30 a.m., November 20, 2002

PLACE: Room 601B, Larson Building, 200 East Gaines Street, Tallahassee, Florida

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 the person below.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Frank Dino, Bureau of L & H Forms & Rates, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0328, (850)413-5014

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

4-163.0015 Applicability.

(1) Section 627.677, Florida Statutes, and this rule chapter apply to credit life insurance and credit accident and health insurance sold in conjunction with a credit transaction.

(2) A policy or certificate is deemed to be credit life insurance or credit accident and health insurance if it:

(a) References the lender or credit transaction within the form;

(b) Has the lender as a beneficiary or assignee of any of the proceeds of the policy; or

(c) Conditions the coverage upon the existence, term or coverage of a credit transaction.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.676, 627.677 FS. History–New _____.

4-163.0017 Definitions.

As used in this rule chapter, the following terms have the following meaning:

(1) Accelerated Death Benefit. Benefit which is paid in advance of the death of the insured. The benefit may be adjusted to consider the time value of money. The requirements shall not necessitate more from the insured than a physicians signature indicating a life expectancy of less than 12 months. Definitions that are more or less restrictive shall cause an adjustment of the rate charged based on actuarial justification.

(2) Actual Net Debt. The amount necessary to liquidate the remaining debt in a single lump-sum payment, excluding all unearned interest and other unearned finance charges.

(3) Actuarial Assumptions. The value of a parameter, or other choice, having an impact on an estimate of a future cost or other actuarial item under evaluation.

(4) Actuarial Present Value. The value of an amount or series of amounts payable or receivable at various times, determined as of a given date with each value based on the same set of actuarial assumptions.

(5) Actuarially Equivalent. Producing equal actuarial present value, determined as of a given date with each value based on the same set of actuarial assumptions.

(6) Credibility. The statistical extent to which the past experience of a case can be expected to recur in the future.

(7) Decreasing Gross Coverages. Coverage where the amount of insurance is decreased by the amount of the payment as the debtor makes each monthly payment. This results in the amount of insurance being equal to the sum of the remaining payments during the policy term-principal and unearned interest included.

(8) Experience. Earned premium, incurred claims, incurred claims count, or number of life years insured, and average amount of insurance during the experience period.

(9) Joint Credit Life or Credit Health. Insurance on the life of the debtor and the spouse of the debtor, partners, or any other legal cosigner.

(10) Prima Facie Rate. Maximum allowable rate, without experience or justification, pursuant to Section 627.6785(2), Florida Statutes~~.~~; shall be those contained in Rules 4-163.010 and 4-163.011, F.A.C., for coverage(s) which do not restrict for any pre-existing condition or which do not contain other restrictions.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.575, 627.677, 627.6785 FS. History–New _____.

4-163.002 Premium Rates.

(1) Premium rates for Credit Life and Credit Disability Insurance shall be filed with the Department ~~Insurance Commissioner~~, and

(2) T~~t~~he creditor (person, firm or corporation) shall not add any additional charge to the premium set by the insurance company and on file with the Department ~~Insurance Commissioner~~.

~~(1) In the case of Group Credit Life insurance or Group Credit Disability insurance, the amounts paid by the insured borrowers or purchasers for the insurance shall be consistent with the premiums set by the insurance company.~~

~~By consistent this Department understands a variation not exceeding two and one-half cents per hundred dollars of original indebtedness per year.~~

~~(2) In the case of Franchise Credit Life insurance, the premium paid by the insured borrower or purchaser for the insurance shall not exceed the premium rate filed by the insurance company with the Insurance Commissioner.~~

~~(3) In the case of Individual Credit Life insurance and Individual Credit Disability insurance, the premium paid by the insured borrower or purchaser shall not exceed the premium rate filed by the insurance company with the Insurance Commissioner.~~

Specific Authority 624.308(1), 627.678 FS. Law Implemented 627.307(1), 627.6785 FS. History–Repromulgated 12-24-74, Formerly 4-7.02, 4-7.002, Amended _____.

4-163.003 Cancellation and Refund Requirements.

Cancellation and refunds shall be required in accordance with the following provisions applicable to each classification, in order to best protect the borrower from loss of funds by short-rate cancellation or termination of insurance, and to further avoid duplication or overlapping of insurance coverage when the loan is prepaid, refinanced or renewed.

(1) At the time the indebtedness is discharged, any remaining insurance coverage must be promptly terminated unless the insured requests in writing that the coverage be continued. ~~Group Credit Life insurance and Group Credit Disability insurance – if through prepayment, renewal or refinancing, the indebtedness is discharged prior to its scheduled maturity date, and the insurance coverage is thereby~~

~~automatically terminated, the return of any unearned premium shall be paid promptly or credited to the person entitled thereto.~~

(2) Upon termination of the insurance coverage, the company shall promptly return the unearned premium to the payor. ~~Franchise Credit Life insurance – if through prepayment, renewal or refinancing, the indebtedness is discharged prior to its scheduled maturity date, and the insurance coverage is thereby automatically terminated, the return of any unearned premium shall be paid promptly or credited to the person entitled thereto provided that, if Franchise Credit Life insurance is written on a plan under which the insurance coverage is not automatically terminated upon discharge of the indebtedness, cancellation of the insurance then in force shall be mandatory. Provided cancellation of insurance then in force shall not be mandatory if an indebtedness (a) is subject to Sections 516.01 to 516.26 or Sections 519.01 to 519.19, Florida Statutes, discharged by prepayment at any time; or (b) is discharged by prepayment one year or less prior to its scheduled maturity; or (c) is refinanced by the same creditor and no credit life insurance or credit disability insurance, as the case may be, is written in connection with the refinanced indebtedness.~~

(3) In addition to the above, a refund of 100% of any payment made in advance of a scheduled payment date subsequent to the date of termination shall be returned to the payor. ~~Individual Credit Life insurance and Individual Credit Disability insurance – if through prepayment, renewal or refinancing, any indebtedness, other than those hereinafter provided for, is discharged prior to the scheduled maturity date, cancellation of the insurance then in force shall be mandatory. Provided, cancellation of the insurance then in force shall not be mandatory if an indebtedness (a) is subject to Sections 516.01 to 516.26 or Sections 519.01 to 519.19, Florida Statutes, is discharged by prepayment at any time; or (b) is discharged by prepayment one year or less prior to its scheduled maturity; or (c) is refinanced by the same creditor and no credit life insurance or credit disability insurance, as the case may be, is written in connection with the refinanced indebtedness. In the event of cancellation, the return of any unearned premium shall be paid promptly or credited to the person entitled thereto.~~

~~(4) In the event of Franchise Credit Life insurance or Individual Credit Life insurance, where retention of insurance is permitted, the option to cancel or to retain shall be set forth in writing either as part of the policy or certificate, or as a separate statement furnished to the debtor at the same time as the policy or certificate. NOTE: The following wording is acceptable to this Department for use in Franchise and Individual Credit Life Insurance policies and certificates and Individual Disability Insurance policies:~~

~~"This policy may be cancelled or continued by the insured in accordance with the laws and rules and regulations of the State of Florida. In the event of the cancellation of the credit insurance prior to the expiration date, the return premium (or any unearned premium due) shall be paid promptly or credited to the person entitled thereto."~~

~~(4)~~(5) The formula to be used in computing return premiums (or unearned premiums) shall be filed with and approved by the Insurance Commissioner. The minimum basis adopted by any company shall not be less than the Rule of 78 for declining balance only and pro-rata for all other types of coverages~~, and its projections; however,~~ I~~i~~f the refund or credit is less than $1.00, no refund or credit is required.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.553, 627.569, 627.681, 627.678(2) FS. History–Repromulgated 12-24-74, Formerly 4-7.03, 4-7.003, Amended _____.

4-163.0045 Filing Requirements.

(1) All forms of Credit Life and Credit Disability policies, certificates of insurance, statements of insurance, applications for insurance, enrollment forms, binders, endorsements and riders and the schedules of premium rates pertaining thereto, shall be filed for approval in accordance with Sections 627.6785 and 627.682, Florida Statutes. Filings shall be mailed to: Bureau of Life and Health Forms & Rates, Division of Insurer Services, Department of Insurance, Post Office Box 8040, Tallahassee, FL 32301-8040 or submitted electronically to https://iportal.fldoi.com. All filings sent to the Department by Federal Express or any other form of special delivery shall be delivered to: Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, 1st Floor, Larson Building, 200 East Gaines Street, Tallahassee, FL 32399-0328.

(2) A standardized data letter, Form DI4-1507, Life and Health Forms and Rates Universal Standardized Data Letter, completed in accordance with Form DI4-1507A, Life and Health Forms and Rates Universal Standardized Data Letter Instructions, shall accompany each filing and annual rate filing or the filing shall be returned incomplete. Forms DI4-1507 and DI4-1507A are adopted in Rule 4-149.022, F.A.C.

(3) An actuarial memorandum, signed and dated by an actuary, shall be included in each rate and form filing. The memorandum shall identify the following:

(a) Types of coverage: gross, net, decreasing, level, single life, joint life, full term or truncated;

(b) Types of loans to be insured: open end credit, closed end credit;

(c) Durations of the loans and durations of the coverage. Refer to Rules 4-163.005, .006, and .007, F.A.C.;

(d) Methods of premium charge: single premium or monthly premium;

(e) Schedules of premium rates and formulas for each type of coverage and how the rates relate to prima facie rates;

(f) Methods of refund calculation and formulas for each type of coverage; and

(g) Reserve bases.

(4) Each filing, except prima facie rates, shall be accompanied by the development and justification, including experience and credibility, of the proposed rate together with an opinion by an actuary certifying to the reasonableness of the rate, compliance with applicable laws and this rule chapter, and disclosure of the methods and assumptions used to develop compliance with this rule chapter. Credibility shall be determined according to the standard table in Appendix A.

(5) An actuarial memorandum shall not be required of filings in which the insurer proposes to use the prima facie rates without any restrictions, exclusions, or exceptions other than those allowed by this Rule, except that a reserve statement signed by a qualified actuary (MAAA) shall be included in each filing.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.682, 627.6785 FS. History–New _____.

4-163.0055 Limits of Coverage; Credit Life.

(1) The amount of Credit Life insurance for decreasing gross coverage shall be within the limits in Section 627.679, Florida Statutes.

(2) If Credit Life Insurance coverage is written on the actual net debt, the amount of credit life insurance shall not exceed the amount of the loan, and the amount payable at the time of loss shall not be less than the actual net debt, less any payments more than 2 months overdue.

(3)(a) If a premium is assessed to the debtor on a monthly basis and is based on the actual net debt, then the amount of insurance payable at the time of loss shall be the actual net debt.

(b) When the premium for Credit Life insurance is computed on the basis of a balance which does not include accrued past due interest, then the amount payable at the time of loss shall not be less than the actual net debt less any accrued interest more than 2 months past due.

(4) Credit Life Insurance Coverage may, at the option of the insurer, be written for less than the net debt by the following methods:

(a) The amount of insurance may be the lesser of a stated level amount and the amount determined by subsection (2) of this rule; or

(b) The amount of insurance may be a constant percentage of the amount determined by subsection (2) of this rule.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.679, 627.681 FS. History–New _____.

4-163.0075 Term and Evidence of Insurance.

The term of insurance and evidence of insurance shall not exceed ten years subject to the following limitations:

(1) For credit life insurance, coverage may terminate upon the first loan anniversary following age 71;

(2) For credit disability insurance, coverage may terminate upon the first loan anniversary following age 66;

(3) Credit life insurance shall provide coverage for at least 5 years or the term of the loan if the loan is for less than 5 years; and

(4) Credit disability insurance shall provide for monthly payments which are the lesser of 60 monthly payments or the number of monthly payments for the full term of the loan.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.681,627.6785(3), 627.681(3) FS. History–New _____.

4-163.0076 Provisions Required in Group Contracts.

All Group Credit Disability contracts shall conform to Section 627.558, Florida Statutes, and shall contain the substance of the following statutory provisions (as appropriate):

(1) 627.559 – Grace period.

(2) 627.560 – Incontestability.

(3) 627.561 – Application: statements deemed representations.

(4) 627.562 – Insurability.

(5) 627.563 – Misstatement of age.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.558(1) FS. History–New _____.

4-163.008 Rights and Treatment of Debtors.

(1) In the event of termination, an insurer may, at its option;

(a) R~~r~~efund unearned premium on a daily pro rata basis, or

(b) ~~may~~ M~~m~~ake no charge for credit insurance for the first 15 days of a loan month and charge for a full month ~~may be charged~~ for 16 days or more of a loan month.

(2) Voluntary prepayment of indebtedness.

(a) If a debtor prepays the indebtedness other than as a result of death or through a lump sum disability payment, and if a disability claim under such coverage is in progress at the time of prepayment, the amount of refund shall ~~may~~ be determined as if the prepayment did not occur until the payment of benefits terminates.

(b) No refund shall ~~need~~ be paid during any period of disability for which credit accident and health benefits are payable. A refund shall be computed as if prepayment occurred at the end of the disability period.

(3) Involuntary prepayment of indebtedness. If an indebtedness is prepaid by the proceeds of a credit life insurance policy covering the debtor or by a lump sum payment of a disability claim under a credit insurance policy covering the debtor, then it shall be the responsibility of the insurer to ensure ~~see~~ that the following are paid to the insured debtor, if living, or the beneficiary~~,~~ other than the creditor~~,~~ named by the debtor, or to the debtor's estate:

(a) In the case of prepayment by the proceeds of a credit life insurance policy, or by the proceeds of a lump sum total and permanent disability benefit under credit life coverage, an appropriate refund of the credit disability ~~accident and health~~ insurance premium in accordance with Rule 4-163.003, F.A.C.

(b) In the case of prepayment by a lump sum disability claim, an appropriate refund of any credit life insurance premium in accordance with Rule 4-163.003, F.A.C.

(c) In the ~~either~~ case of (a) or (b), above, the amount of the benefits in excess of the amount required to repay the indebtedness after reducing the indebtedness by any unearned interest or finance charges.

(d)1. The refund of unearned premium shall be calculated from the date of the event prepaying the indebtedness.

2. An accelerated death prepayment is considered to be a prepayment due to the credit life insurance benefit.

3. Refunds due for the premiums of the life benefit shall include the cost of the accelerated death benefit.

(4) Termination of group or franchise credit insurance policy.

(a) If a debtor is covered by a group or franchise credit insurance policy providing for the payment of single premiums to the insurer, ~~then~~ provision shall be made by the insurer that if ~~in the event of termination of~~ the policy is terminated for any reason, insurance coverage with respect to any debtor insured under the ~~such~~ policy shall be continued for the entire period for which the single premium has been paid.

(b)1. If a debtor is covered by a group or franchise credit insurance policy providing for the payment of premiums to the insurer on a monthly outstanding balance basis, ~~then~~ the policy shall provide that, if the ~~in the event of termination of such~~ policy is terminated for any ~~whatever~~ reason, termination notice ~~thereof~~ shall be given to the insured debtor at least 30 days prior to the effective date of termination, except where replacement of the coverage by the same or another insurer in the same or greater amount takes place without lapse of coverage.

2. The notice required to be given in this paragraph shall be the responsibility of the insurer, but may at the option of the insurer be provided through the creditor.

(5) Refinancing the Debt.

(a) If the debt is discharged due to refinancing prior to the scheduled maturity date, the insurance in force shall be terminated at the earlier of:

1. The issuance of any new insurance in connection with the refinanced debt; and

2. The date the debt is discharged.

(b)1. In all cases of termination prior to scheduled maturity, a refund of all unearned premium or unearned insurance charges paid by the debtor shall be paid or credited to the debtor.

2. In any refinancing of the debt, the effective date of the coverage provided by any policy or certificate shall be deemed to be the first date on which the debtor became insured under the policy with respect to the debt which was refinanced, at least to the extent of the amount and term of the debt outstanding at the time of refinancing the debt.

(6)~~(5)~~ Remittance of premiums. If the creditor adds identifiable insurance charges or premiums for credit insurance to the indebtedness, and any direct or indirect finance, carrying, credit, or service charge is made to the debtor on such insurance charges or premiums, the creditor must remit and the insurer shall collect such premium within sixty (60) days after it is added to the indebtedness.

(7) Maximum Aggregate Provisions. A provision in an individual policy or group certificate that sets a maximum limit on total claim payments shall apply only to that individual policy or group certificate.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.678, 627.6785, 627.682 FS. History–New 5-9-82, Formerly 4-7.08, 4-7.008, Amended _____.

4-163.009 Determination of Reasonableness of Benefits in Relation to Premium Charge.

(1) ~~General Standard.~~ Section 627.682, Florida Statutes, requires that ~~Under the Credit Insurance Law,~~ benefits provided by credit insurance policies must be reasonable in relation to the premium charged. This requirement is satisfied if the premium rate charged develops or may be reasonably expected to develop a loss ratio of claims incurred to premiums earned of not less than:

(a) 55% for credit life insurance, and

(b) 50% for credit accident and health insurance.

(2) ~~On the basis of relevant experience,~~ U~~u~~se of rates not greater than those contained in Rules 4-163.010 and 4-163.011, F.A.C. ("prima facie rates") shall be deemed ~~currently reasonable~~ premium rates reasonably expected to develop the required loss ratio. An insurer may only file and use rates with such forms which are greater than prima facie rates upon a satisfactory showing to the Commissioner that the use of such rates will not result on a statewide basis for that insurer of a ratio of claims incurred to premiums earned of less than the required loss ratio. ~~Furthermore,~~

(3) If ~~the extent to which~~ an actual rate is greater than the prima facie rates, ~~that set forth~~ the actual rate may not exceed the prima facie rates plus the difference between:

(a) Claims which may be reasonably expected, and

(b) The product of the required loss ratio and the prima facie rate set forth for the coverage being provided.

~~(2) The Commissioner shall, on a triennial basis, review the loss ratio standards set forth in subsection (1), above, and the prima facie rates set forth in Rules 4-163.010 and 4-163.011 and determine therefrom the rate of expected claims on a statewide basis, compare such rate of expected claims with the rate of claims for the preceding triennium determined~~

~~from the incurred claims and earned premiums at prima facie rates reported in the annual statement supplement, and adopt the adjusted actual statewide prima facie rates to be used by insurers during the next triennium.~~

(4) When some rates are based on subsection (1) above and others on the prima facie rate, the expected loss ratios of any business remaining at prima facie rates must meet the minimum loss ratio standard in subsection (1) above.

(5) Nonstandard Coverage. If any insurer files for approval of any form providing coverage more restrictive than that described in Rules 4-163.010 and 4-163.011, F.A.C., the insurer shall demonstrate to the satisfaction of the Commissioner that the premium rates to be charged for such restricted coverage comply with subsection (1) above or, are less than or equal to rates which are actuarially equivalent to ~~consistent with~~ the prima facie rates.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.678, 627.682 FS. History–New 5-9-82, Formerly 4-7.09, Amended 6-11-91, Formerly 4-7.009, Amended 3-15-94, _____.

4-163.010 Credit Life Insurance Rates.

(1) ~~Premium Rate.~~ Rates for decreasing gross coverage ~~Credit life insurance premium rates for the insured portion of an indebtedness repayable in equal monthly installments, where the insured portion of the indebtedness decreases uniformly by the amount of the monthly installment paid,~~ shall not be greater than as set forth in ~~p~~Paragraphs (a) and (b) below. Paragraph (c) refers to premium rates for other types of coverage, either alone or in combination with the type of coverages applicable to paragraphs (a) and (b).

(a) If premiums are payable on a monthly outstanding balance basis, $0.69 ~~$0.78~~ per month per $1,000 of outstanding insured indebtedness ~~if premiums are payable on a monthly outstanding balance basis~~.

(b) If premiums are payable on a single premium basis:~~, the following rates shall be deemed the actuarial equivalent of the above monthly outstanding balance rate.~~

Coverage Type	Single Premium Rate per $100 Per Year of Initial Insured Indebtedness
Single Decreasing Life	$0.44 ~~$0.50~~
Joint Decreasing Life	$0.77 ~~$0.87~~

(c) If premiums are payable on a single premium basis when the benefit provided is level term:~~, the following rates shall be deemed the actuarial equivalent of the above outstanding balance rate.~~

Coverage Type	Single Premium Rate per $100 Per Year of Initial Insured Indebtedness
Single Level Life	$0.82 ~~$0.93~~
Joint Level Life	$1.43 ~~$1.62~~

(d) Premiums charged for dismemberment insurance in the amount of life insurance in force shall not exceed 10% of the amounts specified above.

(e) If the coverages provided are other than those described in ~~s~~Subsection (1) above, rates for such coverages shall be actuarially equivalent ~~consistent~~ with the rates provided in subsection (1) ~~paragraphs (a) (b) and (c)~~.

(f) The prima facie rate for accelerated death benefit coverage is:

1. For single premium, decreasing term coverage	$.03/$100/year
2. For single premium, level term coverage	$.05/$100/year
3. For single premium, decreasing term joint life coverage	$.06/$100/year
4. For single premium level term joint life coverage	$.08/$100/year

(2) The premium rates in ~~s~~Subsection (1), above, shall apply to policies providing credit life insurance to be issued with or without evidence of insurability, to be offered to all debtors, and containing~~:~~ ~~(a) N~~no exclusions other than suicide within 6 ~~six~~ months of the incurred indebtedness.~~; and~~

~~(b) Either no age restrictions or age restrictions making ineligible for coverage debtors 71 or over at the time the indebtedness is incurred.~~

~~(c) However, the coverage shall be provided, at a minimum, until the earlier of the maturity date of the loan or the loan anniversary at age 71. Where loans are in the form of revolving credit arrangements, an insurer may terminate coverage when the debtor attains the age of 71.~~

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.678, 627.682 FS. History–New 5-9-82, Formerly 4-7.10, Amended 6-11-91, Formerly 4-7.010, Amended _____.

4-163.011 Credit Disability ~~Accident and Health~~ Insurance Rates.

(1) ~~Premium Rate.~~ Credit disability ~~accident and health~~ insurance premium rates for the insured portion of an indebtedness repayable in equal monthly installments, where the insured portion of the indebtedness decreases uniformly by the amount of the monthly installment paid, shall not be greater than ~~as set forth~~ in ~~p~~Paragraphs (a) and (b). Paragraphs (c), (d), and (e) refer to premium rates for other types of coverages either alone or in combination with the type of coverages applicable to (a) and (b).

(a) ~~As set forth in Table I,~~ Iif premiums are payable on a single-premium basis for the duration of the coverage;~~; or~~

TABLE I

No. of months in which indebtedness is repayable	14-Day Non-Retroactive	30-Day Non-Retroactive	7-Day Retroactive	14-Day Retroactive	30-Day Retroactive
6 or less	$0.81	$0.36	$1.47	$1.30	$1.05
7-12	$1.13	$0.72	$1.76	$1.58	$1.36
13-18	$1.46	$1.08	$2.05	$1.87	$1.67
19-24	$1.78	$1.44	$2.34	$2.16	$1.97
25-30	$2.11	$1.80	$2.64	$2.45	$2.28
31-36	$2.43	$2.16	$2.93	$2.74	$2.58
37-48	$2.84	$2.70	$3.34	$3.10	$2.97
49-60	$3.16	$2.97	$3.69	$3.38	$3.28
61-72*	$3.43	$3.27	$3.97	$3.62	$3.53
73-84*	$3.61	$3.47	$4.18	$3.79	$3.70
85-96*	$3.76	$3.64	$4.34	$3.92	$3.84
97-108*	$3.86	$3.75	$4.46	$4.01	$3.94
109-120*	$3.95	$3.85	$4.55	$4.09	$4.02

*Maximum benefit is 60 monthly payments.

~~TABLE I~~

~~No. of months in which indebtedness is repayable~~	~~14-Day Non-retroactive~~	~~30-Day Non-Retroactive~~	~~7-Day Retroactive~~	~~14-Day Retroactive~~	~~30-Day Retroactive~~
~~6 or less~~	~~$0.90~~	~~$0.40~~	~~$1.63~~	~~$1.44~~	~~$1.17~~
~~7-12~~	~~$1.26~~	~~$0.80~~	~~$1.95~~	~~$1.76~~	~~$1.51~~
~~13-18~~	~~$1.62~~	~~$1.20~~	~~$2.28~~	~~$2.08~~	~~$1.85~~
~~19-24~~	~~$1.98~~	~~$1.60~~	~~$2.60~~	~~$2.40~~	~~$2.19~~
~~25-30~~	~~$2.34~~	~~$2.00~~	~~$2.93~~	~~$2.72~~	~~$2.53~~
~~31-36~~	~~$2.70~~	~~$2.40~~	~~$3.25~~	~~$3.04~~	~~$2.87~~
~~37-48~~	~~$3.15~~	~~$3.00~~	~~$3.71~~	~~$3.44~~	~~$3.30~~
~~49-60~~	~~$3.51~~	~~$3.30~~	~~$4.10~~	~~$3.76~~	~~$3.64~~
~~61-72*~~	~~$3.81~~	~~$3.63~~	~~$4.41~~	~~$4.02~~	~~$3.92~~
~~73-84*~~	~~$4.01~~	~~$3.86~~	~~$4.64~~	~~$4.21~~	~~$4.11~~
~~85-96*~~	~~$4.18~~	~~$4.04~~	~~$4.82~~	~~$4.35~~	~~$4.27~~
~~97-108*~~	~~$4.29~~	~~$4.17~~	~~$4.95~~	~~$4.46~~	~~$4.38~~
~~109-120*~~	~~$4.39~~	~~$4.28~~	~~$5.06~~	~~$4.54~~	~~$4.47~~

~~*Maximum benefit period is 60 months.~~

(b) If premiums are paid on the basis of a premium rate per month per thousand of outstanding insured indebtedness, these premiums shall be computed according to the ~~following~~ formula: OPn = (20 X SPn) / (n + 1) using a rate no less than the 24 month rate in table 1 above. ~~or according to a formula approved by the Commissioner~~ A company may submit a different formula for approval which produces rates actuarially equivalent to the single premium rates in Table I:

~~OPn = 20 SPn n + 1~~

Where SPn = Single Premium Rate per $100 of initial insured indebtedness repayable in equal monthly installments (Table I).

OPn = Monthly Outstanding Balance Premium Rate per $1,000.

n = Original repayment period, in months. If no repayment period is specified, n shall not be assumed to be less than 24.

(c) Coverage which provides a constant maximum indemnity for a given period of time shall use rates no greater than those rates which are actuarially equivalent to the rates in paragraph (a) or (b). ~~The actuarial equivalent of Paragraphs (a) and (b) shall be used if the coverage provided is a constant maximum indemnity for a given period of time~~.

~~(d) An appropriate combination of the premium rate for a constant maximum indemnity for a given period of time and the premium rate for a maximum indemnity which decreases in even amounts per month, if the coverage provided is a combination of a constant maximum indemnity for a given period of time after which the maximum begins to decrease in even amounts per month.~~

(d)~~(e)~~ If the coverages provided are other than those described in this s~~S~~ubsection (1) ~~above~~, rates for such coverages shall be actuarially equivalent to the ~~actuarially consistent with~~ rates provided in p~~P~~aragraph (a), (b) or ~~and~~ (c).

(e) Joint coverage rates shall be no greater than 175% of the specific rate for that type of coverage.

~~(f) The monthly outstanding balance rate for credit accident and health insurance may be either a term specified rate or may be a single composite term rate applicable to all insured loans.~~

(2) The premium rates in s~~S~~ubsection (1) shall apply to policies providing credit accident and health insurance to be issued with or without evidence of insurability, to be offered to all eligible debtors, and containing:

(a)1. No provision excluding or denying a claim for disability resulting from pre-existing conditions, except for those conditions for which the insured debtor received medical advice, diagnosis, or treatment within six months preceding the effective date of the debtor's coverage, and which caused loss within the 6 ~~six~~ months following the effective date of coverage;

2. ~~provided, however, that~~ D~~d~~isability commencing after 6 months following the effective date of coverage ~~thereafter~~ resulting from the ~~such~~ condition shall be covered.

3. Coverage with no pre-existing provision limitation ~~Waiver of this provision~~ shall result in an additional premium of ~~no greater than~~ 10% of the amounts shown in subsection (1), above, unless actuarially justified and approved.

(b) No other provision which excludes or restricts liability in the event of disability caused in a specific manner, except that it may contain provisions excluding or restricting coverage for intentionally self-inflicted injuries and normal pregnancy.

(c) No provision which requires that the debtor be employed more than thirty (30) hours per week in order to be eligible for insurance coverage.

(d) No age restrictions, or only age restrictions making ineligible for coverage debtors 66 or over at the time the indebtedness is incurred.

~~(e) However, coverage shall be provided, at a minimum, until the earlier of the maturity date of the loan or the loan anniversary at age 66. Where loans are in the form of revolving credit arrangements, an insurer may terminate coverage when the debtor attains the age of 66.~~

(e)~~(f)~~ A daily benefit equal in amount to one-thirtieth of the monthly benefit payable under the policy for the indebtedness.

(f)~~(g)~~1. A definition of "disability" which provides that during the first 12 months of disability the insured shall be unable to perform the duties of his occupation at the time the disability occurred, and thereafter the duties of any occupation for which the insured is reasonably fitted by education, training or experience.

2. This paragraph shall not apply to lump sum disability coverage.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.678, 627.6785, 627.682 FS. History–New 5-9-82, Formerly 4-7.11, Amended 6-11-91, Formerly 4-7.011, Amended _____.

4-163.012 Experience Reports.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 624.424(1),(6), 627.678, 627.682 FS. History--New 5-9-82, Formerly 4-7.12, 4-7.012, Repealed _____.

4-163.013 Effective Date.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.678, 627.682 FS. History–New 5-9-82, Amended 8-19-82, Formerly 4-7.13, 4-7.013, Repealed _____.

Appendix A:

Credit Life	Average Number of Life Years Credit Accident and Health Plans Retroactive and Nonretroactive Waiting Periods			Incurred Claim Count	Credibility Factor
	7 Day	14 Day	30 Day		
1	1	1	1	1	.00
1,800	95	141	209	9	.25
2,400	126	188	279	12	.30
3,000	158	234	349	15	.35
3,600	189	281	419	18	.40
4,600	242	359	535	23	.45
5,600	295	438	651	28	.50
6,600	347	516	767	33	.55
7,600	400	594	884	38	.60
9,600	505	750	1,116	48	.65
11,600	611	906	1,349	58	.70
14,600	768	1,141	1,698	73	.75
17,600	926	1,375	2,047	88	.80
20,600	1,084	1,609	2,395	103	.85
25,600	1,347	2,000	2,977	128	.90
30,600	1,611	2,391	3,558	153	.95
40,000	2,106	3,125	4,651	200	1.00

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Fertilizers 5E-1
RULE TITLE: RULE NO.:
Adulteration Levels for Metals in Fertilizers; Certificate of Analysis 5E-1.026

PURPOSE AND EFFECT: The purpose of the rule is to establish parameters for metals in fertilizers offered for sale in the State of Florida.

SUBJECT AREA TO BE ADDRESSED: Rule 5E-1.026, F.A.C., establishes the level of metals used to determine when fertilizers containing guaranteed amounts of phosphates and/or micro nutrients are adulterated. When fertilizers contain metals greater than the levels of metals identified, they are deemed adulterated. This rule amendment changes the formula to utilize the higher, not the sum of the resulting values as the maximum allowable concentrations.

SPECIFIC AUTHORITY: 570.07(23), 576.181(1)(2) FS.

LAW IMPLEMENTED: 576.181 FS.

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

TIME AND DATE: 9:00 a.m., November 8, 2002

PLACE: AES Conference Room, 3125 Conner Blvd., Tallahassee, Florida 32399-1650

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Dale W. Dubberly, Chief, Bureau of Compliance Monitoring, 3125 Conner Boulevard, Tallahassee, Florida 32399-1650, (850)488-8731

THE FULL TEXT OF THE PROPOSED RULE IS:

5E-1.026 Adulteration Levels for Metals in Fertilizers; Certificate of Analysis.

(1) ADULTERATION LEVELS FOR METALS IN FERTILIZERS

(2) Fertilizers that contain guaranteed amounts of phosphates and/or micro nutrients are adulterated when they contain metals in amounts greater than the levels of metals established by the following table[1]:

Metals	ppm per 1% P_2O_5	ppm per 1% Micro nutrients[2]
1. Arsenic	13	112
2. Cadmium	10	83
3. Cobalt	3,100	23,000[3]
4. Lead	61	463
5. Mercury	1	6
6. Molybdenum	42	300[3]
7. Nickel	250	1,900
8. Selenium	26	180[3]
9. Zinc	420	2,900[3]

To use the Table:

Multiply the percent guaranteed P_2O_5 or sum of the guaranteed percentages of all micro nutrients (Iron, Manganese, Zinc, etc…) in each product by the value in the appropriate column in the Table to obtain the maximum allowable concentration (ppm) of these metals. The minimum value for P_2O_5 utilized as a multiplier shall be 6.0. The minimum value for micro nutrients utilized as a multiplier shall be 1. If a product contains both P_2O_5 and micro nutrients multiply the guaranteed percent P_2O_5 by the value in the appropriate column and multiply the sum of the guaranteed percentages of the micro nutrients by the value in the appropriate column. Utilize the higher ~~sum~~ of the two resulting values as the maximum allowable concentrations.

Biosolids, and all compost products[4], shall be adulterated when they exceed the levels of metals permitted by the United States Environmental Protection Agency Code of Federal Regulations, 40 CFR Part 503. Dried biosolids and manure, as well as manipulated manure products not supplemented with chemical fertilizers shall also be deemed adulterated when they exceed the levels of metal permitted by the United States Environmental Protection Agency Code of Federal Regulations, 40 CFR Part 503. Hazardous waste derived fertilizers (as defined by EPA) shall be adulterated when they exceed the levels of metals permitted by the United States Environmental Protection Agency Code of Federal Regulations, 40 CFR Parts 261.2(c), 266.20(a) and 268.40(i), dated May 14, 2002.

[1] These guidelines are not intended, to be used, to evaluate horticultural growing media claiming nutrients but may be applied to the sources of the nutrients added to the growing media.

[2] Micro nutrients (also called minor elements) are essential for both plant growth and development and are added to certain fertilizers to improve crop production and/or quality. These micro nutrients are iron, manganese, zinc, copper, molybdenum and boron. In addition, cobalt and selenium can also be considered micro nutrients.

[3] Only applies when not guaranteed.

[4] Includes all compost products that are not supplemented with chemical fertilizers, even those registered as fertilizers (making nutrient claims).

Specific Authority 576.181 FS. Law Implemented 576.181 FS. History–New 7-29-02, Amended _____.

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: RULE NO.:
Florida Teacher Certification Examination 6A-4.0021

PURPOSE AND EFFECT: The purpose of this rule development is to review the examination application form and competencies and skills for professional teacher certification in Florida. The effect will be an updated application form and new and revised competencies and skills to be included on the Florida Teacher Certification Examinations.

SUBJECT AREA TO BE ADDRESSED: Florida Teacher Certification Examination application form and new and revised competencies and skills for teacher tests.

SPECIFIC AUTHORITY: 231.15(1), 231.17(4),(5),(8),(11), 231.30 FS.

LAW IMPLEMENTED: 231.145, 231.15, 231.17, 231.30 FS.

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

Requests for the rule development workshop should be addressed to: Wayne V. Pierson, Agency Clerk, Department of Education, 325 West Gaines Street, Room 1214, Tallahassee, Florida 32399-0400.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Ken Loewe, Bureau of Curriculum, Instruction, and Assessment, Division of Public Schools and Community Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400, (850)488-8198

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

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: RULE NO.:
Florida Educational Leadership Examination 6A-4.00821

PURPOSE AND EFFECT: The purpose of this rule development is to review the examination application form and propose necessary changes. The effect will be an updated application form.

SUBJECT AREA TO BE ADDRESSED: Florida Teacher Certification Examination application form.

SPECIFIC AUTHORITY: 231.15(1), 231.0861(3) FS.

LAW IMPLEMENTED: 231.15, 231.0861 FS.

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

Requests for the rule development workshop should be addressed to: Wayne V. Pierson, Agency Clerk, Department of Education, 325 West Gaines Street, Room 1214, Tallahassee, Florida 32399-0400.

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

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Community Planning

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Rules of Procedure and Practice Pertaining To Developments of Regional Impact	9J-2
RULE TITLES:	RULE NOS.:
PART II PROCEDURES PERTAINING TO DEVELOPMENTS OF REGIONAL IMPACT	
Subpart A General Procedures	
Forms	9J-2.010
Clearance Letters	9J-2.015
Binding Letters of Interpretation	9J-2.016
Preliminary Development Agreements	9J-2.0185
Regional Report and Recommendations	9J-2.024
Local Government Development Orders	9J-2.025
Abandonment of Development Orders	9J-2.0251
Monitoring and Enforcement	9J-2.027
Downtown Development of Regional Impact Alternative Review Procedure	9J-2.029
PART III DEVELOPMENT OF REGIONAL IMPACT UNIFORM STANDARD RULES	
Listed Plant and Wildlife Resources Uniform Standard Rule	9J-2.041
Archaeological and Historical Resources Uniform Standard Rule	9J-2.043
Hazardous Material Usage, Potable Water, Wastewater, and Solid Waste Facilities Uniform Standard Rule	9J-2.044
Transportation Uniform Standard Rule	9J-2.045
Air Quality Uniform Standard Rule	9J-2.046
Adequate Housing Uniform Standard Rule	9J-2.048

PURPOSE AND EFFECT: To revise Rule Chapter 9J-2, Fla. Admin. Code, to address statutory changes; provide for the submission of biennual rather than annual reports; remove 80% DRI threshold.

SUBJECT AREA TO BE ADDRESSED: Statutory changes to 9J-2, Fla. Admin. Code.

SPECIFIC AUTHORITY: 380.032(2),(a), 380.06(15)(c)4., (19)(f)1.,(23)(a),(b),(c)1.,2.,(26), 380.0651(4)(f) FS.

LAW IMPLEMENTED: 120.569, 380.021, 380.031, 380.031(13), 380.032, 380.032(2), 380.032(3), 380.06(1),(2),(c),(d),(e), (4)(i),(5)(a)1.,(8), (12),(15),(c)4., (17),(18),(19),(20),(23)(c)2.,(26), 380.065, 380.0651(4), 380.07, 380.11 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, A WORKSHOP WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., November 7, 2002

PLACE: Department of Community Affairs, Kelley Training Center, Room 305, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100

Any person requiring special accommodation at the hearing because of a disability of physical impairment should contact Brenda Winningham, Principal Planner, Division of Community Planning, 2555 Shumard Oak Boulevard, Tallahassee, Florida, (850)922-1800, Suncom 292-1800, at least seven days before the date of the hearing. If you are hearing or speech impaired, please contact the Department of Community Affairs using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) or 1(800)955-9771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Brenda Winningham, Principal Planner, Division of Community Planning, 2555 Shumard Oak Boulevard, Tallahassee, Florida, (850)922-1800

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

9J-2.010 Forms.

(1) The following forms are prescribed for use with these rules and are incorporated by reference:

(a) through (g) No change.

(h) Form Number RPM-BSP-BIENNIAL-~~ANNUAL~~ REPORT-1, Biennial ~~Annual~~ Status Report, effective 11-20-90;

(i) through (k) No change.

(2) No change.

Specific Authority 380.032(2)(a), 380.06(15)(c)4.,(19)(f)1.,(23)(a),(c)2.,(26) FS. Law Implemented 380.031(13), 380.06(4)-(10),(15)(c)4., (18),(19),(23)(c)2.,(26) FS. History–New 4-12-81, Amended 5-4-83, Formerly 27F-1.31, 9B-16.17, 9J-2.017, Amended 11-20-90, 3-23-94, 2-21-01, _____.

9J-2.015 Clearance Letters.

(1) At the request of a developer, the Division may issue an informal determination in the form of a clearance letter as to whether development may be required to undergo DRI review. The Division will issue clearance letters in order to respond to inquiries when the answer is clear. For example, the Division has issued clearance letters in the following circumstances:

(a) When a developer is in doubt as to whether two or more developments are subject to aggregation pursuant to Subsection 380.0651(4), Florida Statutes, and Section 9J-2.0275, Florida Administrative Code; or

(b) When a development is ~~at or~~ below 100 ~~80~~ percent of all applicable thresholds contained in Section 380.0651, Florida Statutes, and Chapter 28-24, Florida Administrative Code.~~; or~~

~~(c) When a development is between 80 and 100 percent of all applicable thresholds contained in Section 380.0651, Florida Statutes, and Chapter 28-24, Florida Administrative Code, and the developer is seeking a determination as to whether the Department will require the developer to obtain a binding letter pursuant to the requirements of subparagraph 380.06(4)(b)2., Florida Statutes.~~

(2) through (3) No change.

Specific Authority 380.032(2)(a), 380.06(23)(a), 380.0651(4)(f) FS. Law Implemented 380.032(2), 380.06(4)(i), 380.0651(4) FS. History–New 11-20-90, Amended _____.

9J-2.016 Binding Letters of Interpretation.

(1) No change.

(2)(a) The Division or the local government with jurisdiction over the land on which a development is proposed may require a developer to obtain a binding letter if~~.~~ the ~~1. The~~ development is at any presumptive numerical threshold or up to 20 percent above any numerical threshold in the guidelines and standards.~~; or~~

~~2. The development is between any presumptive numerical threshold and 20 percent below all numerical thresholds and the Division or the local government is in doubt as to whether the character, magnitude, or location of the development creates a likelihood that the development will have a substantial effect on the health, safety, or welfare of citizens of more than one county.~~

(b) No change.

(3) through (17) No change.

Specific Authority 380.032(2)(a), 380.06(23)(a) FS. Law Implemented 120.569, 380.031, 380.032, 380.06(1),(2)(c),(d),(e),(4),(20), 380.0651 FS. History–New 4-12-81, Amended 5-4-83, Formerly 27F-1.16, 9B-16.16, Amended 11-20-90, 2-21-01, _____.

9J-2.0185 Preliminary Development Agreements.

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

(3)(a) A PDA which authorizes development of less than 100 ~~80~~ percent ~~or less~~ of any applicable threshold pursuant to Subsection 380.06(2) and Section 380.0651, Florida Statutes, including thresholds in terms of acreage, may be entered into provided that:

1. through 3. No change.

(b) and (c) No change.

(4) No PDA may be entered into which authorizes development at or above 100 ~~80~~ percent of any applicable threshold in Subsection 380.06(2) and Section 380.0651, Florida Statutes, and Rule Chapter 28-24, Florida Administrative Code, including thresholds in terms of acreage, unless a developer satisfies the requirements of subsection (3) of this rule, and demonstrates one or more of the following:

(a) through (b) No change.

(5) No change.

(6)(a) No change.

1. through 3. No change.

4. Evidence of mitigation for the impacts of the development to date if a final development order has not been issued and the amount of development is less than 100 ~~80~~ percent of all applicable DRI thresholds;

5. through 7. No change.

(b) through (d) No change.

Specific Authority 380.032(2)(a), 380.06(23)(a) FS. Law Implemented 380.032(3), 380.06(8), 380.0651(4) FS. History–New 1-29-86, Amended 7-2-86, 11-20-90, 2-21-01, _____.

9J-2.024 Regional Report and Recommendations.

(1) through (5) No change.

(6)(a) When the proposed DRI lies within the review jurisdiction of two or more regional planning agencies, the state land planning agency shall designate a lead regional planning council. The lead regional planning council shall prepare the regional report. ~~the regional planning agencies should designate a lead agency from among themselves. The regional planning agencies should discuss and determine the method for handling procedural matters involved in the review of the DRI, who will assume responsibility for determining the sufficiency of information contained in the application for development approval, and how the regional report and recommendations will be prepared. To the extent possible, a single joint report and recommendations should be prepared.~~

(b) through (c) No change.

Specific Authority 380.032(2)(a), 380.06(23)(a),(b) FS. Law Implemented 380.06(12) FS. History–New 7-7-76, Amended 5-4-83, Formerly 27F-1.22, 9B-16.24, Amended 11-20-90, 2-21-01, _____.

9J-2.025 Local Government Development Orders.

(1) through (2) No change.

(3) Requirements for a DRI development order:

(a) No change.

(b) The copy of any development order rendered to the Division, the regional planning agency, and the owner or developer shall contain the following:

1. through 13. No change.

14. Specification of the requirements for the biennial ~~annual~~ report designated under Subparagraph 380.06(15)(c)4. and Subsection (18), Florida Statutes, including the date of biennial ~~annual~~ submission, parties to whom the report is to be submitted, and contents of the report as specified by subsection 9J-2.025(7), Florida Administrative Code.

(c) No change.

(4) No change.

(5) Complete copies of all development orders issued pursuant to Section 380.06, Florida Statutes, including any amendments or modifications to previously issued development orders, shall be rendered by the local government to the Division of Community ~~Bureau of State~~ Planning, to the appropriate regional planning agency, and to the owner or developer of the property subject to such order. As used in this chapter, rendition of rendering means issuance of a written development order and transmittal of a certified completed copy of the order by the local government with jurisdiction, together with all pertinent attachments. The rendition shall be by first class certified U.S. Mail or other delivery service for which a receipt as proof of service is required to the Department of Community Affairs, Division of Community ~~Bureau of State~~ Planning, the regional planning agency, and the owner or developer. A certified return receipt for U.S. Mail shall be prima facie evidence of transmittal. A DRI development order will not be considered to have been rendered if it is transmitted by facsimile machine, or if all pages, exhibits, references, and attachments are not included or are not legible. A development order shall take effect upon transmittal to the parties specified in Subsection 380.07(2), Florida Statutes, unless a later effective date is specified in the order. The effectiveness of a development order shall be stayed by the filing of a notice of appeal pursuant to Section 380.07, Florida Statutes.

(6) No change.

(7) The development order shall specify the requirements for the biennial ~~annual~~ report as required in Subsections 380.06(15) and (18), Florida Statutes. The biennial ~~annual~~ report shall be submitted to the Division of Community ~~Bureau of State~~ Planning, the appropriate regional planning council and local government on Form RPM-BSP-BIENNIAL ~~ANNUAL~~ REPORT-1. Every development order shall require the biennial ~~annual~~ report to include the following:

(a) through (h) No change.

(i) A statement that all persons have been sent copies of the biennial ~~annual~~ report in conformance with subsections 380.06(15) and (18), Florida Statutes; and

(j) No change.

(k) If no additional development pursuant to the development order has occurred since the submission of the previous report, then a letter from the developer stating that no development has occurred shall satisfy the requirement for the biennial report.

(l)~~(k)~~ The biennial ~~annual~~ report for an Areawide or a Downtown DRI shall only be required to include the information required in Paragraphs (a), (b), (e), (f), (g), (i), (j), and ~~(j)~~ (k) of this subsection, and any information requirements specified for biennial ~~annual~~ reports in Rule 9J-2.029(2)(d), Florida Administrative Code, or Chapter 9J-3, Florida Administrative Code, whichever is applicable.

(8) through (10) No change.

(11)(a) through (c) No change.

(d) Any change to a previously approved DRI which the developer believes meets the criteria of Subparagraphs 380.06(19)(e)1. and 2., Florida Statutes, shall be submitted to the Division, the local government, and the regional planning agency using Form RPM-BSP-PROPCHANGE-1. Such changes are considered cumulatively with all other previous changes to the DRI in determining whether the conditions of Subparagraph 380.06(19)(e)1. and 2., Florida Statutes, are met. Any change which does meet these criteria is not subject to a public hearing to make a substantial deviation determination but is subject to any local government public hearing requirements that are necessary to amend the DRI development order.

(e) through (f) No change.

Specific Authority 380.032(2)(a), 380.06(19)(f)1.,(23)(a) FS. Law Implemented 380.06(5)(a)1.,(13),(14),(15),(17),(18),(19), 380.07(2) FS. History–New 7-7-76, Amended 5-4-83, 7-7-85, Formerly 22F-1.23, 27F-1.23, 9B-16.25, 9J-2.25, Amended 11-20-90, 2-21-01, _____.

9J-2.0251 Abandonment of Development Orders.

(1) No change.

(2) Procedures and Requirements for Abandonment. The following procedures and requirements shall be followed when seeking the abandonment of an approved DRI:

(a) Pursuant to Subsection 380.06(26), Florida Statutes, the developer shall submit a completed copy of an Application for Abandonment of a Development of Regional Impact to the local government(s) having jurisdiction. Copies of the application shall be simultaneously filed with the appropriate regional planning agency and the Division ~~of Resource Planning and Management~~. The regional planning agency will distribute copies of the completed application to the appropriate commenting agencies normally involved in the DRI review. Copies of the Application for Abandonment of a Development of Regional Impact, FORM RPM-BSP-ABANDON-DRI-1, incorporated herein by

reference, effective 3/91, may be obtained from either the Division ~~of Resource Planning and Management~~ or the appropriate regional planning agency.

(b) Upon receipt of the application, the local government shall, at its next regularly scheduled meeting, schedule a public hearing to consider the application and provide 45 days notice of this hearing to the Division ~~of Resource Planning and Management~~ and the appropriate regional planning agency.

(c) through (e) No change.

(3) through (4) No change.

(5) Eligibility to Abandon.

(a) An approved DRI which is proposed after abandonment to be ~~at or~~ below 100 ~~80~~ percent (100%) ~~(80%)~~ of any applicable guidelines and standards identified in Section 380.0651, Florida Statutes, or Rule 28-24, Florida Administrative Code, is eligible to abandon an approved DRI.

(b) An approved DRI which is proposed after abandonment to be at 100 percent or between 100 ~~80~~ and 120 percent of any applicable guidelines and standards identified in Section 380.0651, Florida Statutes, or Rule 28-24, Florida Administrative Code, and upon which no development as defined in Section 380.04, Florida Statutes, has occurred, is eligible to request abandonment of an approved DRI if the Division ~~of Resource Planning and Management~~ has issued a binding letter which finds the proposed plan of development after abandonment not to be a DRI.

(c) An approved DRI which is proposed after abandonment to be at 100 percent or between 100 ~~80~~ and 120 percent of any applicable guidelines and standards identified in Section 380.0651, Florida Statutes, or Rule 28-24, Florida Administrative Code, and upon which no development as defined in Section 380.04, Florida Statutes, has occurred, is not eligible to request to abandon an approved DRI if the Division ~~of Resource Planning and Management~~ has issued a binding letter which finds the proposed plan of development after abandonment to be a DRI. If the Division ~~of Resource Planning and Management~~ issues a binding letter which finds the proposed plan of development after abandonment to be a DRI, such a development shall be evaluated under the substantial deviation provisions of Subsection 380.06(19), Florida Statutes.

(d) An approved DRI which has commenced development as defined in Section 380.04, Florida Statutes, and which exceeds or is proposed after abandonment to be at or exceed 100 ~~80~~ percent (100%) ~~(80%)~~ of any applicable guidelines and standards identified in Section 380.0651, Florida Statutes, or Rule 28-24, Florida Administrative Code, shall not be eligible to request abandonment of an approved DRI. Such a development shall be evaluated under the substantial deviation provisions of Subsection 380.06(19), Florida Statutes.

(e) No change.

(6) No change.

Specific Authority 380.032(2)(a), 380.06(23)(a),(26) FS. Law Implemented 380.06(2),(26) FS. History–New 3-10-91, Amended 2-21-01, _____.

9J-2.027 Monitoring and Enforcement.

(1) No change.

(2) The Division may monitor any development described in Chapter 28-24, Florida Administrative Code, which may be at or greater than 100 ~~80~~ percent of any applicable numerical threshold in the guidelines and standards in Section 380.0651, Florida Statutes, and Chapter 28-24, Florida Administrative Code. As used above, the term "monitor" means to notify a developer in writing that a development may be a DRI and to request that the developer advise the Division as to his development plans and as to his understanding of the applicability of Chapter 380, Florida Statutes. This notice shall also include a copy of Chapter 380, Florida Statutes, and any other pertinent rules and regulations. Copies of binding letter application forms may also be included and shall be used by the developer if he requests a Binding Letter of Interpretation from the Division.

(3) The Department shall seek assistance from state agencies, regional agencies, and local governments in identifying, monitoring and enforcing the requirements of Chapter 380, Florida Statutes, any DRI development order issued by a local government, and any order contained in a binding letter of interpretation issued by the Department.

(a) through (b) No change.

(c) The regional planning agency shall review the biennial ~~annual~~ report required by Subsection 380.06(18), Florida Statutes, and other information available to the agency and, when appropriate, notify the local government and the Department of potential violations of Section 380.06, Florida Statutes.

(4) through (5) No change.

Specific Authority 380.032(2), 380.06(23) FS. Law Implemented 380.06(15),(17)-(19), 380.11 FS. History–New 5-4-83, Formerly 9B-16.27, Amended 11-20-90, _____.

9J-2.029 Downtown Development of Regional Impact Alternative Review Procedure.

(1) No change.

(2) In addition to the requirements specified in Subsection 380.06(22), Florida Statutes, the following shall apply:

(a) through (c) No change.

(d) In addition to the requirements for the biennial ~~annual~~ report pursuant to Paragraph 380.06(15)(c), Florida Statutes, and Subsection 9J-2.025(7), Florida Administrative Code, the biennial ~~annual~~ report for an approved downtown DRI shall include:

1. through 2. No change.

(e) By written agreement the Division, the local government with jurisdiction, the downtown development authority and the regional planning agency may agree to eliminate or modify the requirements for the biennial ~~annual~~

report established in subsection 9J-2.025(7), Florida Administrative Code, which are not appropriate for a downtown DRI application.

Specific Authority 380.032(2), 380.06(23) FS. Law Implemented 380.06(22) FS. History–New 5-4-83, Formerly 9B-16.29, Amended 11-20-90, _____.

PART III DEVELOPMENT OF REGIONAL IMPACT UNIFORM STANDARD RULES

9J-2.041 Listed Plant and Wildlife Resources Uniform Standard Rule.

(1) through (8) No change.

(9) Site Protection and Management Plans. Whenever site protection is required by subsections (6), (7) or (8), the development order shall require site protection by one of the following methods:

(a) No change.

(b) TRANSFER OF A CONSERVATION EASEMENT ONLY. The development order shall require the establishment of a conservation easement on the land to be preserved that meets all of the following criteria:

1. through 6. No change.

7. The conservation easement shall require that the maintenance and management of the preserved area shall be biennially ~~annually~~ reported by the grantee for inclusion in the grantor's biennial ~~annual~~ status report required by subsection 380.06(18), F.S.; and

8. No change.

(c) PROTECTION THROUGH DESIGNATION IN LOCAL COMPREHENSIVE PLAN AS CONSERVATION LANDS. The development order shall require that all lands to be preserved meet all of the following criteria:

1. through 5. No change.

6. The development order shall require that the maintenance and management of the preserved area shall be biennially ~~annually~~ reported in the biennial ~~annual~~ status report required by Subsection 380.06(18), F.S.; and

7. through 8. No change.

(10) through (12) No change.

Specific Authority 380.032(2), 380.06(23) FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS. History–New 4-25-94, Amended _____.

9J-2.043 Archaeological and Historical Resources Uniform Standard Rule.

(1) through (8) No change.

(9) Conservation Easements. Whenever a conservation easement is required by subsections (6), (7) or (8), the development order shall require the establishment of the conservation easement by either of the following methods:

(a) No change.

(b) TRANSFER OF A CONSERVATION EASEMENT ONLY. The development order shall require the establishment of a conservation easement on the land to be preserved that meets all of the following criteria:

1. through 6. No change.

7. The conservation easement shall require that the maintenance and management of the preserved area shall be biennially ~~annually~~ reported by the grantee for inclusion in the grantor's biennial ~~annual~~ status report required by subsection 380.06(18), F.S.; and

8. No change.

(10) through (11) No change.

Specific Authority 380.032(2)(a), 380.06(23)(a),(c)1. FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS. History–New 3-23-94, Amended 2-21-01, _____.

9J-2.044 Hazardous Material Usage, Potable Water, Wastewater, and Solid Waste Facilities Uniform Standard Rule.

(1) through (4) No change.

(5) Hazardous Material Usage.

(a) No change.

(b) MITIGATION OF SIGNIFICANT IMPACT. It is the intent of the Department to set forth in this rule onsite hazardous material usage conditions which, if included in a development order, would be deemed by the Department not to be the basis for the appeal of the development order by the Department on issues related to onsite hazardous material usage. Therefore, a development order shall be determined by the Department to make adequate provision for hazardous material usage and shall not be appealed by the Department on the basis of inadequate hazardous material usage conditions if it contains either set of conditions enumerated in subparagraph 1. or 2. below:

1. Restricted Hazardous Material Usage. The onsite usage of any hazardous material shall be restricted through legally binding instruments to amounts totaling less than those specified in (5)(a)1., and 2. above. The legally binding instrument shall be in the form of a restrictive covenant recorded with the land title for the development that meets all of the following criteria:

a. through d. No change.

e. The restrictive covenant shall contain a condition that the monitoring and continuance of the restrictive covenants shall be annually reported by the party responsible for enforcement to the local government of jurisdiction, the applicable regional planning council, the Department, and any other affected state agency in the biennial ~~annual~~ report required pursuant to Subsection 380.06(18), F.S.; and

f. No change.

2. No change.

a. Legal Requirements:

(I) through (III) No change.

(IV) A condition requiring that the monitoring of compliance with the HMMP shall be biennially ~~annually~~ reported by the party responsible for enforcement to the local government of jurisdiction, the applicable regional planning

council, the Department, and any other affected state agency in the biennial ~~annual~~ report required pursuant to subsection 380.06(18), F.S.; and

(V) through (VI) No change.

a. No change.

(6) Potable Water.

(a) through (c) No change.

1. Potable Water Facility Availability.

When the development involves an impact identified in (6)(b) above, then the development order shall contain all of the following:

a. No change.

b. A provision which states that on no less than an annual basis the status of the guaranteed improvements shall be assessed and reported in the required biennial ~~annual~~ status report, and the local government shall cause further issuance of building permits to cease immediately at the time the annual monitoring reveals that any needed potable water facility improvements guaranteed by development commitments 1.a.(I) through 1.a.(III) above is no longer scheduled or guaranteed, has been delayed in schedule such that it is no longer consistent with the timing criteria of sub-subparagraph 1.a. above, or is no longer being constructed and remains unoperational, unless the applicant is able to unequivocally demonstrate as part of the biennial ~~annual~~ status report that the needed potable water supply is either existing or is permitted and ensured to be supplied both to all existing permitted project development and to all project development likely to be permitted during the next year. The periodic assessment contemplated by this rule is a review of the actual status of guaranteed improvements scheduled for construction and operation. A change to the approved development schedule for the project, as opposed to a change to the schedule of needed improvements, will need to be addressed through the notification of proposed change provisions of subsection 380.06(19), F.S.

c. No change.

2. No change.

(7) Wastewater.

(a) through (c) No change.

1. Wastewater Facility Availability.

When the development involves an impact identified in (7)(b) above, then the development order shall contain:

a. No change.

b. A provision which states that on no less than an biennial ~~annual~~ basis the status of the guaranteed improvements shall be assessed and reported in the required biennial ~~annual~~ status report, and local government shall cause further issuance of building permits to cease immediately at the time the biennial ~~annual~~ monitoring reveals that any needed wastewater facility improvements guaranteed by development commitments 1.a.(I) through 1.a.(III) above is no longer scheduled or guaranteed, has been delayed in schedule such that it is no longer consistent with the timing criteria of sub-subparagraph 1.a. above, or is no longer being constructed but remains unoperational, unless the applicant is able to unequivocally demonstrate as part of the biennial ~~annual~~ status report that the needed wastewater supply is either existing or is permitted and ensured to be supplied both to all existing permitted project development and to all project development likely to be permitted during the next year. The periodic assessment contemplated by this rule is a review of the actual status of guaranteed improvements scheduled for construction and operation. A change to the approved development schedule for the project, as opposed to a change to the schedule of needed improvements, will need to be addressed through the notification of proposed change provisions of subsection 380.06(19), F.S.

c. No change.

2. No change.

(8) Solid Waste Facilities.

(a) through (b) No change.

(c) MITIGATION OF SIGNIFICANT IMPACT. Pursuant to subsection 380.06(15), Florida Statutes, a development order issued by a local government must make adequate provision for the public solid waste facilities needed to accommodate the impacts of the development. Consistent with that mandate, it is the intent of the Department to set forth in this rule solid waste facility conditions which, if included in a development order, would be deemed by the Department to comply with the requirements of subsection 380.06(15), Florida Statutes, and would, therefore, not be the basis for the appeal of the development order by the Department on issues related to solid waste facilities. Where the solid waste facility impacts of the DRI-sized development are determined to occur in more than one local government jurisdiction, the development order shall ensure that any significant multi-jurisdictional solid waste impacts are mitigated pursuant to the requirements of Section 380.06, F.S.

A development order shall be determined by the Department to make adequate provision for solid waste facilities and shall not be appealed by the Department on the basis of inadequate solid waste facility conditions if, at a minimum, it contains all appropriate sets of conditions enumerated in subparagraphs 1. thru 2. below.

1. Solid Waste Facility Availability.

When the development involves an impact identified in (8)(b) above, then the development order shall contain:

a. No change.

b. A provision which states that on no less than an biennial ~~annual~~ basis the status of the guaranteed improvements shall be assessed and reported in the required biennial ~~annual~~ status report, and local government shall cause further issuance of building permits to cease immediately at the time the biennial ~~annual~~ monitoring reveals that any needed facility

improvements guaranteed by development commitments 1.a.(I) through 1.a.(III) above is no longer scheduled or guaranteed, has been delayed in schedule such that it is no longer consistent with the timing criteria of sub-subparagraph 1.a. above, or is no longer being constructed but remains unoperational, unless the applicant is able to unequivocally demonstrate as part of the biennial ~~annual~~ status report that the needed solid waste capacity is either existing or is permitted and ensured to be supplied both to all existing permitted project development and to all project development likely to be permitted during the next year. The periodic assessment contemplated by this rule is a review of the actual status of guaranteed improvements scheduled for construction and operation. A change to the approved development schedule for the project, as opposed to a change to the schedule of needed improvements, will need to be addressed through the notification of proposed change provisions of subsection 380.06(19), F.S.

c. No change.

2. No change.

(9) through (10) No change.

Specific Authority 380.032(2)(a), 380.06(23)(a),(c)1. FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS. History–New 4-25-94, Amended 2-21-01, _____.

9J-2.045 Transportation Uniform Standard Rule.

(1) through (6) No change.

(7) Mitigation of Transportation Facility Impacts.

(a) Pursuant to subsection 380.06(15), Florida Statutes, a development order issued by a local government must make adequate provision for the public transportation facilities needed to accommodate the impacts of the proposed development. Consistent with that mandate, it is the intent of the Department to set forth in this rule transportation conditions which, if included in a development order, would be deemed by the Department to comply with the requirements of Section 380.06, Florida Statutes, and would, therefore, not be the basis for the appeal of the development order by the Department on issues related to transportation facilities. Where the transportation impacts of the development are determined to occur in more than one local government jurisdiction, the development order shall ensure that any significant multi-jurisdictional facility impacts are mitigated pursuant to the requirements of Section 380.06, F.S., and the applicable level of service standards of the jurisdiction in which the impacts occur.

A development order shall be determined by the Department to make adequate provision for transportation roadway facilities and shall not be appealed by the Department on the basis of inadequate transportation conditions if, at a minimum, it contains one of the sets of conditions enumerated in subparagraphs 1., 2., 3., 4. or 5. below, and, when applicable, complies with paragraph (b) below.

1. SCHEDULING OF FACILITY IMPROVEMENTS.

a. A schedule which specifically provides for the mitigation of impacts from the proposed development on each significantly impacted roadway which will operate below the adopted level of service standard at the end of each project phase's buildout, or, alternatively, a subset stage of that phase. The schedule shall ensure that each and every roadway improvement which is necessary to achieve the adopted level of service standard for that project stage or phase shall be guaranteed to be in place and operational, or under actual construction for the entire improvement, at buildout of each project stage or phase that creates the significant impact. This guarantee shall be in the form of:

(I) through (III) No change.

(IV) A Florida Department of Transportation commitment in the current five years of the Adopted Work Program for FIHS facilities or in the first three years of the Adopted Work Program for all other facilities to provide all needed roadway improvements;

(V) through (VI) No change.

b. A provision which states that on no less than an biennial ~~annual~~ basis the status of the guaranteed improvements shall be assessed and reported in a required biennial ~~annual~~ status report. The local government shall cause further issuance of building permits to cease immediately at the time the biennial ~~annual~~ monitoring reveals that any needed transportation improvements guaranteed by development commitments 1.a.(I) thru 1.a.(VI) above is no longer scheduled or guaranteed, or has been delayed in schedule such that it is no longer consistent with the timing criteria of Sub-subparagraph 1.a. above. The periodic assessment contemplated by this rule is not a monitoring of the actual level of service on a roadway, but is a review of the actual status of guaranteed improvements scheduled for construction. A change to the approved development schedule for the project, as opposed to a change to the schedule of needed improvements, will need to be addressed through the notification of proposed change provisions of subsection 380.06(19), F.S.

c. No change.

2. through 5. No change.

(8) through (9) No change.

Specific Authority 380.032(2)(a), 380.06(23)(a),(c)1. FS. Law Implemented 380.021, 380.06, 380.061, 380.065, 380.07 FS. History–New 3-23-94, Amended 2-21-01, _____.

9J-2.046 Air Quality Uniform Standard Rule.

(1) No change.

(2) Definitions. As used in this rule:

(a) through (f) No change.

(g) "Guaranteed roadway improvement" means a roadway construction or flow improvement that is ensured of being completed and operational when needed through:

1. through 3. No change.

4. A Florida Department of Transportation commitment in the current five years of their Florida Transportation Improvement Program for FIHS facilities or in the first three years of their Florida Transportation Improvements Program for all other facilities; or

5. No change.

(h) through (m) No change.

(3) through (7) No change.

Specific Authority 380.032(2)(a), 380.06(23)(a),(c)1. FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS. History–New 3-23-94, Amended 2-21-01, _____.

9J-2.048 Adequate Housing Uniform Standard Rule.

(1) through (2) No change.

(3) Application.

(a) through (b) No change.

(c) A development order shall be determined by the Department to make adequate provision for the adequate housing issues addressed by this rule, and shall not be appealed by the Department on the basis of inadequate mitigation of adequate housing impacts, if it contains the applicable mitigation standards and criteria set forth in this rule or if it is reviewed and provides applicable mitigation consistent with the East Central Florida Housing Methodology, developed April, 1996 and revised June, 1999.

If a development order does not contain the applicable mitigation standards and criteria set forth in this rule, the Department shall have discretion to appeal the development order, pursuant to the provisions of Section 380.07, F.S. However, nothing in this rule shall require the Department to undertake an appeal of the development order simply because it fails to comply with the provisions of this rule. A development order failing to comply with the provisions of this rule will be addressed on a case-by-case basis by the Department as to whether it otherwise complies with the intent and purposes of Chapter 380, Florida Statutes. The Department will take into consideration the balancing of this rule's provisions with the protection of property rights, the encouragement of economic development, the promotion of other state planning goals by the development, the utilization of alternative, innovative solutions in the development order to provide equal or better protection than the rule, and the degree of harm created by non-compliance with this rule's mitigation criteria and standards.

(d) No change.

(4) through (10) No change.

Specific Authority 380.032(2)(a), 380.06(23)(a),(c)1. FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS. History–New 3-23-94, Amended 2-21-01, _____.

DEPARTMENT OF REVENUE

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Refunds	12-26
RULE TITLES:	RULE NOS.:
Application for Refund	12-26.003
Public Use Forms	12-26.008

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12-26.003, F.A.C. (Application for Refund), is to: (1) change the application form used by the Department in the administration of refunds for taxes administered under the provisions of Chapter 212, F.S., from form DR-26 to form DR-26S, Application for Refund-Sales and Use Tax; (2) provide that refund applications filed under the provisions of s. 212.08(5)(q), F.S. (community contribution tax credit for donations), also require the completion of forms, as provided in Rule 12A-1.107, F.A.C.; (3) remove obsolete form DR-29, Refund of Cash Bond, which is no longer used by the Department; (4) correct the title of form DR-160 to Application for Fuel Tax Refund; (5) provide that form DR-309640, Application for Refund of Tax Paid on Undyed Diesel Consumed by Motor Coaches During Idle Time in Florida, will be used by the Department in the administration of fuel tax refunds pursuant to s. 206.8745(8), F.S.; (6) provide that form DR-309660, Application for Pollutant Tax, will be used by the Department in the administration of pollutant tax refunds pursuant to s. 206.9942, F.S.; and (7) correct technical references.

The purpose of the proposed amendments to Rule 12-26.008, F.A.C. (Public Use Forms), is to incorporate by reference forms used by the Department in the administration of tax refunds and to make necessary technical changes.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is: (1) the proposed requirements to complete the forms required in Rule 12A-1.107, F.A.C., to obtain a community contribution tax credit for donations under s. 212.08(5)(q), F.S.; and (2) the proposed adoption of forms used by the Department in the administration of tax refunds.

SPECIFIC AUTHORITY: 213.06(1) FS.

LAW IMPLEMENTED: 95.091(3), 213.235, 213.255, 213.34, 213.345, 215.26 FS.

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

TIME AND DATE: 1:30 p.m., November 20, 2002

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0100

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 Nancy Purvis, (850)488-0712. If you

are hearing or speech impaired, please contact the Department by using the Florida Relay Service, which can be reached at 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT WORKSHOP 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, e-mail: youngj@dor.state.fl.us

The Department's proposed rules are available on the Department's web site: http://www.myflorida.com/dor/rules.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12-26.003 Application for Refund.

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

(b) Refund applications filed under the provisions of s. 212.08(5)(g), (h), (n), (o) and (q) ~~(o)~~, F.S. ~~Florida Statutes~~, also require, in addition to the ~~DR-26 or~~ DR-26S required by paragraph (a) of this subsection, the forms and other documentation specified in Rule 12A-1.107, F.A.C., in order to be deemed completed applications.

(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 those taxes and fees administered pursuant to Chapter 212, F.S., and as otherwise specified in subsections ~~subsection~~ (4) and (5) 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.), is the approved application for taxes and fees administered pursuant to Chapter 212, F.S. ~~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 ~~Form~~ DR-26 or form DR-26S are listed below:

(a) No change.

~~(b) Sales and Use Tax-Form DR-29, Refund of Cash Bond (incorporated by reference in Rule 12A-1.097, F.A.C.), is required where a bonded contractor or dealer applies for a refund of a cash bond held by the Department.~~

(b)~~(c)~~ Motor Fuel and Diesel Fuel (Forms incorporated by reference in Rule 12B-5.150, F.A.C.)

1. No change.

2. Form DR-160, Application for Fuel Tax Refund-Mass Transit System Users ~~Tax Refund~~, is required where motor fuel or diesel fuel is used in the operation of a mass public transportation system, and the taxes specified in s. 206.41(4)(b), F.S., previously paid pursuant to ss. 206.41 and 206.87, F.S., is refundable.

3. through 5. No change.

6. Form DR-309640, Application for Refund of Tax Paid on Undyed Diesel Consumed by Motor Coaches During Idle Time in Florida, is required where undyed, tax-paid diesel fuel purchased in this state and consumed by the engine of a qualified motor coach during idle time for the purpose of running climate control systems and maintaining electrical systems for the motor coach pursuant to s. 206.8745(8), F.S. The taxes previously paid pursuant to s. 206.87, F.S., are refundable.

7. Form DR-309660, Application for Pollutant Tax, is required where a refund of specific taxes paid pursuant to s. 206.9935, F.S., are subject to refund pursuant to s. 206.9942, F.S.

(c)~~(d)~~ No change.

(d)~~(e)~~ An amended Insurance Premium Tax. Form DR-908, Insurance Premium Taxes and Fees Tax Return (incorporated by reference in Rule ~~subsection~~ 12B-8.003~~(1)~~, F.A.C., is required in all instances where insurance companies wish to file for a refund, except as provided in subsection (5).

(e)~~(f)~~ No change.

(5) Notwithstanding the provisions of subsection (4)~~(3)~~, Form DR-26 may be used to apply for those refunds of corporate income tax or insurance premium tax which constitute:

(a) through (b) No change.

(6) 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, 10-4-01, _____.

12-26.008 Public Use Forms.

(1)(a) The following public use forms are used by the Department in the processing of refunds and refund denials and are hereby incorporated by reference.

(b) These forms are available, without cost, by one or more of the following methods: 1) writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the 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://www.myflorida.com/dor/). Persons with hearing or speech impairments may call the Department's TDD, (800)367-8331.

Form Number	Title	Effective Date
(2)~~(1)~~ DR-26	Application for Refund ~~from the State of Florida Department of Revenue~~ (R. _____ ~~r. 09/99~~)	____ ~~10/01~~
(3)~~(2)~~ DR-370026	Mutual Agreement to Audit or Verify Refund Claim (R. 07/02 ~~n. 02/00~~)	____
(4)~~(3)~~ DR-26S	Application for Refund-Sales and Use Tax (R. _____ ~~n. 11/00~~)	____ ~~10/01~~

Specific Authority 213.06(1) FS. Law Implemented 213.34, 215.26 FS.~~, ss. 2, 3, 4, 5, 6, 7, 40, Ch. 91-112, L.O.F.~~ History–New 11-14-91, Amended 4-18-93, 10-4-01, _____.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Sales and Use Tax	12A-1
RULE TITLES:	RULE NOS.:
Admissions	12A-1.005
Aircraft, Boats, Mobile Homes, and Motor Vehicles	12A-1.007
Refunds and Credits for Sales Tax Erroneously Paid	12A-1.014
Equipment Used to Deploy Internet Related Broadband Technologies in a Florida Network Access Point; Refund Procedures	12A-1.0141
Promotional Materials Exported from this State	12A-1.034
Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property	12A-1.051
Mail Order Sales	12A-1.103

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-1.005, F.A.C. (Admissions), is to provide guidelines for the sale of vacation packages consistent with the provisions of s. 212.04(1)(d), F.S., as amended by s. 4, Chapter 98-140, L.O.F.

The purpose of the proposed amendments to the following rule sections is to change the refund application used by the Department in the administration of refunds for taxes administered under the provisions of Chapter 212, F.S., to form DR-26S, Application for Refund-Sales and Use Tax:

Rule 12A-1.007, F.A.C., Aircraft, Boats, Mobile Homes, and Motor Vehicles

Rule 12A-1.014, F.A.C., Refunds and Credits for Sales Tax Erroneously Paid

Rule 12A-1.0141, F.A.C., Equipment Used to Deploy Internet Related Broadband Technologies in a Florida Network Access Point; Refund Procedures

Rule 12A-1.034, F.A.C., Promotional Materials Exported from this State; and

Rule 12A-1.103, F.A.C., Mail Order Sales.

In addition to changing to the use of form DR-26S, and the refund requirements, the purpose of the proposed amendments to Rule 12A-1.007, F.A.C. (Aircraft, Boats, Mobile Homes, and Motor Vehicles), is to provide that the documentation listed in form DR-26S is required to be submitted to the Department to obtain a refund of tax pursuant to s. 681.104, F.S.

The purpose of the proposed amendments to Rule 12A-1.051, F.A.C. (Sales to or by Contractors Who Repair, Alter, Improve, and Construct Real Property), is to implement the provisions of s. 13, Chapter 2002-218, L.O.F., which removes the definition of the term "trade fixtures" from s. 212.06(14)(b), F.S.

In addition to changing to the use of form DR-26S and other refund requirements, the purpose of the proposed amendments to Rule 12A-1.103, F.A.C. (Mail Order Sales), is to: (1) revise the provisions for obtaining a refund of tax paid consistent with the provisions of Rule 12A-1.014, F.A.C.; (2) revise the definition of the terms "mail order sale" and "dealer" consistent with the provisions of s. 212.0596, F.S.; (3) remove provisions redundant of the provisions of s. 212.0596(2), F.S.; and (4) remove unnecessary examples of mail-order sales.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is: (1) the proposed guidelines for the sale of vacation packages; (2) the proposed adoption of form DR-26S, Application for Refund-Sales and Use Tax, used by the Department in the administration of refunds of taxes administered under the provisions of Chapter 212, F.S.; (3) the proposed guidelines on how to obtain refunds consistent with the provisions of ss. 213.255(2) and (3), Rule 12-26.003, F.A.C., and Rule 12A-1.014, F.A.C.; and (4) the proposed revisions to forms used by the Department in the administration of the sales and use tax.

SPECIFIC AUTHORITY: 72.011, 212.05(1), 212.08(5)(p), 212.17(6), 212.18(2), 213.06(1), 213.21, 213.255(11) FS.

LAW IMPLEMENTED: 95.091, 212.02(1),(2),(4),(7),(10),(14),(15),(16),(19),(20),(21), 212.03, 212.04, 212.05, 212.0596, 212.06(1),(2),(4),(5),(7),(8),(10)-(12),(14),(15)(a), 212.0601, 212.07(1),(2),(7),(8), 212.08(5)(g),(i),(p),(6),(7),(10),(11),(15), 212.085, 212.12(1),(2),(6),(12), 212.14(5), 212.17(1), 212.18(3), 212.183, 212.20(4), 213.255(1),(2),(3), 213.35, 215.26(2), 616.260 FS.

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

TIME AND DATE: 1:30 p.m., November 20, 2002

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0100

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 Nancy Purvis, (850)488-0712. If you

are hearing-impaired or speech-impaired, please contact the Department by using the Florida Relay Service, which may be reached at 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT WORKSHOP 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, e-mail: youngj@dor.state.fl.us

The Department's proposed rules are available on the Department's web site: http://www.myflorida.com/dor/rules.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12A-1.005 Admissions.

(1) through (5) No change.

(6) SALES OF VACATION PACKAGES.

~~(a) A dealer owes tax on purchases of any taxable components of a vacation package which he or she sells.~~

(a)~~(b) No tax is due on the sale of a vacation package by a travel agent if the components are not separately itemized and if applicable tax has been paid on the initial purchase of the taxable components.~~ For purposes of this subsection, a "vacation package" means a bundle consisting of two or more components, such as admissions, transient rentals, transportation, or meals. Coupon books, maps, or other incidental items, that are provided free of charge as part of a vacation package ~~packaged~~ are not considered "components" for purposes of this subsection.

(b) Tax is due on the purchase of taxable components of a vacation package at the time of purchase. No additional tax is due on the components that are incorporated into a vacation package and sold by a travel agent, when all of the following conditions are met:

1. The vacation package sold by the travel agent includes two or more components;

2. There is no separate itemization of the sales price of the package for the admission, transient rental, transportation, meal, or any other component of the vacation package; and

3. All components of the vacation package were purchased by the travel agent from other parties and any sales tax due on such purchases was paid at the time of purchase.

(c) A travel agent who ~~If a travel agent~~ itemizes the sales price of the taxable components of a vacation package ~~and sells the taxable components for more than was paid for them, he or she~~ must register with the Department as a dealer ~~and collect and remit tax on the itemized taxable components, and may take a credit for taxes previously paid~~. (See Rule 12A-1.060, F.A.C., Registration). Travel agents who itemize the sales price of the taxable components of a vacation package are required to collect tax from the purchaser as follows:

1.~~(d)~~ When ~~If~~ the itemized components are sold for the same amount or less than was paid for each of them, the travel agent is not required to ~~seller of the package shall not~~ collect any additional tax~~, and shall not take credit for taxes previously paid~~. No credit is allowed for tax paid on the purchase of the taxable components.

2. When the itemized components are sold for more than the purchase price of each component, the travel agent is required to collect tax on the sales price of the taxable components. The travel agent may take a credit of tax previously paid for the taxable components that are separately itemized at a sales price greater than the purchase price of the component.

(d)~~(c)~~ When the seller of components of a vacation package and the purchasing travel agent are members of the same controlled group of corporations for federal income tax purposes and the amount charged for the component ~~If the actual price charged for the admission by the dealer to a travel agent, which is a member of the same controlled group of corporations as the dealer,~~ is an amount less than the price charged to unrelated travel agents under normal industry practices, ~~then~~ the related travel agent is ~~will be~~ required to itemize the sales price of the components ~~of the package~~ to the purchaser and ~~his customer,~~ collect tax on the itemized taxable components~~, and may take a credit for taxes previously paid~~. The travel agent may take a credit of tax previously paid for the taxable components.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(1), 212.04, 212.08(6),(7), 616.260 FS. History–Revised 10-7-68, 1-7-70, 6-16-72, Amended 7-19-72, 12-11-74, 9-28-78, 7-3-79, 12-3-81, 7-20-82, Formerly 12A-1.05, Amended 1-2-89, 12-16-91, 10-17-94, 3-20-96, 3-4-01, 10-2-01, _____.

12A-1.007 Aircraft, Boats, Mobile Homes, and Motor Vehicles.

(1) through (23) No change.

(24) Lemon Law.

(a) The following provisions shall apply when a manufacturer, pursuant to the provisions of s. 681.104, F.S., replaces or repurchases a motor vehicle:

1. No change.

2.a. When the manufacturer repurchases the motor vehicle, the Department of Revenue shall refund to the manufacturer any Florida sales tax that the manufacturer refunded to the consumer, lienholder, or lessor under the provisions of s. 681.104, F.S. To receive the refund, an Application for Refund-Sales and Use Tax (Form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.) must be filed by the manufacturer ~~within 3 years after the date the tax was paid~~ in accordance with the timing provisions of s. 215.26(2), F.S. ~~The manufacturer must also submit, with its application for refund, the following documentation: 1) a copy of the written agreement signed by the consumer, lienholder, or lessor under which the manufacturer refunded the Florida sales tax to the consumer, lienholder, or lessor; 2) a copy of the~~

~~original sales invoice made out by the seller which affirmatively demonstrates payment of Florida sales tax on the purchase of the motor vehicle for which the refund is being sought; and 3) written documentation that the manufacturer refunded the Florida sales tax to the consumer, lienholder, or lessor.~~ An application for refund shall not be considered complete pursuant to s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C., and a refund shall not be approved before the manufacturer provides the required ~~such~~ documentation listed in form DR-26S regarding the reimbursement of tax previously paid on a vehicle purchased in Florida by a motor vehicle manufacturer when the manufacturer agrees to replace or repurchase the vehicle.

b. Form DR-26S, Application for Refund-Sales and Use Tax, must be filed with the Department for tax paid on or after October 1, 1994, and prior to July 1, 1999, within 5 years after the date the tax was paid.

c. Form DR-26S, Application for Refund-Sales and Use Tax, must be filed with the Department for tax paid on or after July 1, 1999, within 3 years after the date the tax was paid.

d.~~b.~~ No change.

(b) No change.

(25) through (29) No change.

Specific Authority 212.05(1), 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(2),(4),(10),(14),(15),(16),(19),(20), 212.03, 212.05(1), 212.06(1),(2),(4),(5),(7),(8),(10),(12), 212.0601, 212.07(2),(7), 212.08(5)(i),(7)(t),(aa),(ee),(10),(11), 212.12(2),(12), 213.255(1),(2),(3), 215.26(2) FS. History–Revised 10-7-68, 1-7-70, Amended 1-17-71, Revised 6-16-72, 8-18-73, 12-11-74, 6-9-76, Amended 2-21-77, 5-10-77, 9-26-77, 9-28-78, 3-16-80, 12-31-81, 7-20-82, 10-13-83, Formerly 12A-1.07, Amended 1-2-89, 12-11-89, 3-17-93, 10-17-94, 3-20-96, 4-2-00, 6-19-01, _____.

12A-1.014 Refunds and Credits for Sales Tax Erroneously Paid.

(1) through (4) No change.

(5)(a) Any dealer entitled to a refund of tax paid to the Department of Revenue may seek a refund by filing an Application for Refund-Sales and Use Tax (Form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.) with the Department. Form DR-26S~~, Application for Refund,~~ must be filed ~~within 3 years after the date the tax was paid~~ in accordance with the timing provisions of s. 215.26(2), F.S., and must meet the requirements of s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.

1. Form DR-26S, Application for Refund-Sales and Use Tax, must be filed with the Department for tax paid on or after October 1, 1994, and prior to July 1, 1999, within 5 years after the date the tax was paid.

2. Form DR-26S, Application for Refund-Sales and Use Tax, must be filed with the Department for tax paid on or after July 1, 1999, within 3 years after the date the tax was paid.

(b) through (6) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1), 213.255(11) FS. Law Implemented 95.091, 212.12(6), 212.17(1), 213.255(1),(2),(3) 213.35, 215.26(2) FS. History–Revised 10-7-68, Amended 1-17-71, Revised 6-17-72, Amended 10-21-75, 9-28-78, 11-15-82, 10-13-83, Formerly 12A-1.14, Amended 6-10-87, 1-2-89, 8-10-92, 3-17-93, 1-3-96, 3-20-96, 6-19-01, _____.

12A-1.0141 Equipment Used to Deploy Internet Related Broadband Technologies in a Florida Network Access Point; Refund Procedures.

(1) through (2) No change.

(3) To obtain a refund of tax imposed and paid pursuant to Chapter 212, F.S., on eligible equipment, an Application for Refund-Sales and Use Tax (form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.) must be filed with the Department within 6 months after the eligible property is purchased. An application for refund ~~Application for Refund~~ shall not be considered complete pursuant to s. 213.255(2) and (3), F.S., and a refund shall not be approved until the applicant provides the following information and documentation to the Department and certifies that the provided information and documentation are true and correct:

(a) through (d) No change.

(4) through (5) No change.

Specific Authority 212.08(5)(p), 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.08(5)(p), 212.085, 213.255(1),(2),(3), 215.26(2) FS. History–New 6-19-01, Amended _____.

12A-1.034 Promotional Materials Exported from this State.

(1) through (5) No change.

(6) To receive a refund of tax paid to the Department for promotional materials, the dealer must file an Application for Refund-Sales and Use Tax (form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.) ~~within 3 years after the date the tax was paid~~ in accordance with the timing provisions of s. 215.26(2), F.S. However, an application for refund shall not be considered complete pursuant to s. 213.255(2) and (3), F.S., and a refund shall not be approved, before the date the promotional materials are exported from this state.

1. Form DR-26S, Application for Refund-Sales and Use Tax, must be filed with the Department for tax paid on or after October 1, 1994, and prior to July 1, 1999, within 5 years after the date the tax was paid.

2. Form DR-26S, Application for Refund-Sales and Use Tax, must be filed with the Department for tax paid on or after July 1, 1999, within 3 years after the date the tax was paid.

(a) through (b) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 95.091, 212.02(4),(14),(16),(20), 212.06(11), 212.183(6), 213.255(1),(2),(3), 215.26(2) FS. History–Revised 10-7-68, 6-16-72, Formerly 12A-1.34, Amended 5-19-93, 11-16-93, 6-19-01, _____.

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

(1) No change.

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

(a) through (b) No change.

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

2. through 3. No change.

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

~~a. Trade fixtures.~~

a.~~b.~~ Titled property.

b.~~c.~~ Machinery or equipment.

(d) through (i) No change.

~~(j) "Trade fixtures" means items that are attached to real property by the operator of a trade or business that occupies the premises and are useful solely in connection with or to facilitate that trade or business, rather than serving functions integral to general use of land or a building. For example, the operator of a bakery has a special glass display counter installed for displaying cookies and doughnuts. The counter would not be useful to a different type of retail business because of the shelving configuration and materials used. The counter is bolted to the floor. The counter is a trade fixture and not a fixture of the realty. If the bakery has a sign installed to identify the location by name of the business, that sign is a trade fixture. If the same bakery operator has built-in storage shelving installed in a supply room or overhead lighting installed in the shop area, those items are not trade fixtures because the shelving and lighting are equally functional for any subsequent user of the premises.~~

(3) through (16) No change.

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

(a) through (gg) No change.

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

(ii) 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, 10-2-01(18), 10-2-01(5),(8), (9),(13), _____.

12A-1.103 Mail Order Sales.

(1) Every dealer, as defined in s. 212.06(2)(c), F.S., ~~Effective October 1, 1987, every person~~ who engages in the business of making mail order sales and who meets the requirements of s. 212.0596(2), F.S., is exercising a taxable privilege in this state and is required to collect tax~~, when:~~

~~(a) The dealer is a corporation doing business under the laws of this state or a person domiciled in, a resident of, or a citizen of this state; or~~

~~(b) The dealer maintains retail establishments or offices in this state, whether or not the mail order sales result from or are related in any other way to the activities of such establishments or offices; or~~

~~(c) The dealer has agents in this state who solicit business or transact business on behalf of the dealer, whether or not the mail order sales result from or are related in any other way to such solicitation or transaction of business; or~~

~~(d) The property was delivered in this state in fulfillment of a sales contract that was entered into in this state, in accordance with applicable conflict of laws rules, when a person in this state accepted an offer by ordering the property; or~~

~~(e) The dealer, by purposefully or systematically exploiting the market provided by this state by any media-assisted, media-facilitated, or media-solicited means, including, but not limited to, direct mail advertising, unsolicited distribution of catalogues, computer-assisted shopping, television, radio or other electronic media, or magazine or newspaper advertisements or other media, radio or other electronic media, or magazine or newspaper advertisements of other media, creates nexus with this state; or~~

~~(f) Through compact or reciprocity with another jurisdiction of the United States which jurisdiction sues its taxing power and its jurisdiction over the retailer in support of this state's taxing power; or~~

~~(g) The dealer consents, expressly or by implication, to the imposition of the tax imposed by Chapter 212, F.S.~~

~~(2) Definitions. The following terms and phrases when used in this section shall have the meaning ascribed to them except where the context clearly indicates a different meaning:~~

~~(a) "Dealer" means every person who sells at retail, or has in his possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this state, tangible personal property, including a retailer who transacts a mail order sale.~~

~~(b) A "final adjudication" means a decision of a court of competent jurisdiction from which no appeal can be taken or from which the official or officials of this state with authority to make such decisions has or have decided not to appeal.~~

(2)~~(c)~~ A "mail order sale" is a sale of tangible personal property, ordered by mail~~, computer-assisted shopping, media-assisted, media-facilitated, or media-solicited,~~ or other means of communication ~~(including, but not limited to direct~~

~~mail advertising, unsolicited distribution of catalogues, television, radio or other electronic media, telephone, or magazine or newspaper advertising), to a purchaser who is in this state at the time the order is remitted~~, from a dealer who receives the order in another state of the United States, or in a commonwealth, territory, or other area under the jurisdiction of the United States, and transports the property or causes the property to be transported, whether or not by mail, from any jurisdiction of the United States, including this state, to a person in this state, including the person who ordered the property. ~~For purposes of this definition, there is presumption that every person who is a resident of this state who remits an order was in this state when the order was remitted.~~

1. Example: A multi-state company has stores located in Florida and a mail order division located in New York. The mail order division receives a customer telephone order for merchandise to be delivered to a Florida residence. The mail order division ships the item to the Florida residence. This is a mail order sale subject to Florida sales tax. The New York mail order division is required to collect Florida sales tax. ~~A purchaser, who is a resident of Florida, receives in the mail a catalogue of the seller, who resides in another state and whose business facilities are all located in that state. The purchaser orders tangible personal property advertised in the catalogue by completing an order blank furnished with the catalogue, attaching his or her personal check in the amount required for the purchase, and mails the order from within this state to the seller. The seller, by mail or other means of transportation, transmits the property to the purchaser in Florida. If any of the provisions of subsection (1) are applicable, this is a taxable mail order sale.~~

2. Example: A Florida resident, while in New York, places an order for merchandise with a New York store and requests that the store deliver the merchandise to his or her Florida residence. This is not a mail order sale because the order was placed in person at the out-of-state location. The provisions of s. 212.0596, F.S., for mail order sales are not applicable to this transaction. ~~A purchaser, not a resident of Florida while outside this state, orders tangible personal property from a seller in another state to be sent tot the purchaser's grandchild in Florida. This is not a "mail order sale", because the purchaser was not in Florida at the time the order was remitted.~~

~~3. Example: A Florida resident, while vacationing in another state, orders tangible personal property from a seller in another state, to be sent to the purchaser's home in Florida. Since the purchaser is a Florida resident, he or she is presumed to have been in Florida at the time the order was remitted. If this presumption is rebutted, this would not be a taxable "mail order sale."~~

(3) through (5) No change.

(6) Refund of taxes on mail order sales.

(a) When there has been a final adjudication, that any tax upon a mail order sales transaction was levied, collected, or both, contrary to the Constitution of the United States, or to the Constitution of Florida, or to ~~of~~ both, the Department will~~, in accordance with paragraph (b),~~ refund the amount of tax to the person who paid the tax. A "final adjudication" means a decision of a court of competent jurisdiction from which no appeal can be taken or from which the official or officials of this state with authority to make such decisions has or have decided not to appeal.

(b) To receive a refund of tax, the person who paid the tax must file an Application for Refund-Sales and Use Tax ~~from the State of Florida~~ (DR-26S~~)~~, incorporated by reference in Rule 12-26.008, F.A.C.), as provided in Rule 12A-1.014, F.A.C. ~~Applications for Refund (DR-26) are available by: 1) writing the Florida Department of Revenue, Forms Distribution Center, 168 Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the Forms Distribution Center at (850)922-2208; or, 3) using a fax machine telephone handset to call the Department's automated Fax on Demand system at (850)922-3676; or, 4) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 5) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 6) downloading selected forms from the Department's Internet site at the address shown inside the parentheses (http://sun6.dms.state.fl.us/dor/revenue.html). Persons with hearing or speech impairments may call the Department's TDD at 1(800)367-8331. In addition to the Application for Refund, every person claiming a refund of tax shall submit to the Department in conjunction with the Application for Refund, the following:~~

~~1. A description of the tangible personal property purchased;~~

~~2. The date on which the purchase was made;~~

~~3. The purchase price of said item(s);~~

~~4. The amount of Florida sales tax paid for said item(s);~~

~~5. The name of the seller from which the purchase of the tangible personal property was made;~~

~~6. The cite of the court decision or decisions upon which the claim for refund is based;~~

~~7. A copy of the sales invoice made out by the seller of the tangible personal property; and~~

~~8. Any other information that is required by the Department in order to verify the authenticity of the refund application. The Department may refuse to grant a refund if the Application for Refund is incomplete or fails to contain the full information required in this paragraph.~~

~~(c) Upon formal approval of a complete Application for Refund the Department shall certify to the Comptroller such information necessary for issuance of a refund directly to the person entitled to the refund.~~

Cross Reference: Rule 12A-15.003, F.A.C.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(14),(21), 212.05, 212.0596, 212.06(2),(5), 212.12(1), 212.18(3), 212.20(4), 215.26(2) FS. History–New 12-8-87, Amended 8-10-92, _____.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Sales and Use Tax	12A-1
RULE TITLES:	RULE NOS.:
Sales and Use Tax on Services; Sale for Resale	12A-1.0161
Tax Due at Time of Sale; Tax Returns and Regulations	12A-1.056
Waiver of Electronic Data Interchange Sales and Use Tax Return Filing Requirements	12A-1.0565
Registration	12A-1.060
Public Use Forms	12A-1.097

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-1.0161, F.A.C. (Sales and Use Tax on Services; Sale for Resale), is to: (1) change the title of form DR-15MO to "Out-of-State Purchases Return"; (2) remove the redundancy of the due dates for filing form DR-15MO that are provided in Rule 12A-1.091, F.A.C.; (3) remove provisions regarding the imposition of the discretionary sales surtax on services that are provided in Rule 12A-15.003, F.A.C.; and (4) remove provisions regarding the payment of tax that are redundant of s. 212.06(2)(g) and (7), and s. 212.07(8), F.S.

The purpose of the proposed amendments to Rule 12A-1.056, F.A.C. (Tax Due at Time of Sale; Tax Returns and Regulations) is to: (1) provide that payment of tax required to be made by electronic means, returns for taxes required to be submitted by electronic means, and returns when no tax is due must be submitted to the Department as provided in Rule Chapter 12-24, F.A.C.; (2) provide that the motor vehicle warranty fee is not to be included in the computation of estimated tax due; (3) remove the unnecessary recitation of statutory provisions for the late filing of returns and penalties imposed for failure to file a return or remit tax due; (4) clarify that failure to secure a return does not relieve the dealer of any tax liability or a filing requirement; and (5) clarify that the Department is not authorized to extend the time for any dealer to file a return or remit any tax due.

The purpose of the proposed repeal of Rule 12A-1.0565, F.A.C. (Waiver of Electronic Data Interchange Sales and Use Tax Return Filing Requirements), is to remove provisions for requesting a waiver from electronic filing that are provided in Rule Chapter 12-24, F.A.C.

The purpose of the proposed amendments to Rule 12A-1.060, F.A.C. (Registration), is to: (1) reorganize the rule for easier reading of the guidelines for registration with the Department; (2) provide guidelines for persons required to register with the department for purposes of sales and use tax and the methods by which persons may register; (3) clarify guidelines for registration of each place of business for use as transient accommodations; (4) clarify provisions for exhibitors who are required to register for purposes of sales and use tax; and (5) consolidate the provisions for penalties imposed for failure or refusal to register into one subsection of the proposed rule.

The purpose of the proposed amendments to Rule 12A-1.097, F.A.C. (Public Use Forms), is to adopt changes to forms used by the Department in the administration of the sales and use tax.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is: (1) the proposed registration requirements for registering with the Department for purposes of sales and use tax and the methods made available by the Department; (2) the proposed repeal of provisions regarding reporting and paying tax by electronic means that are provided in Rule Chapter 12-24, F.A.C.; (3) the proposed adoption of changes to forms used by the Department in the administration of the sales and use tax; and (4) the proposed removal of the unnecessary recitation of statutory provisions.

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1) FS.

LAW IMPLEMENTED: 125.0104(3)(g), 125.0108(2)(a), 212.02(14),(21), 212.03(1),(2), 212.0305(3)(c), 212.031(3), 212.04(3),(4), 212.05, 212.0506(4),(11), 212.055, 212.0596, 212.06(1)(a),(2),(5), 212.0606, 212.07(1)(b), 212.08(5)(f),(g),(h),(n),(o),(7)(v),(15), 212.096, 212.11, 212.12(1)-(6), 212.14(2), 212.15(1), 212.16(1),(2), 212.17(1),(6), 212.18(2),(3), 212.20(4), 213.755, 215.26(2), 288.1258, 376.30, 403.718, 403.7185, 681.117 FS.

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

TIME AND DATE: 1:30 p.m., November 20, 2002

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0100

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 Nancy Purvis, (850)488-0712. If you are hearing-impaired or speech-impaired, please contact the Department by using the Florida Relay Service, which may be reached at 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

The Department's proposed rules are available on the Department's web site: http://www.myflorida.com/dor/rules.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT WORKSHOP 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, e-mail: youngj@dor.state.fl.us

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12A-1.0161 Sales and Use Tax on Services; Sale for Resale.

(1) through (7) No change.

~~(8) The local option sales surtaxes authorized by ss. 212.054 and 212.055, F.S., apply to sales or use of the services enumerated in this rule on or after January 1, 1994.~~

~~(9) The provisions of the Florida Sales and use Tax shall not apply to the use of a service in this state upon which a like tax equal to or greater than the amount due this state has been lawfully imposed and paid in another state, territory of the United States, or the District of Columbia before use tax payable to this state would otherwise have become due. If the amount of tax so lawfully imposed and paid in another state, territory of the United States, or the District of Columbia is not equal to or greater than the amount of tax imposed by Chapter 212, F.S., then the person from whom the use tax is due shall pay to the Department of Revenue an amount sufficient to make the tax paid in the other state, territory of the United States, or the District of Columbia and in this state equal to the amount imposed by Chapter 212, F.S.~~

~~(10) Every dealer who solicits business, either by direct representatives, indirect representatives, or agents and by reason thereof receives orders for services in this state, shall collect the tax from the purchaser, and no action either in law or in equity on a sale or transaction as provided by the terms of Chapter 212, F.S., may be had in this state by any such dealer unless it is affirmatively shown that the provisions of the law have been fully complied with.~~

~~(11) Any person who has purchased at retail or used taxable services, and cannot prove that the tax levied by Chapter 212, F.S., has been paid to the selling vendor or lessor shall be directly liable to the state for any tax, interest, or penalty due on any such taxable transactions.~~

(8)~~(12)(a)~~ Any person, whether registered or unregistered, who has purchased services either in this state or from out-of-state for use in this state without having paid sales tax on such services if subject to tax, is required to remit use tax on the cost price of such service. If such person is registered, use tax is to be remitted with the dealer's sales and use tax return. If such person is unregistered, use tax is to be remitted on Form DR-15MO, Out-of-State Purchase ~~DR-15-MO, Mail Order/Use Tax~~ Return (incorporated by reference in Rule 12A-1.097, F.A.C.)~~, on or before the 20th day of the first month after the end of the calendar quarter during which any such service was invoice by the seller~~. ~~In those cases where the 20th day falls on Saturday, Sunday, or a federal holiday, payments accompanied with returns shall be accepted as timely if postmarked or delivered to the Department of Revenue on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For this purpose, a legal holiday shall mean a holiday which is observed by federal or state agencies as a legal holiday as this term is defined in Ch. 683, F.S., and Sec. 7503 of the Internal Revenue Code. Also, where the tax is required to be remitted by electronic funds transfer and the tax due date falls on a Saturday, a Sunday, or a legal holiday as defined in s. 655.89, F.S., or on a legal holiday of the jurisdiction in which the taxpayer's financial institution is located, the deposit by electronic funds transfer is required on or before the first banking day thereafter. For the purposes of these rules, "banking day" has the meaning prescribed in s. 655.89, F.S.~~

~~(b) Any person required to file and remit use tax on Form DR-15MO, Mail Order/Use Tax Return, is not considered, by virtue of that fact alone, as "engaged in or conducting business in this state as a dealer," within the meaning of section 212.18(3), F.S., and is not required to file an application for a certificate of registration.~~

~~(c) Any person required to file and remit use tax on Form DR-15MO, Mail Order/Use Tax Return, is not entitled to a collection allowance on account of keeping required records and accounting and remitting of taxes required.~~

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, 10-2-01, _____.

12A-1.056 Tax Due at Time of Sale; Tax Returns and Regulations.

(1)(a) The total amount of tax on cash sales, credit sales, installment sales, or sales made on any kind of deferred payment plan shall be due at the moment of the transaction. Except as provided in Rule Chapter 12-24, F.A.C., Rules 12A-1.005 and~~,~~ 12A-1.070, F.A.C., and this rule, all taxes required under Chapter 212, F.S., to be collected or paid in any month ~~by Chapter 212, F.S.~~, are due to the Department ~~of Revenue~~ on the first day of the month following the date of sale or transaction. The payment and return must be delivered to ~~either reach the office of~~ the Department ~~of Revenue~~ or be postmarked on or before the 20th day of the month following the date of sale or transaction for a dealer to be entitled to the collection allowance and to avoid penalty and interest for late filing. If ~~When~~ the 20th day falls on Saturday, Sunday, or ~~a~~ legal holiday, payments accompanied by returns will be accepted as timely if postmarked or delivered to the Department ~~of Revenue~~ on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this rule, a legal holiday means a holiday that is observed by federal or state agencies as a legal holiday as this term is defined in Ch. 683, F.S., and s. ~~Sec.~~ 7503 of the Internal Revenue Code of 1986, as amended. A "legal holiday" pursuant to s. ~~Section~~ 7503 of the ~~1986~~ Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide ~~Statewide~~ legal holiday at a location outside the District of Columbia but within an internal revenue district.

(b) through (c) No change.

(d) Payments and returns for reporting tax must be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C., when:

1. Payment of the tax is required to be made by electronic means;

2. Any return for reporting taxes is required to be submitted by electronic means; or

3. No tax is due with a return for reporting taxes.

(2) No change.

~~(3) The state fiscal year covers the period from July 1 of one calendar year through June 30 of the following calendar year.~~

(3)~~(4)~~ The following are not required to be included in computing the estimated tax liability due and payable:

(a) through (c) No change.

(d) The motor vehicle warranty fee levied under the authority of s. 681.117, F.S.

(5) through (6) renumbered (4) through (5) No change.

~~(7) A tax return on forms provided by the Department of Revenue shall be filed on or before the 20th day following the end of the period for which the return is filed, whether or not any taxes are due, by all persons required to file returns. For example, for a dealer who files on a monthly basis, the January return shall be filed on or before the 20th day of February; whereas a dealer who files on a quarterly basis shall file the January through March return on or before the 20th of April. The failure of any dealer to secure such forms shall not relieve the dealer from payment of said tax at the time and in the manner provided. Tax returns shall be filed and taxes paid to the Department of Revenue at Tallahassee or to designated offices of the Department throughout the state.~~

(6)~~(8)~~ The failure of any dealer to secure a tax return for reporting tax due does not relieve the dealer from the requirement to file a return or to remit tax due to the Department. The Department ~~Executive Director or the Executive Director's designee~~ is not authorized to extend the time for any dealer ~~under Chapter 212, F.S.,~~ to file ~~make~~ any return or pay any tax due ~~or fee~~. ~~Any dealer or other person who fails to make a return and pay the tax or fee due, on or before the due date, is liable for penalties, interest, and loss of collection allowance, regardless of any particular problems encountered in assembling the necessary data for filing a return and paying the tax.~~

~~(9)(a) In the event any dealer other person required to do so fails to make a report and pay the tax, or any person receiving rentals, or any dealer, owner, or person required to report fails to make a report, or makes a grossly incorrect report, or makes a report that is false or fraudulent, or fails or refuses to make his records available for inspection, the Executive Director or the Executive Director's designee in Compliance Enforcement shall make an assessment from an estimate for the taxable period and shall proceed to collect such taxes on the basis of such assessment which shall be considered prima facie correct, and the burden to show the contrary shall rest upon the person charged with the responsibility of filing the report.~~

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

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 125.0104(3)(g), 125.0108(2)(a), 212.03(2), 212.0305(3)(c),~~(h),~~ 212.031(3), 212.04(3),(4),~~(5),~~ 212.0506(4),(11),~~(10), 212.054(4),~~ 212.055, 212.06(1)(a), 212.0606, 212.11, 212.12(1),(2),(3),(4),(5), 212.14(2), 212.15(1), ~~213.235, 213.29,~~ 213.755, 376.70, ~~215.01, 376.11,~~ 403.718, 403.7185, 681.117 FS. History–Revised 10-7-68, 6-16-72, Amended 10-21-75, 6-9-76, 11-8-76, 2-21-77, 4-2-78, 10-18-78, 12-23-80, 8-26-81, 9-24-81, 11-23-83, 5-28-85, Formerly 12A-1.56, Amended 3-12-86, 1-2-89, 12-19-89, 12-7-92, 10-20-93, 10-17-94, 3-20-96, 4-2-00, 6-19-01, _____.

12A-1.0565 Waiver of Electronic Data Interchange Sales and Use Tax Return Filing Requirements.

Specific Authority 212.18(2), 213.06(1) FS. Law Implemented 212.11(1)(f) FS. History–New 12-6-98, Amended 6-19-01, Repealed _____.

12A-1.060 Registration.

(1) PERSONS REQUIRED TO REGISTER AS DEALERS.

(a)~~1.~~ Every ~~Except as provided in paragraphs (f), (g), or (h), every~~ person desiring to engage in or conduct any one of the following businesses in this state as a "dealer" must register ~~file an Application to Collect and/or Report Tax in Florida (form DR-1, incorporated by reference in Rule 12A-1.097, F.A.C.)~~ with the Department of Revenue and obtain ~~for~~ a separate certificate of registration for each place of business ~~dealer's certificate of registration before engaging in any one of the following businesses~~:

1.~~a.~~ Sale of admissions or making of any charge for admission to any place of amusement, sport, or recreation or where there is any exhibition or entertainment subject to tax under s. 212.04, F.S.;

2.~~b.~~ Sale, lease, let, rental, or granting a license to use tangible personal property subject to tax under Chapter 212, F.S.;

3. Repairs or alterations of tangible personal property subject to tax under Chapter 212, F.S.;

4. Sales of electric power or energy subject to tax under s. 212.05(1)(e), F.S.;

5. Sales of services subject to tax under s. 212.05(1)(i), F.S.;

6. Sales of prepaid calling arrangements subject to tax under s. 212.05(1)(e), F.S.;

7. Operation of coin-operated amusement machines subject to tax under s. 212.05(1)(h), F.S.;

8. Operation of coin-operated vending machines subject to tax under s. 212.0515, F.S.;

9.~~c.~~ Lease, let, rental, rental, or granting licenses to use any living quarters or sleeping or housekeeping accommodations subject to the transient rental tax imposed under s. 212.03, F.S. ~~for transient accommodations, as defined in Rule 12A-1.061, F.A.C.~~;

10.~~d.~~ Lease, let, rental, or granting a license in real property;

11.~~e.~~ Lease or rental of parking or storage space for motor vehicles in parking lots or garages;

12.~~f.~~ Lease or rental of docking or storage space in boat docks or marinas;

13.~~g.~~ Lease or rental of tie-down or storage space for aircraft; ~~or~~

14. Soliciting, offering, providing, entering into, issuing, or delivering any service warranty subject to tax under s. 212.0506, F.S.; or

15. Engaging in any trade or business, as provided in s. 212.0501, F.S.;

~~h. Sales of taxable services.~~

(b)1. For purposes of this rule, a "dealer" means a dealer, as defined in s. 212.06(2), F.S., and a dealer who makes mail order sales, as provided in s. 212.0596, F.S.

2. The term "dealer" does not include a "nonresident print purchaser." A "nonresident print purchaser" is any person whose only owned or leased property in this state, including property owned or leased by an affiliate, is located at the premises of a printer with which the purchaser has contracted for printing. The property for which the purchaser has contracted for printing must be the final printed product or property from which the printed product is produced. Nonresident print purchasers are not required to register as dealers. For guidelines regarding sales made to nonresident print purchasers, see subsection (5) of Rule 12A-1.027, F.A.C.

(c) The Department will NOT issue a Certificate of Registration for the purpose of sales and use tax to any out-of-state applicant who requests a certificate for the sole purpose of making tax-exempt purchases of items for resale outside this state when:

1. The applicant has no permanent, licensed place of business in this state; and

2. The applicant does not make retail sales within this state.

~~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 4. or 5.~~

(d)~~3.~~ For purposes of this rules, a "place of business" is a location where a dealer engages in an activity or activities described in this subsection ~~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 ~~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 ~~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. through g. renumbered 1. through 7. No change.

~~4. 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 (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 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;~~

~~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. 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.~~

(2) HOW TO REGISTER AS A DEALER.

(a) Registration with the Department for the purposes of sales and use tax is available by using one of the following methods:

1. Registering through the Department's Internet site at the address shown in the parentheses (http://www.myflorida.com/dor/) using the Department's "e-Services" without payment of a registration fee; or

2. Filing an Application to Collect and/or Report Tax in Florida (form DR-1, incorporated by reference in Rule 12A-1.097, F.A.C.) with the Department, as indicated on the registration form, with the required $5 registration fee.

(b) A separate application is required for each place of business.

(c) Each application submitted to the Department must contain sufficient information to facilitate the processing of the application.

(3) REGISTRATION OF TRANISENT ACCOMMODATIONS.

(a) For purpose of this rule, a "transient accommodation" shall have the same meaning as that term is defined in paragraph (2)(f) of Rule 12A-1.061, F.A.C.

(b)1. Any person exercising a taxable privilege of engaging in the business of renting, leasing, letting, or granting licenses to others to use transient accommodations is required to register as a dealer and obtain a separate dealer's certificate of registration for each place of business where transient accommodations are provided. ~~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 (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. The agent, representative, or management company for a time-share resort which rents, leases, lets, or grants licenses to others to use time-share periods under written agreement(s) with time-share period owners is presumed to be the dealer who is required to be registered ~~register under the provisions of subparagraph 1., above~~. The agent, representative, or management company may collectively register the ~~all such~~ time-share units ~~under the provisions of paragraph (c)~~, even if the agent, representative, or management company may not rent, lease, let, or grant licenses to use to the transient public for each and every time-share period at such resort.

(c)1. Any person who exclusively enters into a bona fide written lease, as provided in subsection (15) of Rule 12A-1.061, F.A.C., for continuous residence for periods longer than six months to lease, let, rent, or grant a license to others to use, occupy, or enter upon any transient accommodation is NOT required to register with the Department.

2. Any transient accommodation that is leased under the terms of a bona fide written agreement for continuous residence for longer than six months in duration is NOT required to be registered with the Department by the owner or the owner's representative.

(d)~~(c)~~1. Any agent, representative, or management company may collectively register transient accommodations, ~~as defined in Rule 12A-1.061, F.A.C.,~~ including timeshare units, ~~that are rented, leased, let, or for which a license to use has been granted to others for periods six months or less~~ under the following conditions:

1.~~a.~~ The agent, representative, or management company holds a valid ~~has obtained a~~ dealer's certificate of registration for each place of business ~~certificate of registration as provided in subparagraph (a)1., above~~;

2.~~b.~~ The agent, representative, or management company is authorized by means of a written agreement with the property owner to collect rental charges or room rates due on any transient accommodations~~, as defined in Rule 12A-1.061, F.A.C.~~; and

3.~~c.~~ The written agreement contains the following provisions acknowledged by the property owner:

a.~~I.~~ The property owner is ultimately liable for any sales tax due the State of Florida on rentals, leases, lets, or licenses to use the owner's property; and

b.~~II.~~ In the event that the State is unable to collect any taxes, penalties, and interest due from the rental, lease, let, or license to use the owner's property, a warrant for such uncollected amount will be issued and will become a lien against the owner's property until satisfied.

(e)1.~~2.~~ To ~~The agent, representative, or management company may~~ collectively register transient accommodations ~~properties described in subparagraph 1., above,~~ that are located in a single county, the agent, representative, or management company holding a dealer's certificate of registration may file ~~by filing~~ an Application for Collective Registration for Rental of Living or Sleeping Accommodations (form DR-1C) ~~for each county~~. A separate form DR-1C is required for each county.

3. through 4. renumbered 2. through 3. No change.

4.~~5.~~ In lieu of completing all required information on form ~~Form~~ DR-1C for each unregistered property or time-share unit, all ~~the~~ information required for each property or time-share unit may be submitted to the Department in a schedule attached to the completed "Agent's Sales Tax Registration Information" section of form ~~Form~~ DR-1C~~, containing the agent or management company's name, mailing address, federal identification number (if applicable), and sales tax registration number~~. ~~The schedule must contain all the required information listed in subparagraph 2. or 3., as applicable, so that the processing of the information may be accomplished by the Division of Tax Processing.~~

5.~~6.~~ A $5 registration fee~~, except as provided in subparagraph (1)(a)2. of this rule,~~ must accompany form DR-1C ~~the application~~ for each transient accommodation ~~such property~~ or time-share unit that ~~which~~ is not currently registered with the Department. A certificate of registration ~~Sales and Use Tax Certificate of Registration (Form DR-11)~~ will be issued to the property owner for each property that is not a time-share unit ~~other than time-share units~~ and mailed to the agent's address. For time-share units, a certificate of registration will be issued and mailed to the agent or management company. ~~See Rule 12A-1.061(16), F.A.C.~~

~~7. When any agent or management company which has registered any property with the Department under the provisions of subparagraphs 1. and 2., or 1. and 3., enters into additional written agreements with owners of properties or time-share units authorizing the licensed dealer to collect the rental, lease, or license payments as agent for the property owner after filing the initial Form DR-1C (or schedule) with the Department, the agent or management company may file an additional form DR-1C (or schedule) to collectively register any additional such property or time-share unit which is rented, leased, let, or in which a license to use has been granted to others. Each additional Form DR-1C (or schedule) must contain the information required in subparagraph 2. or 3., as applicable; the agent or management company's name, mailing address, federal identification number (if applicable), and sales tax registration number; and must be accompanied by a $5 registration fee, except as provided in subparagraph (1)(a)2. of this rule, for each property or each time-share unit which is not currently registered with the Department.~~

~~(d) The Department will issue a separate Sales and Use Tax Certificate of Registration (form DR-11) for each place of business for which it receives an application for registration. Engaging in a business listed in paragraph (a) of this subsection without first obtaining a Sales and Use Tax Certificate of Registration or after such certificate has been canceled by the Executive Director or the Executive Director's designee is prohibited. The failure or refusal of any person to register as a dealer is a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., or subject to injunctive proceeding as provided by law.~~

(4) REGISTRATION OF EXHIBITORS.

(a)~~(e)1~~. For purposes of this rule, the following definitions are provided ~~As used in this paragraph~~:

1.~~a.~~ An "exhibitor" means a person who enters into a written agreement authorizing the display by that person of tangible personal property or services at a convention or trade show.

2.~~b.~~ A "trade show or convention" is a meeting of limited duration of individuals with organizational ties or similar interests, one of the purposes of which is the displaying of products or services or sharing information on them, without a major purpose of making retail sales of tangible personal property.

3.~~c.~~ A "sale" is as defined in s. 212.02(15), F.S. ~~subsection (16) of section 212.02, Florida Statutes.~~

4.~~d.~~ A "retail sale" is as defined in s. 212.02(14), F.S. ~~subsection (15) of section 212.02, Florida Statutes.~~

~~2. An exhibitor is **not** required to register as a dealer if the agreement provides that the exhibitor shall make only wholesale sales, provided the exhibitor receives from each purchaser a copy of its Annual Resale Certificate. If an exhibitor fails to comply with these conditions, the exhibitor is required to register as a dealer if the exhibitor is a dealer with the definition of "dealer," as provided in s. 212.06(2), F.S.~~

~~3. An exhibitor is **not** required to register as a dealer if the agreement prohibits the sale of tangible personal property or services that are subject to this state's sales or use tax.~~

(b) Any person who displays tangible personal property or services at a convention or trade show is required to register as a dealer and collect and remit tax on any taxable sales made in this state, whether the sales were made before, during, or after the convention or trade show, and whether or not the sales resulted from the activities at the convention or trade show when:

1.~~4.~~ The written ~~An exhibitor **is** required to register as a dealer if the~~ agreement authorizes an ~~the~~ exhibitor to make retail sales in this state of taxable tangible personal property or services ;~~.~~

2.~~5.~~ The written ~~An exhibitor **is** required to register as a dealer if the~~ agreement authorizes an ~~the~~ exhibitor to make mail order sales, pursuant to s. 212.0596, F.S. ; or

3. The person is a dealer, as defined in s. 212.06(2), F.S., who displays tangible personal property or services at a convention or trade show without a written agreement as an exhibitor.

(d) An exhibitor who does not carry on any other activity in Florida that requires registration is NOT required to register as a dealer to collect sales tax when:

1. The written agreement prohibits the sale of taxable tangible personal property or taxable services; or

2. The written agreement provides that the exhibitor shall only make sales for the purposes of resale and the exhibitor obtains a copy of the purchaser's Annual Resale Certificate, as provided in Rule 12A-1.039, F.A.C.

~~6. Any person **is** required to register as a dealer if the person displays at a convention or trade show tangible personal property or services subject to this state's sales or use tax without a written agreement, if such person is a dealer with the definition of "dealer" in subsection (2) of section 212.06, F.S.~~

~~7. Any exhibitor or person required to register as a dealer is required to collect and remit sales tax on any taxable sales made in this state, whether the sales were made before, during, or after the convention or trade show, and whether the sales resulted from the activities at the convention or trade show.~~

~~8. Any person who conducts a convention or trade show is required to maintain and preserve copies of agreements as long as is required by s. 213.35, F.S., and to make agreements available, upon request, to the Department of Revenue for inspection and copying.~~

~~9. Each exhibitor is required to secure, maintain, and preserve as long as required by s. 213.35, F.S., a record of tangible personal property or services sold in this state, whether by retail sales or by wholesale sale, including, but not limited to, resale certificates, sales invoices, and related supporting documents, in accordance with generally accepted accounting standards.~~

~~(f) A person who is not a "dealer" under the provisions of paragraph (a) and whose only owned or leased property (including property owned or leased by an affiliate) in this state is located at the premises of a printer with which it has contracted for printing, if such property consists of the final printed product, or property from which the printed product is produced, is not required to obtain a dealer's certificate of registration from the Department. See Rule 12A-1.027, F.A.C.~~

~~(g)1. Any person who exclusively enters into a bona fide written agreement for continuous residence for longer than six months in duration to lease, let, rent, or grant a license to others to use, occupy, or enter upon any living quarter or sleeping or housekeeping accommodation in apartment houses (including duplex apartments), roominghouses, tourist camps, or trailer camps is not required to register with the Department. See subsection (5) below.~~

~~2. Any living quarter or sleeping or housekeeping accommodation in apartment houses (including duplex apartments), rooming houses, tourist camps, or trailer camps which is rented, leased, let, or in which a license has been granted to others to use, occupy, or enter upon such property under the terms of a bona fide written agreement for continuous residence for longer than six months in duration is not required to be registered with the Department.~~

(5) PENALTIES FOR FAILURE OR REFUSAL TO REGISTER.

(a)~~(2)~~ No person shall be issued any license for any authority within the State of Florida to engage in any business activity required to be registered with the Department until ~~business listed in paragraph (a) of subsection (1) of this rule unless~~ such person is the holder of a valid certificate of registration ~~Sales and Use Tax Certificate of Registration (form DR-11)~~.

~~(3) Sales tax certificates of registration may be refused to out of state applicants who have no permanent, licensed place of business in this state who makes no sales here, and who request the certificates for the sole purpose of making tax free purchases of items which they claim they will resell in their home states. See Rule 12A-1.064(2)(b), F.A.C.~~

(b) The Department is authorized to impose a $100 registration fee for each place of business for the failure or refusal of any person to register with the Department prior to engaging in or conducting business in this state as a dealer. 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 whether the $100 registration fee shall be imposed, the Executive Director or the Executive Director's designee in the responsible process shall consider and be guided by:

1. The prior history, if any, of the applicant's compliance or noncompliance with the revenue laws administered by the Department pursuant to s. 213.05, F.S.;

2. The applicant's ability to demonstrate the exercise of ordinary care and prudence through presenting to the Department facts and circumstances 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 whether the applicant is required to register;

3. Reliance upon the erroneous advice of a competent advisor that the applicant did not meet the 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, that 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;

4. The applicant's ability to demonstrate reliance upon another person to comply with the registration requirements on behalf of the applicant;

5. Whether the applicant, the applicant's agent, or the applicant's employee can demonstrate that the applicant exercised ordinary care and prudence in meeting the registration requirements once the applicant had actual or constructive knowledge of the requirements.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.03(1),(2), 212.04(4), 212.0596(1),(2), 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, 6-19-01, 10-2-01(1), 10-2-01(1), _____.

12A-1.097 Public Use Forms.

(1) The following public use forms and instructions are employed by the Department in its dealings with the public related to the administration of Chapter 212, F.S. These forms are hereby incorporated by reference in this rule.

(a) through (b) No change.

Form Number	Title	Effective Date
(2) DR-1	Application to Collect and/or Report Tax in Florida (R. ___ ~~08/01~~)	___ ~~08/02~~
(3) No change.		
(4)(a) DR-5	Application for Consumer's Certificate of Exemption (R. ___ ~~10/00~~)	___ ~~10/01~~
(b) DR-5N	Information and Instructions for Completing Application for Consumer's Certificate of Exemption (R. ___ ~~10/00~~)	___ ~~10/01~~
(5)(a) DR-7	Consolidated Sales and Use Tax Return (R. 01/03 ~~01/02~~)	___ ~~08/02~~
(b) DR-7N	Instructions for Consolidated Sales and Use Tax Return (R. 01/03 ~~01/02~~)	___ ~~08/02~~
(6)(a) DR-15	Sales and Use Tax Return (R. 01/03 ~~01/02~~)	___ ~~08/02~~
(b) DR-15CS	Sales and Use Tax Return (R. 01/03 ~~01/02~~)	___ ~~08/02~~
(c) DR-15CSN	DR-15 Sales and Use Tax Returns Instructions 2003 ~~2002~~ (R. 01/03 ~~01/02~~)	___ ~~08/02~~
(d) through (g) No change.		
(h) DR-15N	Instructions for 2003 ~~2002~~ DR-15 Sales and Use Tax Returns (R. 01/03 ~~01/02~~)	___ ~~08/02~~
(i) DR-15SA	Sales and Use Tax Return [Semi-Annual] (R. ___ ~~06/01~~)	___ ~~08/02~~
(j) DR-15SAN	Annual and Semiannual Sales and Use Tax Return Instructions (R. 01/03 ~~01/02~~)	___ ~~08/02~~
(k) through (n) No change.		
(7) through (9) No change.		
(10) DR-38	Tax Collector's Report-6% Sales Tax and/or Surtax (R. ___ ~~01/99~~)	___ ~~08/02~~
(11) through (20) No change.		

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.08(5)(f),(g),(h),(n),(o),(q),(15), 212.096, 212.17(6), 212.18(2),(3), 288.1258 FS. History–New 4-12-84, Formerly 12A-1.97, Amended 8-10-92, 11-30-97, 7-1-99, 4-2-00, 6-28-00, 6-19-01, 10-2-01, 10-21-01, 8-1-02, _____.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Solid Waste Fees	12A-12
RULE TITLES:	RULE NOS.:
Registration	12A-12.003
Reporting and Remitting Fees	12A-12.004

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-12.003, F.A.C. (Registration), is to provide the methods and requirements to register with the Department for purposes of the solid waste fees.

The purpose of the proposed amendments to Rule 12A-12.004, F.A.C. (Reporting and Remitting Fees), is to: (1) clarify when payments and returns are due to the Department; (2) provide that payment of fees required to be made by electronic funds transfer, returns for fees required to be submitted by electronic means, and returns when no fee is due, must be submitted to the Department as provided in Rule Chapter 12-24, F.A.C.; (3) remove guidelines on how to obtain forms from the Department redundant of Rule 12A-16.008, F.A.C.; (4) remove the unnecessary recitation of statutory provisions regarding the collection allowance and the computation of estimated tax; (5) clarify that failure to secure a return does not relieve the dealer of any fee liability or filing requirement; (6) clarify that the Department is not authorized to extend the time for any dealer to file a return or remit any tax due; and (7) provide that the penalties imposed under s. 212.12(2), F.S., apply to solid waste fees for purposes of late payments and the filing of returns.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is: (1) the proposed guidelines for registering with the Department for purposes of the solid waste fees imposed on tires and batteries; (2) the proposed guidelines for the reporting and the payment of the solid waste fees, including those required to be made by electronic means; (3) clarification of the application of penalties imposed under s. 212.12(2), F.S., for purposes of late payments and the filing of returns; and (4) the proposed removal of the recitation of statutory provisions and unnecessary provisions.

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1), 403.718(3)(b), 403.7185(3)(b) FS.

LAW IMPLEMENTED: 212.18(3), 213.755, 403.718, 403.7185 FS.

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

TIME AND DATE: 1:30 p.m., November 20, 2002

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0100

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 Nancy Purvis, (850)488-0712. If you are hearing-impaired or speech-impaired, please contact the Department by using the Florida Relay Service, which may be reached at 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

The Department's proposed rules are available on the Department's web site: http://www.myflorida.com/dor/rules.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT WORKSHOP 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, e-mail: youngj@dor.state.fl.us

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12A-12.003 Registration.

(1)(a) Every person desiring to engage in or conduct business in this state of making retail sales of new motor vehicle tires ~~engaged in or conducting business in this State of selling new tires at retail, as described in Rule 12A-12.001, F.A.C.,~~ or ~~selling~~ lead-acid batteries~~, as described in Rule 12A-12.0011, F.A.C.,~~ must register with the Department of Revenue and obtain a certificate of registration ~~be registered in order to do so~~. No additional registration is required for dealers who hold a valid certificate of registration ~~However, such person's registration for sales tax purposes is sufficient registration~~ for purposes of sales and use tax ~~the fees described in those rules~~.

(b) Registration with the Department for purposes of making retail sales of new motor vehicle tires or lead-acid batteries is available by using one of the following methods:

1. Registering through the Department's Internet site at the address shown in the parentheses (http://www.myflorida.com/dor/) using the Department's "e-Services" without payment of a registration fee; or

2. Filing an Application to Collect and/or Report Tax in Florida (form DR-1, incorporated by reference in Rule 12A-1.097, F.A.C.) with the Department, as indicated on the registration form, with the required $5 application fee.

(2) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1), 403.718(3)(b), 403.7185(3)(b) FS. Law Implemented 212.18(3), 403.718, 403.7185 FS. History–New 1-2-89, Amended 10-16-89, 12-16-91, 4-2-00, _____.

12A-12.004 Reporting and Remitting Fees.

~~(1) Except as state in this rule, the requirements of Rule 12A-1.056, F.A.C., are applicable to the reporting and remitting of the solid waste fees on new tires and new, used or remanufactured lead-acid batteries.~~

(1)~~(2)~~(a) A Solid Waste and Surcharge Return~~, (~~form DR-15SW, incorporated by reference in Rule 12A-16.008, F.A.C.), reporting new tires and lead-acid batteries sold at retail shall be filed with the Department. Except as provided in Rule Chapter 12-24, F.A.C., the ~~The~~ payment and the return must be delivered to ~~either reach the office of~~ the Department ~~of Revenue~~ or be postmarked on or before the 20th day of the month following the date of sale to avoid penalty and interest for late filing~~, as provided in Rule 12A-1.056(1), F.A.C~~. If the 20th day falls on Saturday, Sunday, or a legal holiday, payments accompanied by returns will be accepted as timely if postmarked or delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this rule, a legal holiday means a holiday that is observed by federal or state agencies as a legal holiday as this term is defined in Chapter 683, F.S., and s. 7503 of the Internal Revenue Code of 1986, as amended. A "legal holiday" pursuant to s. 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a Statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(b) When quarterly, semi-annual, or annual reporting is authorized by the Department pursuant to s. 212.11(1)(c), F.S., the fee is due the first day of the month following the authorized reporting period and becomes delinquent on the 21st day of that month. When a dealer is required to file the new tire fee and the lead-acid battery fee under a single account number on the same return, the dealer may not exceed the limitations provided in s. 212.11(1)(c), F.S., to be eligible to file on a quarterly, semi-annual, or annual basis.

(c) Payments and returns for reporting fees must be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C., when:

1. Payment of the fee is required to be made by electronic means;

2. Any return for reporting fees is required to be submitted by electronic means; or

3. No fees are due with a return for reporting fees.

~~(b) The Solid Waste and Surcharge Return, form DR-15SW, is incorporated by reference in Rule 12A-16.008, F.A.C. Copies of this form are available, without cost, 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 show inside the parentheses (http://www.myflorida.com/dor/). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.~~

~~(c) When a dealer is required to file the new tire fee and the lead-acid battery fee under a single account number on the same return, the dealer must not exceed the limitations, as provided in s. 212.11(1)(c), F.S. to be eligible to file on a quarterly or semiannual basis.~~

~~(3) The fees are not to be included in the computation of estimated taxes, as provided in s. 212.11(1)(a), F.S. No estimate of these fees is required to be filed.~~

~~(4) A dealer's collection allowance for remitting the fees is not allowed.~~

(2)~~(5)~~ The failure of any dealer to secure a tax return for reporting new tire and lead-acid battery fees does not relieve the dealer from the requirement to file a return or to remit fees due to the Department. The Department ~~As stated in subsection 12A-1.056(8), F.A.C., with reference to taxes, the department~~ is not authorized to extend the time for any dealer to file ~~make~~ any return or to pay any fee due ~~the fees; and the consequences described in that subsection are applicable to the fees~~.

(3)~~(6)~~ No change.

(4)~~(7)~~ Persons who are required to make a return or to pay fees imposed by ss. 403.718 and 403.7185, F.S., and administered under Chapter 212, F.S., and fail to do so will be subject to penalties, as provided in s. 212.12(2), F.S. ~~Delinquency penalties pursuant to s. 212.12(2)(a), F.S., are applicable to the fees.~~

Specific Authority 212.17(6), 212.18(2), 213.06(1), 403.718(3)(b), 403.7185(3)(b) FS. Law Implemented 213.755, 403.718, 403.7185 FS. History–New 1-2-89, Amended 10-16-89, 12-16-91, 4-12-94, 3-21-95, 3-20-96, 4-2-00, 6-19-01, _____.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Fee on the Sale or Lease of Motor Vehicles	12A-13
RULE TITLES:	RULE NOS.:
Scope of Rules	12A-13.001
Collection and Remittance of Fee	12A-13.002
Distribution of Fees Remitted to the Department of Revenue	12A-13.003

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-13.001, F.A.C. (Scope of Rules), is to remove reference to the distribution of the motor vehicle warranty fee from the provisions of Rule Chapter 12A-13, F.A.C.

The purpose of the proposed amendments to Rule 12A-13.002, F.A.C., is to: (1) change the title to "Collection and Remittance of Fee"; (2) implement the provisions of s. 54, Chapter 2002-218, L.O.F., which provide that the $2 motor vehicle warranty fee imposed on sales of motor vehicles that are titled and registered outside this state are to be remitted to the Department of Revenue; (3) provide guidelines on how to remit the fee to the Department; and (4) incorporate by reference the revisions to form DR-35, Motor Vehicle Warranty Remittance Fees.

The purpose of the proposed repeal of Rule 12A-13.003, F.A.C. (Distribution of Fees Remitted to the Department of Revenue), is to remove the unnecessary recitation of s. 681.117, F.S., regarding the distribution of motor vehicle warranty fees.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is: (1) the proposed guidelines for the remittance of the motor vehicle warranty fee for new motor vehicles titled and registered outside this state, as required by s. 54, Chapter 2002-218, L.O.F.; (2) the removal of redundant language regarding the distribution of funds received from the fee; and (3) the incorporation by reference of changes to form DR-35, Motor Vehicle Warranty Remittance Fee.

SPECIFIC AUTHORITY: 213.06(1) FS.

LAW IMPLEMENTED: 681.117 FS.

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

TIME AND DATE: 1:30 p.m., November 20, 2002

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0100

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 Nancy Purvis, (850)488-0712. If you are hearing-impaired or speech-impaired, please contact the Department by using the Florida Relay Service, which may be reached at 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

The Department's proposed rules are available on the Department's web site: http://www.myflorida.com/dor/rules.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT WORKSHOP IS: Gary Gray, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4729, e-mail (grayg@dor.state.fl.us).

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12A-13.001 Scope of Rules.

These rules govern the remittance ~~and distribution~~ of the two dollar ($2.00) fee which is to be collected by each motor vehicle dealer and by each person engaged in the business of leasing motor vehicles, from the consumer, including business entities, at the consummation of the sale of a new motor vehicle or at the time a lease agreement for a new motor vehicle is entered into pursuant to the provisions of s. ~~Section~~ 681.117, F.S. ~~Florida Statutes.~~

Specific Authority 213.06(1) FS. Law Implemented 681.117 FS. History–New 4-5-89, Amended _____.

12A-13.002 Collection and Remittance of Fee.

(1) Each motor vehicle dealer licensed under s. ~~Section~~ 320.27, F.S., and each person engaged in the business of leasing motor vehicles, is required to collect a $2 ~~shall remit the~~ fee ~~collected~~ from the consumer at the consummation of the sale of a new motor vehicle or at the time of entry into a lease agreement for a new motor vehicle ~~to the county tax collector or private tag agency acting as agent for the Department of Revenue at the time of application for certificate of title~~.

(2) All fees collected for new motor vehicles that are titled and registered in this state must be remitted to the county tax collector or private tag agency acting as agent for the Department of Revenue.

(a) Each county tax collector is required to file form DR-35, Motor Vehicle Warranty Remittance Fee Report (R. 06/02, hereby incorporated by reference), and remit such fees to the Department at or within the time or times prescribed in s. 219.07, F.S.

(b) Each private tag agent is required to file form DR-35, Motor Vehicle Warranty Remittance Fee Report, and remit such fees to the Department not later than seven (7) working days from the close of the week in which the private tag agency received the fees.

(3) All fees collected for new motor vehicles sold or leased by motor vehicle dealers in this state for titling and registering outside this state must be remitted directly to the Department. Dealers are required to file form DR-35, Motor Vehicle Warranty Remittance Fee Report, with the Department and remit the collected fees monthly. Dealers who have not sold or leased a new motor vehicle for titling and registering outside this state during the monthly reporting period are not required to file form DR-35 for that reporting period.

~~(4)(2) Each county tax collector shall file a Motor Vehicle Warranty Remittance Fee (DR-35), dated January 1989, which is hereby incorporated in this rule and made part of the rule by reference, showing the amount of such fees received, and shall remit such fees to the Department of Revenue at or within the time or times prescribed in Section 219.07, Florida Statutes.~~ The ~~form entitled~~ Motor Vehicle Warranty Remittance Fee Report (form DR-35) is available, without cost, by one or more of the following methods: 1) writing the Florida Department of Revenue, ~~Forms~~ Distribution Center, 168A 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 show inside the parentheses (http://www.myflorida.com/dor/). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.

~~(3) Each private tag agent shall file a Motor Vehicle Warranty Remittance Fee (DR-35), showing the amount of such fees received, and shall remit such fees to the Department of Revenue not later than seven (7) working days from the close of the week in which the private tag agency received the fees.~~

Specific Authority 213.06(1) FS. Law Implemented 681.117 FS. History–New 4-5-89, Amended _____.

12A-13.003 Distribution of Fees Remitted to the Department of Revenue.

Specific Authority 213.06(1) FS. Law Implemented 681.117 FS. History–New 4-5-89, Repealed _____.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Discretionary Sales Surtax	12A-15
RULE TITLES:	RULE NOS.:
Admissions; Tangible Personal Property; Services; Service Warranties; Real Property and Transient Accommodations; Use Tax	12A-15.003
Aircraft, Boats, Motor Vehicles, and Mobile Homes	12A-15.0035
Specific Limitations	12A-15.004
Construction Contractors Who Repair, Alter, Improve, and Construct Real Property; Refund of Surtax	12A-15.008
Occasional and Isolated Sales	12A-15.009
Interstate and Foreign Commerce	12A-15.013
Transition Rule	12A-15.014
Public Use Forms	12A-15.015

PURPOSE AND EFFECT: The purpose of the substantial rewording of Rule 12A-15.003, F.A.C.: is to: (1) change the title to "Admissions; Tangible Personal Property; Services; Service Warranties; Real Property and Transient Accommodations; Use Tax," to reflect the changes to the

proposed rule: (2) provide that guidelines for the imposition of the surtax on the sale, lease, rental, and use of any aircraft, boat, motor vehicle, or mobile home are provided in Rule 12A-15.0035, F.S., as proposed; (3) define the term "surtax county"; (4) provide that charges for admissions are subject to the surtax imposed in the county where the event is held; (5) provide that dealers who sell taxable tangible personal property are required to collect surtax when the property is delivered to a location within a surtax county at that county's rate; (5) provide that dealers are required to collect surtax when a mail-order is placed through a dealer's location within a surtax county, the mail-order is received in another state, and the property is delivered to a location within a surtax county; (6) provide that dealers are required to collect surtax on taxable services when the delivery of the service, or the tangible personal property representing the service, is made to a location within a surtax county; (7) provide that any person located within a surtax county who receives consideration for issuance of a service warranty is required to collect surtax; (8) provide that dealers are required to collect surtax on sales of electricity or natural or manufactured gas to any customer located within a surtax county; (9) provide that surtax is imposed on the lease, rental, or license to use real property or transient accommodations located within a surtax county; (10) provide that any person who is not required to be registered as a dealer who owes Florida use tax is not required to pay surtax when paying the use tax due; (11) provide that no additional surtax is due when the applicable sales tax and surtax have been paid at the time of purchase and the item is later used in a surtax county imposing a rate of surtax greater than that paid at the time of purchase; and (12) provide that registered dealers are required to pay surtax when required to pay Florida use tax and the property is used in a surtax county. The effect of this substantial rewording will provide current guidelines regarding the imposition of discretionary sales surtaxes on admissions, sales and use of tangible personal property and services, leases, rentals, and licenses to use real property or transient accommocations, and other transactions subject to the surtaxes.

The purpose of the proposed creation of Rule 12A-15.0035, F.A.C. (Aircraft, Boats, Motor Vehicles, and Mobile Homes), is to: (1) provide a single administrative rule regarding the imposition of the discretionary sales surtax on sales, purchases, and transfers of title on any aircraft, boat, mobile home, or motor vehicle required to be titled, licensed, or registered in this state; (2) define the terms "aircraft or boat," "mobile home, motor vehicle, or other vehicle," and "surtax county" for purposes of the rule; (3) provide that registered aircraft and boat dealers are required to collect surtax on sales of aircraft or boats that are delivered to a location within a surtax county; (4) provide that surtax is due by the owner of the aircraft or boat at the time of titling, registering, or documenting the aircraft or boat when it is imported to a location within a surtax county; (5) provide that surtax is due on a boat imported into Florida and subject to the saltwater fishing license fee required under s. 372.57(7), F.S., and subject to use tax under s. 212.06(8)(b), F.S., when the boat is used within a surtax county; (6) provide that registered mobile home, motor vehicle, or other vehicle dealers are required to collect surtax on sales of mobile homes, motor vehicles, or other vehicles when the residence address of the purchaser identified on the registration or title document is located within a surtax county; (7) provide that surtax is due by the purchaser of any mobile home, motor vehicle, or other vehicle when the purchaser's residential address appearing on the registration document is located within a surtax county; (8) provide guidelines on how credits for like taxes lawfully imposed and paid to another state, territory of the United States, or the District of Columbia apply to surtaxes due in Florida; and (9) provide examples to illustrate the imposition of the surtaxes imposed on aircraft, boats, mobile homes, motor vehicles, and other vehicles.

The purpose of the proposed amendments to Rule 12A-15.004, F.A.C., is to: (1) change the title to "Specific Limitations"; (2) provide guidelines regarding the limitation for the sales amount above $5,000 for any item of tangible personal property subject to the surtaxes; (3) provide when the surtax applies without limitation to sales of admissions, services, service warranties, prepaid calling arrangements, real property or transient accommodations; to parking, storage, or tie-down spaces at boat docks and marinas or for aircraft; and to any other transaction; (4) provides when lease payments are subject to the limitation; (5) provide that the limitation applies when the sale or purchase is a single sale and it is a sale of items normally sold in bulk or items that comprise a working unit or part of a working unit; (6) define and describe a "single sale," "items normally sold in bulk," and "items that comprise a working unit"; (7) provide guidelines for when multiple items of tangible personal property will not be aggregated into a single sale for purposes of the limitation; and (8) provide illustrative examples for the application of the surtax limitation.

The purpose of the proposed amendments to Rule 12A-15.008, F.A.C. (Construction Contractors Who Repair, Alter, Improve, and Construct Real Property; Refund of Surtax), is to: (1) provide guidelines regarding the application of surtax to purchases of tangible personal property and the fabricated cost of items for use in a lump sum, cost plus, fixed fee, guaranteed price, or similar type of contract; (2) provide guidelines for when the surtax limitation applies to the fabricated cost of items; (3) provide that surtax is imposed on tangible personal property sold by contractors under retail sale plus installation type contracts when the item is delivered to a location within a surtax county; (4) change the refund application from form DR-26, Application for Refund, to the form currently used by the Department in the administration of refunds for taxes administered under the provisions of Chapter 212, F.S., form DR-26S, Application for Refund-Sales and Use Tax; and (5) remove instructions on how to obtain a form from the Department that are provided in Rule 12-26.008, F.A.C.

The purpose of the proposed repeal of Rule 12A-15.009, F.A.C. (Occasional and Isolated Sales), is to repeal provisions regarding the occassional or isolated sales of aircraft, boats, mobile homes, and motor vehicles that will be provided in proposed Rule 12A-15.0035, F.A.C.

The purpose of the proposed repeal of Rule 12A-15.013, F.A.C. (Interstate and Foreign Commerce), is to remove unnecessary guidelines for the application of the discretionary sales surtax under s. 212.054(2)(b)4., F.S., to sales of property subject to the partial exemption provided in s. 212.08(8) or (9), F.S.

The purpose of the proposed amendments to Rule 12A-15.014, F.A.C. (Transition Rule), is to: (1) remove provisions for aircraft, boat, mobile home, and motor vehicle dealers that will be provided in proposed Rule 12A-15.0035, F.A.C.; (2) remove provisions regarding the imposition of surtax on taxable services that will be provided in the substantial rewording of Rule 12A-15.003, F.A.C.; and (3) remove obsolete provisions regarding the collection of surtax within a county imposing a new surtax or revising the current rate of surtax.

The purpose of the proposed repeal of Rule 12A-15.015, F.A.C. (Public Use Forms), is to: (1) remove the incorporation by reference of form DR-37, a form no longer used by the Department; and (2) remove the incorporation by reference of form DR-38, which is incorporated by reference in Rule 12A-1.097, F.A.C.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is the proposed changes to rule Chapter 12A-15, F.A.C., Discretionary Sales Surtax, regarding the imposition of discretionary sales surtaxes under s. 212.054, F.S., levied by a governing body of any county as authorized in s. 212.055, F.S.

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1) FS.

LAW IMPLEMENTED: 212.02(2),(4),(15),(16),(19),(20), 212.05(1), 212.0506, 212.054, 212.055, 212.0596, 212.0598, 212.06(1),(2),(4),(6),(8)-(10), 212.07(8), 212.08(4)(a),(8),(9), 212.14(5), 212.18(3) FS.

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

TIME AND DATE: 1:30 p.m., November 20, 2002

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0100

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 Nancy Purvis, (850)488-0712. If you are hearing-impaired or speech-impaired, please contact the Department by using the Florida Relay Service, which may be reached at 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

The Department's proposed rules are available on the Department's web site: http://www.myflorida.com/dor/rules.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT WORKSHOP IS: Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-9407, e-mail: youngj@dor.state.fl.us

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

(Substantial Rewording of Rule 12A-15.003 follows. See Florida Administrative Code for present text.)

12A-15.003 Admissions; Tangible Personal Property; Services; Service Warranties; Real Property and Transient Accommodations; Use Tax ~~Imposition and Payment of Tax~~.

(1) SCOPE.

(a) Section 212.054, F.S., provides for the imposition of discretionary sales surtaxes levied by a governing body of any county, as authorized in s. 212.055, F.S. This rule is intended to clarify the application of the surtaxes on admissions, sales and use of tangible personal property and services, leases, rentals, and licenses to use real property or transient accommodations, and other transactions.

(b) Rule 12A-15.0035, F.A.C. (Aircraft, Boats, Motor Vehicles, and Mobile Homes), governs the imposition of surtax on the sale, lease, rental, and use of any aircraft or boat that is required to be registered, licensed, titled, or documented in this state or by the United States Government and any motor vehicle or mobile home of a class or type that is required to be registered in this state.

(2) DEFINITION. For purposes of this rule, a "surtax county" means a county whose governing body levies a discretionary sales surtax pursuant to ss. 212.054 and 212.055, F.S.

(3) ADMISSIONS. When the event for which a taxable admission is charged is held within a surtax county, surtax is due at the rate imposed by the county where the event occurs. The seller of the admission to an event is required to collect surtax on the sales price or actual value of the admission, as provided in s. 212.04(1)(b), F.S., when the event is held within a surtax county.

(4) SALES OF TANGIBLE PERSONAL PROPERTY.

(a) A dealer who makes sales of tangible personal property is required to collect surtax when the taxable item of tangible personal property is delivered within a surtax county. The dealer is required to collect surtax at the rate imposed by the county where the delivery occurs, whether the delivery is made directly by the dealer or by a manufacturer or wholesaler who delivers the property to the purchaser on behalf of the dealer. When the item of tangible personal property is delivered within a county not imposing a surtax, the dealer is not required to collect surtax.

1. Example: A dealer in County A (a county not imposing a surtax) sells a washing machine to the purchaser, who takes possession of the washing machine at the dealer's location in County A. The purchaser then takes the washing machine to a location within County B (a county imposing a 1% surtax). The sales transaction occurs in County A. The selling dealer is required to collect sales tax on the sales price of the washing machine at the rate of 6% and is not required to collect surtax. No surtax is due by the purchaser or the seller when the washing machine is taken to County B.

2. Example: A dealer in County A (a county imposing a 1% surtax) sells a washing machine to a purchaser and delivers the washing machine to a location in County B (a surtax county imposing a 1/2% surtax). The sales transaction occurs in County B. The selling dealer is required to collect sales tax and surtax on the sales price of the washing machine at the rate of 6 1/2% (6% state sales tax and 1/2% surtax).

3. Example: A retail dealer of office equipment in County A (a county imposing a 1/2% surtax) sells office equipment to a customer in County B (a county imposing a 1% surtax). The retail dealer in County A has the out-of-state manufacturer of the office equipment deliver the equipment to the customer in County B. The transaction occurs in County B, where the delivery to the customer is made. The retail dealer in County A is required to collect and sales tax and surtax on the sales price of the office equipment at the rate of 7% (6% state sales tax and 1% surtax).

(b) When a florist who takes the original customer order to sell tangible personal property is located within a surtax county, the florist is required to collect surtax at the rate imposed where the florist is located. Florists are not required to collect surtax when they deliver tangible personal property to a location within a surtax county for another florist who received the original customer order.

(c) The sale of subscriptions to a newspaper, newsletter, magazine, or other periodical that is delivered to the customer by a carrier or by means other than by mail, such as home delivery, is subject to surtax when delivery of the publication is made to a location within a surtax county. The sales of subscriptions to periodicals that are delivered to a customer by mail are exempt. See Rule 12A-1.008, F.A.C., for the requirements to collect and remit sales tax on sales of periodicals and sales of subscriptions to periodicals.

(5) MAIL-ORDER SALES.

(a) A dealer who makes mail-order sales, as defined in Rule 12A-1.103, F.A.C., is required to collect surtax at the rate imposed by the surtax county where the taxable item of tangible personal property is delivered when:

1. The mail order is placed through a dealer's location within a surtax county and received by the dealer in another state; and

2. The item is delivered to a location within a surtax county.

(b)1. Example: A multi-state company has stores in Florida located in surtax counties and in counties that do not impose a surtax. A purchaser places a mail order with the company's mail-order division at the dealer's location in County A (a county imposing a 1% surtax). The out-of-state mail-order division ships the merchandise to purchaser's residence in County B (a county not imposing a surtax). Although the company has stores within a surtax county and the order is placed through the dealer's location within a surtax county, the item is not delivered within a surtax county. The selling dealer is not required to collect surtax.

2. Example: A multi-state company has stores in Florida located in surtax counties and in counties that do not impose a surtax. A purchaser places a mail order with the company's mail-order division at the dealer's location in County A (a county imposing a 1% surtax). The mail-order division ships the item to a residence in County B (a county imposing a 1/2% surtax). The transaction occurs in County B. The selling dealer is required to collect sales tax and surtax on the sales price of the merchandise at the rate of 6 1/2% (6% state tax and 1/2% surtax).

(6) SERVICES.

(a) When a dealer sells a taxable service, and delivery of the service, or tangible personal property representing a taxable service, is made to a location within a surtax county, the dealer is required to collect surtax at the rate imposed in the county where the services are provided or where the tangible personal property representing the services is delivered. If there is no reasonable evidence of delivery of a service, the sale of a service occurs in the county in which the purchaser accepts the invoice for services rendered.

(b)1. Example: A dealer in County A (a county not imposing a surtax) sells nonresidential cleaning services to a purchaser in County B (a surtax county imposing a 1% surtax) and performs those services at a location in County B. The service transaction occurs within County B. The selling dealer is required to collect sales tax and surtax on the sales price of the service at the rate of 7% (6% state sales tax and 1% surtax).

2. Example: A dealer in County A (a county imposing a 1/2% surtax) sells burglar monitoring services to a location in County B (a surtax county imposing a 1% surtax). The burglar monitoring service monitors the alarms at the purchaser's location in County B. The service transaction occurs within County B. The dealer is required to collect sales tax and surtax on the sales price of the service at the rate of 7% (6% state sales tax and 1% surtax).

3. Example: A dealer in County A (a county imposing a 1% surtax) sells armored car service to a bank in County B (a surtax county imposing a 1/2% surtax). The armored car service is provided to the bank's branches located in different counties and to the main bank. Under this example, the armored car service provider cannot reasonably allocate the service provided to each county. The main bank located in

County B receives the invoice for services rendered. Therefore, the service transaction occurs within County B. The dealer is required to collect sales tax and surtax on the sales price of the services at the rate of 6 1/2% (6% state sales tax and 1/2% surtax).

(7) SERVICE WARRANTIES.

(a) Any person who is located within a surtax county and who receives consideration for the issuance of a service warranty from the agreement holder is required to collect surtax at the rate imposed by the county where the consideration is received.

(b)1. Example: The person receiving consideration for the issuance of a service warranty is located in County A (a county imposing a 1% surtax). The service warranty covers a television located within County B (a county not imposing the surtax). The person receiving consideration for the service warranty is required to collect sales tax and surtax on the sales price of the service warranty at the rate of 7% (6% state sales tax and 1% surtax).

2. Example: The person receiving consideration for the issuance of a service warranty is located in County A (a county imposing a 1/2% surtax). The service warranty covers a motor vehicle, and the resident address of the owner identified on the title document is located in County B (a county imposing a 1% surtax). The person receiving consideration for the service warranty is required to collect sales tax and surtax on the sales price of the service warranty at the rate of 6 1/2% (6% state sales tax and 1/2% surtax).

(8) ELECTRIC AND GAS UTILITIES.

(a) When a dealer sells electricity or natural or manufactured gas to a consumer located within a surtax county, the dealer is required to collect surtax at the rate imposed by the county where the consumer is located. See Rule 12A-1.060, F.A.C.

(b) Any dealer who provides electricity or natural or manufactured gas to consumers located within a surtax county is required to register for sales tax purposes in each surtax county in which its consumers are located.

(9) REAL PROPERTY AND TRANSIENT ACCOMMODATIONS.

(a) When real property that is leased, rented, or upon which a license for use is granted is located within a surtax county, surtax on the rental or license payment is due at the rate imposed within the surtax county.

(b) When any transient accommodation is located within a surtax county, surtax is due at the rate imposed within the surtax county.

(c) The owner of real property or a transient accommodation that is leased, rented, or upon which a license for use is granted or the owner's representative is required to collect surtax at the rate imposed by the surtax county where the real property or transient accommodation is located.

(10) USE TAX.

(a) Any person who is not required to be a registered dealer but who owes use tax on tangible personal property purchased out-of-state, in another country, or through mail-order firms or the Internet is not required to pay surtax when paying the applicable use tax to the Department.

(b) Any person who purchases tangible personal property and pays the selling dealer the applicable sales tax and surtax due at the time of sale is not required to pay any additional surtax when the item of tangible personal property is later used within a surtax county imposing a surtax at a rate higher than the rate imposed at the time of sale.

(c) Any person, located within a surtax county, who owes use tax on newspapers, magazines, or other publications it produces for its own use or purchases without paying the applicable sales tax due is required to accrue and remit sales tax and surtax at the rate imposed by the surtax county where the publications are used. See Rule 12A-1.008, F.A.C.

(d) A dealer who is registered with the Department and who is required to pay use tax directly to the Department shall pay surtax in the following manner:

1. When tangible personal property is purchased, leased, or rented outside Florida for use in a surtax county, the dealer is required to pay surtax at the rate imposed by the surtax county where the tangible personal property is used.

2. When a dealer is authorized by the Department to accrue use tax on the lease, rental, or license to use real property located within a surtax county, the dealer is required to pay surtax at the rate imposed by the surtax county where the property is located.

3. When a dealer is required to pay use tax on services and when the primary benefit of the service is used or consumed within a surtax county, the dealer is required to pay surtax at the rate imposed by that surtax county, as provided in subsection 12A-1.0161(2), F.S.

4. For surtax due on the fabrication of items of tangible personal property by real property contractos for use in performing contracts, see Rule 12A-15.008, F.A.C.

(e)1. Example: A purchaser of tangible personal property in County A (a surtax county imposing a 1% surtax) has received authority from the Department to self-accrue and remit the state sales and use tax directly to the Department. The purchaser issues a copy of its direct pay permit to the seller of the property relieving the seller from the responsibility of collecting and remitting state sales tax on the transaction. The purchaser must self-accrue and pay sales tax and surtax at the rate of 7% (6% state use tax and 1% surtax).

2. Example: A dealer in County A (a surtax county imposing a 1% surtax) purchases office supplies from an out-of-state dealer that is not registered with Florida to collect sales tax. The purchasing dealer is required to pay use tax and surtax at the rate of 7% (6% state use tax and 1% surtax).

3. Example: A dealer purchases office supplies at the selling dealer's location in County A (a county not imposing a surtax) and takes possession of the supplies at the dealer's location. The dealer pays the applicable 6% sales tax to the selling dealer. The purchaser immediately transports the office supplies to the purchaser's business location in County B (a surtax imposing a 1% surtax). Florida sales tax has been properly collected on the office supplies, and no use tax is due; therefore, no additional surtax is due when the office supplies are used by the puchaser in the surtax county.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.05(1), 212.0506, 212.054, 212.055, 212.0596, 212.06(1),(4),(6),~~(7),~~(8),(10), 212.07(8), 212.18(3) FS. History–New 12-11-89, Amended 1-30-91, 5-12-92, 8-10-92, 11-16-93, 3-20-96, 6-19-01, 10-2-01, _____.

12A-15.0035 Aircraft, Boats, Motor Vehicles, and Mobile Homes.

(1) SCOPE. This rule is intended to provide guidelines regarding the application of surtaxes imposed on the sale, purchase, or transfer of title of any aircraft, boat, mobile home, motor vehicle, or other vehicle subject to the discretionary sales surtax imposed under ss. 212.054 and 212.055, F.S.

(2) TITLE CERTIFICATE, LICENSE, OR REGISTRATION.

(a) No title certificate may be issued on any aircraft, boat, mobile home, motor vehicle, or other vehicle, or, if no title certificate is required by law, no license or registration may be issued for any aircraft, boat, mobile home, motor vehicle, or other vehicle by any state agency unless there is filed with the application for title certificate or license or registration a receipt evidencing the payment of the applicable surtax issued by:

1. Any authorized aircraft, boat, mobile home, or motor vehicle dealer;

2. Any County Tax Collector;

3. Any licensed Private Tag Agency;

4. The Department of Highway Safety and Motor Vehicles; or

5. The Department of Revenue or its designated agents.

(b) Sales, purchases, and transfers of title submitted by persons who are not required to be registered as a dealer to any County Tax Collector, licensed Private Tag Agency, or the Department of Highway Safety and Motor Vehicles are subject to the surtax on the first $5,000 on all transfers submitted on or after the effective date of a county imposed surtax.

(3) DEFINITIONS. For purposes of this rule, the following definitions will be used:

(a) "Aircraft or boat" means an aircraft or boat of a class or type that is required to be registered, licensed, titled, or documented in this state or by the United States government.

(b) "Mobile home, motor vehicle, or other vehicle" means a mobile home, motor vehicle, or other vehicle of a class or type that is required to be registered in this state or in any other state.

(c) "Surtax county" means a county whose governing body levies a discretionary sales surtax pursuant to ss. 212.054 and 212.055, F.S.

(4) AIRCRAFT AND BOATS.

(a) A registered aircraft or boat dealer who makes a sale of an aircraft or boat is required to collect surtax when the aircraft or boat is delivered to a location within a surtax county. The dealer is required to collect surtax at the rate imposed by the county where the delivery occurs. When the aircraft or boat is delivered within a county not imposing a surtax, the selling dealer is not required to collect surtax.

(b)1. When the owner imports an aircraft or boat into a surtax county for use, consumption, distribution, or storage in that county, the aircraft or boat is subject to the surtax imposed by that county. The surtax shall be collected from the owner at the time of titling, registration, or documenting of the aircraft or boat, irrespective of whether such titling, registration, or documenting occurs in that surtax county.

2.a. A credit against any Florida use tax and surtax due on the use of an aircraft or boat is allowed to any purchaser who provides documentary evidence that a like tax has been lawfully imposed on the sale or use of the aircraft or boat and has been paid to another state, territory of the United States, or the District of Columbia. The credit allowed shall be the amount of legally imposed like tax paid to the other state, territory of the United States, or the District of Columbia. When the applicable tax credit is equal to or greater than the amount of tax or surtax due on the use of the aircraft or boat in a surtax county, no additional surtax is due. When the tax is paid to another state, territory of the United States, or District of Columbia is greater than the Florida sales tax and surtax due, no refund is due from the State of Florida.

b. No credit is allowed for any taxes paid to a foreign country.

3.a. No additional surtax is due on any aircraft or boat, except as provided in subparagraph b., used outside a surtax county for 6 months or longer before being imported into that surtax county. It is presumed that the aircraft or boat was not purchased for use in that surtax county, when the aircraft or boat is used outside that county for 6 months or longer before being imported into that county.

b. Any boat imported into Florida for which a saltwater fishing license fee is required to be paid pursuant to s. 372.57(7), F.S., for the boat or the captain, for the purpose of taking, attempting to take, or possessing any marine fish for noncommercial purposes, such as sport or pleasure fishing, is subject to use tax as provided in s. 212.06(8)(b), F.S. When the use of the boat is within a surtax county, the use of the boat is subject to the surtax rate imposed by that surtax county.

(c)1. Example: A dealer located in County A (a county imposing a 1% surtax) sells a boat to a purchaser who resides in County B (a county imposing a 1/2% surtax). The purchaser takes possession of the boat at the dealer's location in County A. The dealer is required to collect sales tax and surtax at the rate of 7% (6% state tax and 1% surtax). The purchaser immediately takes the boat to County B for storage and use in County B. No additional surtax is required to be paid when the boat is registered for use in County B, because a surtax greater than the rate imposed in County B has been paid.

2. Example: A purchaser who resides in County A (a county not imposing the surtax) purchases a boat in County A from an individual who is not a registered boat dealer. The purchaser takes possession of the boat in County A. The purchaser immediately takes the boat to County B (a county imposing a 1/2% surtax) to be used in County B. A use transaction occurs in County B. The purchaser is required to pay sales tax and surtax at the rate of 6 1/2% (6% state tax and ½% surtax) to any County Tax Collector or Licensed Private Tag Agent.

3. Example: A purchaser who resides in County A (a county imposing a 1/2% surtax) purchases a boat and uses the boat in County A. Nine months after the date of purchase, the purchaser moves the boat to County B (a county imposing a 1% surtax) for storage and to be used in County B. No additional surtax is due, because the boat was used in County A for 6 months or longer before being imported for use in County B.

(4) MOBILE HOME, MOTOR VEHICLE, OR OTHER VEHICLE.

(a) A registered mobile home, motor vehicle, or other vehicle dealer who makes sales of any mobile home or vehicle is required to collect surtax when the residence address of the purchaser identified on the registration or title document for the mobile home or vehicle is located within a surtax county. The dealer is required to collect surtax at the rate imposed by the county where the residence address of the purchaser is located. When the residence address of the purchaser is located within a county not imposing a surtax, the dealer is not required to collect a surtax.

(b) When the purchaser of any mobile home, motor vehicle, or other vehicle is a resident of a surtax county, surtax is due on the purchase at the rate imposed by the county of residence. The address appearing on, or to be recorded on, the registration document will determine the residence address of the purchaser. The surtax is required to be collected from the purchaser incident to the titling, registration, or documenting of the mobile home or vehicle, irrespective of whether such titling, registration, or documenting occurs in the surtax county.

(c)1. When mobile home, motor vehicle, or other vehicle that is required to be registered in this state is imported from another state into a surtax county for use, consumption, distribution, or storage within the surtax county, the mobile home or vehicle is subject to surtax when the user resides within the surtax county. The surtax is required to be collected from the user incident to the titling, registration, or documenting of the mobile home or vehicle, irrespective of whether such titling, registration, or documenting occurs in the surtax county.

2.a. A credit against any Florida use tax and surtax due on the use of any mobile home, motor vehicle, or other vehicle is allowed to any purchaser who provides documentary evidence that a lawfully imposed tax on the sale or use of the mobile home or vehicle has been paid to another state, territory of the United States, or the District of Columbia. The credit allowed shall be the amount of legally imposed tax paid to the other state, territory of the United States, or the District of Columbia. When the applicable tax credit is equal to or greater than the amount of tax or surtax due on the use of the mobile home or vehicle in a surtax county, no additional surtax is due. When the tax paid to another state, territory of the United States, or District of Columbia is greater than the Florida sales tax and surtax due, no refund is due from the State of Florida.

b. No credit is allowed for any taxes paid to a foreign country.

3. No additional surtax is due on any mobile home, motor vehicle, or other vehicle used outside a surtax county for 6 months or longer before being imported into that county. It is presumed that the mobile home or vehicle was not purchased for use in that surtax county, when the mobile home or vehicle is used outside that county for 6 months or longer before being imported into that county.

(d)1. Example: A mobile home dealer in County A (a county not imposing a surtax), sells a mobile home for $12,599. The residence address of the purchaser on the title document is in County B (a county imposing a 1/2% surtax). The transaction occurs in County B. The selling dealer is required to collect sales tax and surtax at the rate of 6 1/2% (6% state tax and 1/2% surtax) on the first $5,000 of the sales price and sales tax at the rate of 6% on the amount of the sales price in excess of $5,000.

2. Example: A person purchases a motor vehicle in Alabama for $7,500, and pays $150 state sales tax and $75 local sales tax for a total tax of $225 to the State of Alabama. Within 6 months from the date of purchase, the purchaser imports the vehicle into Florida for use in County A (a county imposing a 1/2% surtax). The purchaser's residential address on the registration document is located in County A. The use transaction occurs in County A. The amount of tax due prior to deducting the like tax paid in Alabama is $475 [($7,500 x .06) + ($5,000 x .005)]. Even though the local tax paid in Alabama exceeds the surtax due in County A, the total amount of like tax paid in Alabama will be allowed as a credit against the Florida use tax and surtax due in County A. A credit of $225 tax paid in Alabama will be allowed. The purchaser is required

to pay $250 in tax and surtax due [$475 Florida tax and surtax due – $225] to any County Tax Collector or licensed Private Tag Agent when registering the vehicle in this state.

3. Example: A person purchases, titles, and registers a motor vehicle in Great Britain and pays the appropriate taxes imposed in Great Britain. One year later, the purchaser imports the vehicle into Florida for use in County A (a county imposing a 1% surtax). The purchaser's address on the registration document is located within County A. The use transaction occurs in County A. The purchaser must pay Florida use tax and surtax due on the first $5,000 of the taxable amount and use tax at the rate of 6% on the taxable amount in excess of $5000.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.05(1), 212.054, 212.055, 212.06(1),(4),(6),(7),(8),(10), 212.07(8), 212.18(3) FS. History–New _____.

12A-15.004 Specific Limitations ~~Exemptions~~.

(1) SCOPE. This rule is intended to provide guidelines regarding the limitation for the sales amount above $5,000 provided for any item of tangible personal property subject to the discretionary sales surtax imposed under ss. 212.054 and 212.055, F.S. For the application of the limitation to the fabrication of items used in the performance of a real property contract, see Rule 12A-15.008, F.A.C. ~~Except as provided in this section, any transaction subject to the state sales and use tax imposed on sales, use, rentals, admissions, and other transactions by Chapter 212, F.S., is subject to the surtax, if the transaction occurs in a taxing county. A transaction that is not subject to state sales and use tax is not subject to the surtax.~~

(2)(a)~~1.~~ The surtax does not apply to the sales amount above $5,000 on any item of tangible personal property. However, the surtax does apply to the first $5,000 of the sales amount on the sale, use, lease, rental, or license to use any item of tangible personal property, including electric power or energy ~~and to all other transactions which are subject to the state tax imposed on sales, use, rentals, and other transactions by Chapter 212, F.S., without limitation, except as provided in (3) below~~. The surtax applies, without limitation, to sales of admissions; sales and uses of services; sales of service warranties; charges for prepaid calling arrangements; leases, rentals, and licenses to use real property or transient accommodations; leases or rentals of parking or storage space for motor vehicles in parking lots or garages, docking or storage space in boat docks and marinas, and tie-down or storage space for aircraft; and all other transactions subject to the discretionary sales surtax.

(b) Each lease or rental payment made, or contracted to be paid, for the lease or rental of tangible personal property by a lessee or renter represents one taxable transaction. The surtax applies to the first $5,000 of the lease or rental payment when the lease or rental payment is due. Liability for the immediate payment of the tax on all the payments required under the lease or rental does not arise at the time of the execution of the lease or rental.

(c)1.~~2.a.~~ Example: A motor vehicle dealer ~~in a county imposing the surtax~~ sells a vehicle for $12,000 to a purchaser whose ~~and the purchaser's~~ address on the registration or title document is in a county imposing the surtax. The first $5,000 of the sales amount is subject to the surtax and the amount over $5,000 (i.e., $7,000) is not subject to the surtax.

2.~~b.~~ Example: A person leases real property subject to the state sales tax for $10,000 a month. The entire monthly rental (i.e., $10,000) is subject to the surtax, since the $5,000 limitation only applies to items of tangible personal property.

3.~~c.~~ Example: ABC, Inc., a consumer of electric power, is located within a county imposing the surtax. The consumer (a commercial account) receives a bill in the amount of $6,700. The first $5,000 of the sales amount is subject to the surtax and the amount over $5,000 (i.e., $1,700) is not subject to the surtax.

4.~~d.~~ Example: A security company provides security services to a shopping mall located in a surtax county for $8,000 a month. The entire monthly charge for security services (i.e., $8,000) is subject to the surtax, since the $5,000 limitation only applies to items of tangible personal property.

(3)(b)1. When multiple ~~For purposes of administering the $5,000 limitation on any item of tangible personal property, if two or more taxable~~ items of tangible personal property are sold by a dealer to the same purchaser at the same time ~~and~~, the $5,000 limitation applies when the sale or purchase is a single sale that meets the requirements of paragraph (a) and is a sale of items normally sold in bulk or items that comprise a working unit, or a part of a working unit, that meets the requirements of paragraph (b) ~~under generally accepted business practice or industry standards or usage, are normally sold in bulk or are items which, when assembled, comprise a working unit or part of a working unit, such items shall be considered a single item for purposes of the $5,000 limitation when supported by a charge ticket, sales slip, invoice, or other tangible evidence of a single sale or rental~~.

(a) SINGLE SALE. The sale or purchase of multiple items of tangible personal property must be a single sale in which the purchaser buys all items of tangible personal property from the dealer at the same time.

1. There must be an invoice, sales slip, charge ticket, written purchase order or agreement, or other tangible evidence of sale that establishes the items were sold in a single sale.

2. A single sale of items of tangible personal property that is documented by a written purchase order or written agreement executed between a purchaser and the selling dealer must:

a. Provide for a specific quantity of tangible personal property; and

b. If delivery of all items does not occur at the same time, provide for a specific time period within which delivery of the tangible personal property to the purchaser must be made.

3. Each delivery of items of tangible personal property, under the provisions of a written purchase order or written agreement that does not specify the quantity and the time period during which delivery of the property will occur, will be a single sale.

4.a. Example: A developer and an appliance distributor enter an agreement pursuant to which the developer purchases 250 refrigerators for an apartment complex project. Delivery will be in 10 loads of 25 refrigerators, as buildings in the complex are completed, with invoicing to follow each delivery and final delivery to occur no later than 10 months after the contract is signed. The 250 refrigerators will be viewed as purchased in a single sale, because the agreement specified both the quantity to be purchased and the time period in which delivery will occur.

b. Example: A road contractor enters a contract to purchase all of the asphalt needed for a certain job from an asphalt dealer that is willing to guarantee delivery as needed over a six-month period for a set price per ton, with invoicing to follow each delivery. Each delivery is a separate sale, because the agreement does not specify the quantity of asphalt to be purchased.

(b) ITEMS NORMALLY SOLD IN BULK OR ITEMS THAT COMPRISE A WORKING UNIT. A single sale must be a sale of items of tangible personal property that meets at least one of the following conditions:

1. The items are multiple quantities of a single item that the dealer normally sells in multiple quantities in the normal course of the dealer's business or that the purchaser normally buys in multiple quantities in the normal course of the purchaser's business;

2. The items are normally sold as a set or a unit and the utility of each for its intended purposes is dependent on the set being complete;

3. The items are normally sold in single sale by the seller to the purchaser for use in the normal business practice of the purchaser as an integrated unit; or

4. The items are component parts that have no utility unless assembled with each other to form a working unit or part of a working unit.

(c) MULTIPLE ITEMS OF TANGIBLE PERSONAL PROPERTY IN A SINGLE SALE. Multiple items of tangible personal property sold or purchased under a single sales transaction that are not normally sold in bulk or that, when assembled, will not comprise a working unit, part of a working unit, or comprise an integrated unit to be used in the purchaser's normal business practice, cannot be aggregated into a single sale for purposes of the surtax limitation.

~~2.a. Example: An automobile dealer normally sells automobiles or trucks one at a time or one per invoice. Thus, if the dealer lists two or more automobiles or trucks on the same invoice, the surtax would apply to the first $5,000 of the charge for each automobile or truck.~~

(d) EXAMPLES.

1.~~b. Example:~~ When ~~Where~~ furniture dealers advertise, sell, and invoice furniture suites or sets for a certain amount, without itemization of individual pieces that make up the suite or set, the surtax applies to the first $5,000 of each such suite or set of furniture. If the invoice contains other items not included in the suite or set, the surtax applies to the first $5,000 of each of these items. When furniture dealers sell individual pieces of furniture and separately itemize each piece, the surtax applies to the first $5,000 of each piece. ~~Further, in the case of furniture dealers who sell and invoice furniture by the piece, each piece is subject to the surtax on the first $5,000.~~

2.~~c. Example:~~ When a heating and air conditioning contractor ~~distributor/dealer~~, who normally purchases ~~makes bulk sales (that is, sells~~ several heating and air conditioning units at the same time, purchases several units from a selling dealer who~~)~~ bills for the ~~such~~ units on one invoice, the surtax applies to the first $5,000 on the total amount of the invoice.

~~d. Example: In the case of heating and air conditioning dealers who do not normally make bulk sales, the surtax applies to the first $5,000 on each unit, even though the dealer may sell and list several units on one invoice.~~

~~e. Example: Piping, duct material, wiring, and other similar items used to make up the heating and air conditioning system are normally sold in bulk. Thus, if the selling dealer sells and invoices that type of material on one invoice, the surtax applies to the first $5,000 for the total of these materials.~~

3.~~f. Example:~~ When a lumber and building supply dealer sells lumber of various kinds and sizes, nails of different sizes, rolls of felt, squares of shingles, and ~~or~~ other building materials that are used by the purchaser to comprise a working unit (e.g., a roof), ~~normally sold in bulk and the sale is on one invoice, the sale will be considered to be a single item and~~ the surtax applies to the first $5,000 of the total amount of the single sale ~~invoice~~. If~~,~~ the single sale or purchase ~~however, the invoice~~ contains items that are not used to comprise the working unit (e.g., the roof), ~~normally sold in bulk (e.g., hammers, saws, shovels, power drills, refrigerators, stoves, washing machines, dryers and other appliances, ceiling fans)~~ the surtax applies ~~will apply~~ to the first $5,000 of ~~for~~ each item separately itemized on the sales invoice or other evidence of sale ~~not usually sold in bulk~~. Examples of such items that are used by the contractor to construct the roof, but do not become a part of the roof when completed are hammers, saws, shovels, and power tools.

~~(c) In the lease or rental of tangible personal property, each lease or rental payment made by a lessee or rentee, or contracted to be paid, by a lessee or rentee represents one~~

~~taxable transaction. Liability for the immediate payment of the tax on all the payments required under the lease or rental does not arise at the time of the execution of the lease or rental.~~

~~(d) Where a purchase order is issued by the purchaser to the selling dealer, or an agreement is made between the selling dealer and the purchaser which is reduced to writing, that provides for the purchase of a specific quantity of tangible personal property which, according to the terms and conditions set out in the purchase order or agreement, is to be delivered to the purchaser within a definite specified time, such transaction constitutes one sale for purposes of the $5,000 limitation. Delivery of the tangible personal property so ordered within the time specified in the purchase order or agreement will constitute one sale notwithstanding that due to the nature of the property it must be delivered in installments or that multiple deliveries may be necessary to consummate delivery to the purchaser. In the absence of a written purchase order or written agreement reflecting the above conditions, each individual delivery of tangible personal property is to be considered one sale. Each individual delivery of tangible personal property on purchase orders for indefinite quantities or open-end purchase orders is considered to be one sale.~~

~~(e) Where a contractor fabricates an item of tangible personal property for his own consumption and use in the performance of contracts for the construction or improvement of real property the $5,000 limitation is applicable only to those cases where the contract, or agreement which is reduced to writing, specifies the particular project on which the item of property is to be used.~~

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(15),(19), 212.05(1), 212.054~~(2)~~, 212.055 FS. History–New 12-11-89, Amended 5-12-92, 3-17-93, 11-16-93, 10-2-01, _____.

12A-15.008 Construction Contractors Who Repair, Alter, Improve, and Construct Real Property; Refund of Surtax.

(1) LUMP SUM, COST PLUS, FIXED FEE, OR GUARANTEED PRICE CONTRACTS.

(a)~~1.~~ Contractors or subcontractors purchasing tangible personal property from a dealer ~~in a taxing county~~ for use in a lump sum, cost plus, fixed fee, guaranteed price, or similar type ~~any kind~~ of contract~~, except one falling in paragraph (b) below,~~ must pay the surtax to the selling dealer, when the property is delivered ~~if delivery is made~~ to a location within a county imposing the surtax. The surtax to be paid to the selling dealer is based on the rate imposed in the county where delivery of the tangible personal property is made. When the tangible personal property is delivered to a location within a county not imposing the surtax, no surtax is due.

~~2. Contractors or subcontractors purchasing tangible personal property from a dealer located in a county that does not impose the surtax for use in a lump sum, cost plus, fixed fee, guaranteed price, or any kind of contract, except one falling in paragraph (b) below, must pay the surtax to the selling dealer if delivery is made by the selling dealer to a location within a county imposing the surtax.~~

(b)~~3.~~ A contractor or subcontractor who is not required to be a registered dealer and who owes use tax on ~~If~~ taxable items of tangible personal property purchased out-of-state, in another country, or through mail-order firms or the Internet for use in a lump sum, cost plus, fixed fee, guaranteed price, or similar type of contract is not required to pay surtax when paying the applicable use tax to the Department ~~purchased in such manner that the state sales tax would not be applicable at the time of purchase, are imported into a taxing county for use, or consumption in the performance of any kind of contract, except one falling in paragraph (b) below, the surtax is not due on the tangible personal property unless the contractor or subcontractor is a registered dealer in the taxing county~~.

(c)1.~~4.~~ Contractors and subcontractors are required to pay use tax on the fabricated cost of items of tangible personal property they manufacture, produce, compound, process, or fabricate for their own use in performing contracts. When the contractor or subcontractor owes use tax on the fabricated cost of items manufactured, produced, compounded, processed, or fabricated for use at a manufacturing plant site located within a surtax county, the contractor or subcontractor is required to pay surtax on such fabrication cost. ~~If the contractor or subcontractor purchases tangible personal property for use or consumption in the performance of a real property contract from a dealer located within or without a taxing county, and pays the applicable sales tax and surtax to the dealer, and further fabricates such property at a manufacturing plant site in a taxing county, such fabrication costs are subject to both sales tax and surtax.~~ Labor ~~Fabricated labor~~ incurred at the job site where the item will be incorporated into a real property improvement or transportation from the plant where an item was fabricated to the job site is not subject to tax or surtax. ~~For the purpose of this subsection "job site' means a temporary site where fabrication is performed for a specific job. The "job site" becomes a "manufacturing plant site" when fabrication is performed for any job other than the specific job for which the site was selected.~~ See Rule 12A-1.043~~(1)~~, F.A.C., for determining fabrication cost.

2. Contractors who pay sales tax to vendors for direct materials that are incorporated into fabricated items of tangible personal property are not required to pay use tax on the cost of those materials. Contractors who are registered as dealers may elect either to pay sales tax to their vendors on direct materials or to extend a copy of their Annual Resale Certificate and accrue use tax when the materials are used for fabrication. If sales tax is paid on the purchase of direct materials at the time of purchase, the county of delivery determines whether surtax is due. If use tax is accrued at the time of fabrication of the items, the surtax must also be accrued when the fabrication occurs within a county imposing a surtax.

3. Contractors and subcontractors who are located within a county imposing a surtax, and who have elected and have been authorized by the Department to use an alternate tax calculation method, must compute the surtax on the appropriate percentage of the contract price at the same time and in the same manner in which use tax is computed.

4. The $5,000 limitation is applicable to the fabricated cost when the written contract or agreement specifies the particular project for which the fabricated item of tangible personal property is to be used.

5. Example: A contractor operates a roofing tile manufacturing plant in a surtax county. The contractor sells roofing tiles, as well as uses roofing tiles in performing real property contracts. The contractor is a registered dealer and purchases raw materials tax exempt by extending a copy of the dealer's Annual Resale Certificate. The contractor enters a contract to furnish materials and install a tile roof for $15,000. The direct materials cost is $5,000 and the other taxable fabrication costs are $3,000, for a total of $8,000 on which use tax must be accrued. The contractor must accrue sales tax and surtax, because the fabrication occurs at the plant located within a surtax county. If roofing contractors were permitted to accrue use tax on 40 percent of the contract price, use tax would be due on $6,000, because the fabrication occurred at the plant located within a surtax county. Whether the contractor computes use tax on $8,000 actual cost or on $6,000 on a percent of contract price basis, surtax only needs to be accrued on $5,000, because the fabricated tangible personal property is identified to the specific contract.

(2) RETAIL SALE PLUS INSTALLATION CONTRACTS.

~~(b)~~ Contractors or subcontractors performing contracts where the contractor or subcontractor agrees to sell specifically described and itemized materials and supplies at an agreed price or at the regular retail price and to complete the work either for an additional agreed price or on the basis of time consumed, are required to register as dealers. They must collect ~~the~~ surtax from customers on the sales price of the materials when the materials are delivered to a county imposing the surtax at the rate imposed by that county ~~if the contractor or subcontractor is in a taxing county and delivery is made within the taxing county or in another county imposing the surtax~~. ~~Contractors or subcontractors must also collect the surtax if the contractor or subcontractor is located in a county that does not impose the surtax and delivery is made to another county imposing the surtax.~~

~~(c) Contractors and subcontractors in a taxing county performing any kind of contract, except one falling in paragraph (b) above, who have been authorized and elected to use an alternate tax compliance method, must compute the surtax on the appropriate percentage of the contract price at the same time and in the same manner in which sales and use tax is computed.~~

(3)~~(d)~~ The ~~For the purpose of determining the~~ application of surtax to sales, fabrication, use, consumption, distribution, or storage of tangible personal property to or by contractors or subcontractors~~, it~~ shall be determined on the basis of the date of each invoice for such sales, the date such fabrication occurred, or the date of importation for use, consumption, distribution, or storage. The~~, not on the~~ date the written contract was entered into, the date of the oral contract, or the date of the purchase order does not determine the application of the surtax.

(4)~~(2)~~(a) In the case of written contracts executed (signed) prior to the effective date of any surtax, for the repair, alteration, improvement, remodeling, or construction of real property, the surtax shall be paid by the contractor responsible for the performance of the contract. However, the contractor responsible for the performance of the written contract signed prior to the effective date of any such surtax may apply for one refund per contract of any such surtax paid by the contractor responsible for the performance of the contract on materials necessary for the completion of the contract.

(b)~~1.~~ To receive the refund, the contractor responsible for the performance of the contract must file an Application for Refund-Sales and Use Tax ~~from the State of Florida~~ (form DR-26S~~)~~, incorporated by reference in Rule 12-26.008, F.A.C.)~~, containing a sworn statement, signed by the applicant or its representative, attesting to the validity of the application for refund.~~ Such application for refund shall be made no later than 15 months following the initial imposition of the surtax in the county in which the transaction subject to the initial imposition of the surtax occurred.

~~2. Applications for Refund from the State of Florida (DR-26) are available, without cost, 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://www.myflorida.com/dor/). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.~~

(c) The contractor must submit the information as provided in subparagraphs ~~shown in~~ 1. through 5. ~~below~~, with the Application for Refund-Sales and Use Tax ~~from the State of Florida~~ (form DR-26S). Upon approval of a completed application, the Department ~~of Revenue~~ shall, within 30 days, certify to the county or counties information necessary for issuance of a refund directly to the applicant of said taxes.

Counties are authorized to issue refunds for this purpose and shall set aside from the proceeds of the surtax a sum sufficient to pay any refund lawfully due.

1. through 5. No change.

(d) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(4),(16),(20), 212.054, 212.055, 212.06(1), 212.14(5), ~~212.17~~ FS. History–New 12-11-89, Amended 5-12-92, 8-10-92, 11-16-93, 3-20-96, _____.

12A-15.009 Occasional and Isolated Sales.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(2), 212.05(1), 212.054, 212.055, 212.06(1),(2),(10) FS. History–New 12-11-89, Amended 5-12-92, Repealed _____.

12A-15.013 Interstate and Foreign Commerce.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.054, 212.055, 212.0598, 212.06(2)(d), 212.08(4)(a),(8),(9) FS. History–New 12-11-89, Amended 11-16-93, 3-20-96, Repealed _____.

12A-15.014 Transition Rule.

(1) through (2) No change.

~~(3) Motor Vehicle, Mobile Home, Boat, and Aircraft Dealers.~~

~~(a)1. Dealers in motor vehicles, mobile homes, boats, and aircraft who issue sales invoices to their customers, dated before the effective date of any such surtax, shall charge the applicable 6% tax rate, even though delivery is not made until after the effective date of the surtax. To qualify for the 6% tax rate, the provisions established in subsection (1) must be met.~~

~~2. For sales and purchases, other than by dealers, and for all other transfers of title, the County Tax Collectors and the Department of Highway Safety and Motor Vehicles will require tax at the 6% rate, plus the surtax rate on the first $5,000, on all transfers of title submitted on or after the effective date of any such surtax.~~

(3)~~(4)~~ No change.

~~(5) Effective January 1, 1994, services, including detective, burglar protection, and other protection services, nonresidential cleaning and nonresidential pest control services which are subject to the state tax imposed by Chapter 212, F.S., are subject to the surtax.~~

~~(6)(a) A dealer located outside a county who sells tangible personal property or taxable services and delivers the tangible personal property or taxable services into a county imposing the surtax is liable for collection of the surtax as follows:~~

~~1. If the county into which the tangible personal property or services are delivered adopts or revises the surtax rate between January 1 and November 9 of any year, the dealer is not required to collect the surtax at the new or revised rate on taxable transactions until February 1 of the next year. For example: A county imposes a new surtax on October 1, 1994. Dealers located outside the county which sell and deliver tangible personal property or services into the county must begin collecting the surtax on February 1, 1995.~~

~~2. If the county adopts or revises the surtax between November 9 and December 31 of any year, dealers located outside the county are not required to collect the surtax at the new or revised rate until the 14th month following that year (beginning February 1 of the year following the year after the adoption or revision). For example: A county imposes a new surtax beginning December 1, 1994. Dealers located outside the county which sell and deliver tangible personal property or services into the county imposing the new surtax must begin collecting the surtax on February 1, 1996.~~

~~3. The surtax rates to be collected on or after February 1 of any year by a dealer who sells tangible personal property or taxable services and delivers tangible personal property or taxable services into counties imposing the surtax will be provided in the sales and use tax return coupon booklet mailed each year to all dealers by the Department of Revenue.~~

~~(b) Dealers located in a surtax county who sell and deliver tangible personal property or services within the county in which they are located are required to collect and remit the adopted or revised rate for that county upon the effective date of any such surtax.~~

~~(c) Dealers who collect surtax should indicate on the back of the Sales and Use Tax return (Form DR-15) sales and/or purchases that are exempt or subject to the surtax.~~

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.05(1), 212.054, 212.055, 212.06(10) FS. History–New 12-11-89, Amended 11-16-93, 3-20-96, 10-2-01, _____.

12A-15.015 Public Use Forms.

~~In addition to the forms prescribed in Chapter 12A-1, F.A.C., the following public use forms and instructions are employed by the Department of Revenue in its dealings with the public in administering the surtax. These forms are hereby incorporated by reference in this rule. Copies of these forms are available, without cost, 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://www.myflorida.com/dor/). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.~~

~~Form Number~~	~~Title~~	~~Effective Date~~
~~(1) DR-37~~	~~Motor Vehicle/Mobile Home Dealers Proof of Payment of Discretionary Tax Return (N. 02/88)~~	~~02/88~~
~~(2) DR-38~~	~~Tax Collector's Report-6% Sales Tax and/or Surtax (r. 09/95)~~	~~02/96~~

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.054, 212.055 FS. History–New 12-11-89, Amended 8-10-92, 9-14-93, 3-20-96, 6-19-01, Repealed _____.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Rental Car Surcharge	12A-16
RULE TITLES:	RULE NOS.:
Registration	12A-16.004
Surcharge Returns and Filing Requirements	12A-16.006
Interstate and Foreign Commerce	12A-16.007
Public Use Forms	12A-16.008

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-16.004, F.A.C. (Registration), is to provide the methods and requirements to register with the Department for purposes of the rental car surcharge.

The purpose of the proposed amendments to Rule 12A-16.006, F.A.C., is to: (1) change the title to "Surcharge Returns and Filing Requirements"; (2) remove the unnecessary recitation of statutory provisions regarding the collection allowance and the computation of estimated taxes; (3) provide that payment of the rental car surcharge required to be made by electronic means, returns required to be submitted by electronic means, and returns when no surcharge is due must be submitted to the Department as provided in Rule Chapter 12-24, F.A.C.; and (4) provide that the penalties imposed under s. 212.12(2), F.S., for purposes of late payments and returns applies to the rental car surcharge.

The purpose of the proposed repeal of Rule 12A-16.007, F.A.C. (Interstate and Foreign Commerce) is to remove unnecessary guidelines for the application of the partial exemption in s. 212.08(9)(b), F.S., to the rental car surcharge imposed under s. 212.0606, F.S.

The purpose of the proposed amendments to Rule 12A-16.008, F.A.C. (Public Use Forms), is to adopt by reference changes to form DR-15SW, Solid Waste and Surcharge Return, and provide necessary technical changes.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is: (1) the proposed guidelines and requirements for registering with the Department for purposes of the rental car surcharge; (2) the proposed guidelines for the reporting and the payment of the rental car surcharge, including those required to be made by electronic means; (3) clarification of the application of the penalties imposed under s. 212.12(2), F.S., for purposes of late payments and the filing of returns; and (4) the proposed removal of unnecessary recitation of statutory provisions and unnecessary provisions.

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1) FS.

LAW IMPLEMENTED: 212.0606, 212.07, 212.08(9), 212.11, 212.12(2),(3),(4), 212.13, 212.18(3), 213.235, 376.70, 403.717, 403.718, 403.7185 FS.

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

TIME AND DATE: 1:30 p.m., November 20, 2002

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0100

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 Nancy Purvis, (850)488-0712. If you are hearing-impaired or speech-impaired, please contact the Department by using the Florida Relay Service, which may be reached at 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

The Department's proposed rules are available on the Department's web site: http://www.myflorida.com/dor/rules.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT WORKSHOP 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, e-mail: youngj@dor.state.fl.us

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12A-16.004 Registration.

(1) Before any person may engage in or conduct business in this state of leasing or renting any for hire passenger motor vehicle, that person must register with the Department for sales and use tax purposes and obtain a separate certificate of registration for each place of business ~~first file an Application to Collect and/or Report Tax in Florida (form DR-1)~~. Registration as a sales tax dealer is sufficient registration for purposes of the surcharge. ~~See Rule 12A-16.008, F.A.C., for information on how to obtain forms.~~

(2)(a) Registration with the Department for sales and use tax purposes is available by using one of the following methods:

1. Registering through the Department's Internet site at the address shown in the parentheses (http://www.myflorida.com/dor/) using the Department's "e-Services" without payment of a registration fee; or

2. Filing an Application to Collect and/or Report Tax in Florida (form DR-1, incorporated by reference in Rule 12A-1.097, F.A.C.) with the Department, as indicated on the form, with the required $5 registration fee.

(b) A separate application is required for each place of business.

(c) Each application submitted to the Department must contain sufficient information to facilitate the processing of the application.

(3)~~(2)~~ No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.0606, 212.18(3) FS. History–New 11-14-89, Amended 8-10-92, 3-21-95, 6-19-01, _____.

12A-16.006 Surcharge Returns and Filing Requirements ~~Regulations~~.

(1)(a) Except as provided in Rule Chapter 12-24, F.A.C., the ~~The~~ surcharge for each month shall be due to the Department ~~of Revenue~~ on the first day of the month following the date the lease or rental payments are to be made by the lessee or renter, under the terms of the lease or rental agreement~~, and shall be delinquent on the twenty-first of each month~~. The payment and return must be delivered to ~~either reach the office of~~ the Department ~~of Revenue~~ or be postmarked on or before the 20th day of the month following the date the lease or rental payments are to be made by the lessee or renter, under the terms of the lease or rental agreement, to avoid penalty and interest for late filing. If ~~When~~ the 20th day falls on Saturday, Sunday, or ~~a~~ legal holiday, payments accompanied by returns will be accepted as timely if postmarked or delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For this purpose, a legal holiday means a holiday which is observed by federal or state agencies as a legal holiday as this term is defined in Ch. 683, F.S., and s. ~~Sec.~~ 7503 of the Internal Revenue Code of 1986, as amended. A "legal holiday" pursuant to s. ~~Section~~ 7503 of the 1986 Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide ~~Statewide~~ legal holiday at a location outside the District of Columbia but within an internal revenue district.

~~(b) The surcharge is not to be included in the computation of estimated taxes pursuant to s. 212.11, F.S.~~

(b)~~(c)~~ No change.

(c) Payments and returns for reporting the rental car surcharge must be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C., when:

1. Payment of the rental car surcharge is required to be made by electronic means;

2. Any return for reporting the rental car surcharge is required to be submitted by electronic means; or

3. No fees are due with a return for reporting the rental car surcharge.

~~(2) The dealer's collection allowance for timely remitting sales and use tax provided in s. 212.12, F.S., does not apply to the surcharge.~~

(3) through (4) renumbered (2) through (3) No change.

(4) Persons who are required to make a return or to pay fees imposed by s. 212.0606, F.S., and fail to do so will be subject to penalties, as provided in s. 212.12(2), F.S.

(b)~~(5)~~ No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.0606, 212.11, 212.12(2),(3),(4),~~(5),~~ 213.235, 213.755 ~~213.29~~ FS. History–New 11-14-89, Amended 7-7-91, 8-10-92, 5-19-93, 3-20-95, 3-20-96. 4-2-00, _____.

12A-16.007 Interstate and Foreign Commerce.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.0606, 212.07, 212.08(9), 212.13 FS. History–New 11-14-89, Repealed _____.

12A-16.008 Public Use Forms.

(1)(a) In addition to the forms prescribed in Chapter 12A-1, F.A.C., the following public use forms and instructions are employed by the Department of Revenue in its dealings with the public in administering the surcharge.

(b) Copies of these forms are available, without cost, by one or more of the following methods: 1) writing the Florida Department of Revenue, ~~Forms~~ Distribution Center, 168A 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 show inside the parentheses (http://www.myflorida.com/dor/). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.

Form Number	Title	Effective Date
(2)~~(1)~~ DR-15SW	Solid Waste and Surcharge Return (r. 04/02 ~~r. 05/99~~)	___ ~~06/01~~

(3)~~(2)~~ No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.0606, 212.12(2), 213.235, 376.70, 403.717, 403.718, 403.7185 FS. History–New 11-14-89, Amended 7-7-91, 8-10-92, 3-21-95, 6-19-01, _____.

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Tax on Gross Receipts on Dry-Cleaning	12B-11

RULE TITLES:	RULE NOS.:
Registration	12B-11.005
Returns and Filing Requirements	12B-11.006
Public Use Form	12B-11.009

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12B-11.005, F.A.C. (Registration), is to: (1) remove the obsolete registration form DR-1DC; (2) incorporate form DR-1, Application to Collect and/or Report Tax in Florida, which is currently used by the Department to register dealers for purposes of the gross receipts tax imposed on dry-cleaning; (3) provide the methods and requirements to register with the Department; (4) provide that a $30 registration fee is required with form DR-1 but is not required when registering through the Department's Internet site; and (5) remove the incorporation by reference of form DR-11, Certificate of Registration, which does not meet the definition of a "rule," as defined in s. 120.542(15), F.S.

The purpose of the proposed amendments to Rule 12B-11.006, F.A.C., is to: (1) change the title to "Returns and Filing Requirements"; (2) clarify when tax is due; (3) clarify the definition of the term "legal holiday"; (4) provide that payment of tax required to be made by electronic means, returns required to be submitted by electronic means, and returns when no tax is due must be submitted to the Department as provided in Rule Chapter 12-24, F.A.C.; (5) clarify that the Department is not authorized to extend the time for a dealer to file a return or remit tax due; (6) clarify that the penalties imposed under s. 212.12(2), F.S., apply to the gross receipts tax on dry-cleaning for purposes of late payments and the filing of returns; and (7) remove language regarding the collection allowance that is redundant of s. 376.70, F.S.

The purpose of the proposed repeal of Rule 12B-11.009, F.A.C. (Public Use Form), is to repeal the incorporation by reference of form DR-1DC, Application for Gross Receipts Tax on Dry-Cleaning, which is no longer used by the Department.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is: (1) the proposed guidelines and requirements for registering with the Department for purposes of the tax on gross receipts on dry-cleaning; (2) the proposed guidelines for the reporting and payment of the gross receipts tax on dry-cleaning when required to be made by electronic means; (3) the clarification that the Department is not authorized to extend the time for a dealer to file a return or remit any tax due; (4) the proposed removal of the unnecessary recitation of statutory provisions; and (5) the removal of forms that are no longer used by the Department in the administration of the tax on gross receipts on dry-cleaning.

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1), 376.70(6)(b) FS.

LAW IMPLEMENTED: 213.755, 376.70 FS.

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

TIME AND DATE: 1:30 p.m., November 20, 2002

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0100

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 Nancy Purvis, (850)488-0712. If you are hearing-impaired or speech-impaired, please contact the Department by using the Florida Relay Service, which may be reached at 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

The Department's proposed rules are available on the Department's web site: http://www.myflorida.com/dor/rules.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT WORKSHOP IS: Alan R. Fulton, Senior Tax Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)488-2577, e-mail: fultona@dor.state.fl.us

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12B-11.005 Registration.

(1) Every person desiring to engage in or conduct business in this state as a dry-cleaning facility must register with the Department and obtain a certificate of registration from the Department. Dry-cleaning facilities or drop-off facilities operating at more than one location are only required to obtain a single certificate from the Department. ~~The registration for the tax is to be made on the Application for Gross Receipts Tax on Dry-cleaning (Form DR-1DC), incorporated by reference in Rule 12B-11.009, F.A.C.~~

(2)(a) Registration with the Department for purposes of the gross receipts tax on dry-cleaning facilities is available by using one of the following methods:

1. Registering through the Department's Internet site at the address shown in the parentheses (http://www.myflorida.com/dor/) using the Department's "e-Services" without payment of a registration fee; or

2. Filing an Application to Collect and/or Report Tax in Florida (form DR-1, incorporated by reference in Rule 12A-1.097, F.A.C.) with the Department, as indicated on the form, with the required $30 registration fee.

(b) Each application submitted to the Department must contain sufficient information to facilitate the processing of the application.

(3)~~(2) The Executive Director or the Executive Director's designee, upon receipt of such application, will grant the applicant a Certificate of Registration (Form DR-11), incorporated by reference in Rule 12A-1.097, F.A.C.~~ Engaging in business as a dry-cleaning facility without first obtaining a certificate of registration ~~Certificate of Registration~~ or after such certificate has been cancelled by the Executive Director

or the Executive Director's designee is prohibited. The failure or refusal of any person to register is a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., or subject to injunctive proceeding as provided by law.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 376.70(2) FS. History–New 2-19-95, Amended 6-19-96, _____.

12B-11.006 Returns and Filing Requirements ~~Regulations~~.

(1) Tax due on transactions:

(a) Businesses which maintain tax and accounting records on the basis of cash receipts may report this tax when payment is received. The tax is due on the first day of the month following the month that the consideration for the service is paid, if the accounting records are maintained on the basis of cash receipts.

(b) Businesses which maintain tax and accounting records on the accrual basis must report this tax in the month the receivable is recorded. The tax is due on the first day of the month following the month that the receivable for the service is recorded, if the accounting records are maintained on the accrual basis.

(c)~~(2)~~ The tax should be reported on the Solid Waste and Surcharge Return (form ~~Form~~ DR-15SW), incorporated by reference in Rule 12A-16.008, F.A.C.

(2)~~(3)~~(a) Except as provided in Rule Chapter 12-24, F.A.C., the ~~The~~ payment and the Solid Waste and Surcharge Return (Form DR-15SW)~~,~~ must be delivered to ~~either reach~~ the ~~office of the~~ Department or be postmarked ~~on or before the 20th day of the month following the month in which the consideration is received, if the accounting records are maintained on the basis of cash receipts,~~ to avoid penalty and interest for late filing as follows:~~, whether or not any taxes are due, by all persons required to file the returns.~~

1. On or before the 20th day of the month following the month in which the consideration is received, if the accounting records are maintained on the basis of cash receipts; or

2.~~(b)~~ On ~~The payment and the Solid Waste and Surcharge Return (Form DR-15SW) must either reach the office of the Department or be postmarked on~~ or before the 20th day of the month following the month in which the account receivable is posted, if the accounting records are maintained on the accrual basis~~, to avoid penalty and interest for late filing, whether or not any taxes are due, by all persons required to file the return~~.

3.~~(4)(a)~~ If the 20th day falls on a Saturday, Sunday, or ~~a~~ legal holiday, payments accompanied by returns will ~~shall~~ be accepted as timely if postmarked or delivered to the Department ~~department~~ on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

~~(b)~~ For the purpose of this rule ~~section~~, a legal holiday means ~~shall mean~~ a holiday that ~~which~~ is observed by federal or state agencies as a legal holiday, as this term is defined in Chapter 683, F.S., and s. 7503, Internal Revenue Code~~,~~ of 1986, as amended ~~and in effect on 1/1/95, which is incorporated by reference in this rule~~. A "legal holiday" pursuant to s. 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(b) Payments and returns for reporting tax must be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C., when:

1. Payment of the tax is required to be made by electronic means;

2. Any return for reporting tax is required to be submitted by electronic means; or,

3. No tax is due with a return for reporting taxes.

(3)~~(5)~~ The failure of any dealer to secure a tax return for reporting tax due does not relieve the dealer from the requirement to file a return or remit tax due to the Department. The Department is not authorized to extend the time for any dealer to file any return or pay any tax due. ~~As stated in Rule 12A-1.056(12), F.A.C., with reference to taxes, the Department is not authorized to extend the time to make any returns or pay any fees; and the consequences for late filing described in Rule 12A-1.056, F.A.C., are applicable to this tax.~~

(4) Persons who are required to make a return or to pay tax on gross receipts on dry-cleaning imposed under s. 376.70, F.S., and administered under the provisions of Chapter 212, F.S., and fail to do so will be subject to penalties, as provided in s. 212.12(2), F.S.

~~(6) Where payment by electronic funds transfer is required, the tax will be remitted as provided by Rule Chapter 12-24, F.A.C.~~

~~(7) A collection allowance for timely remitting the tax due, provided in s. 212.12, F.S., does not apply to the gross receipts tax.~~

Specific Authority 212.17(6), 212.18(2), 213.06(1), 376.70(6)~~(5)~~(b) FS. Law Implemented 213.755, 376.70 FS. History–New 2-19-95, Amended 6-19-96, _____.

12B-11.009 Public Use Form.

Specific Authority 212.17(6), 212.18(2), 213.06(1), 376.70(6)~~(5)~~(b) FS. Law Implemented 376.70(3) FS. History–New 2-19-95, Amended 6-19-96, Repealed _____.

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Tax on Perchloroethylene	12B-12
RULE TITLES:	RULE NOS.:
Registration	12B-12.005
Returns and Filing Requirements	12B-12.006
Public Use Forms	12B-12.009

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12B-12.005, F.A.C. (Registration), is to: (1) to correctly title form DR-166, Florida Pollutant Tax

Application; (2) provide that any person who produces, sells, or imports perchloroethylene ("perc") in Florida must obtain a Pollutants License; (3) provide that a $30 registration fee is required for each application; and (4) remove the incorporation by reference of form DR-110, Pollutants License, which does not meet the definition of a "rule," as defined in s. 120.542(15), F.S.

The purpose of the proposed amendments to Rule 12B-12.006, F.A.C., is to: (1) change the title to "Returns and Filing Requirements"; (2) clarify the definition of the term "legal holiday"; (3) provide that payment of taxes required to be made by electronic means, returns required to be submitted by electronic means, and returns when no tax is due must be submitted to the Department as provided in Rule Chapter 12-24, F.A.C.; and (4) remove the recitation of penalties for late filing and payment of the tax imposed under ss. 376.75(9)(a) and 212.12(2), F.S.

The purpose of the proposed repeal of Rule 12B-12.009, F.A.C. (Public Use Forms) is to repeal an unnecessary rule which incorporates by reference forms that are incorporated by reference in Rules 12B-12.005 and 12B-12.006, F.A.C.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is: (1) the proposed guidelines for tax payments and the filing of returns; (2) the proposed definition of the "legal holiday"; and (3) the incorporation by reference of forms used by the Department in the administration of the tax on perc.

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1), 376.75(9)(b) FS.

LAW IMPLEMENTED: 212.11(1)(b),(d), 212.12(2)(a),(3),(4), 213.235, 213.755, 376.75 FS.

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

TIME AND DATE: 1:30 p.m., November 20, 2002

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0100

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 Nancy Purvis, (850)488-0712. If you are hearing-impaired or speech-impaired, please contact the Department by using the Florida Relay Service, which may be reached at 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

The Department's proposed rules are available on the Department's web site: http://www.myflorida.com/dor/rules.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT WORKSHOP IS: Alan R. Fulton, Senior Tax Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)488-2577, e-mail: fultona@dor.state.fl.us

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12B-12.005 Registration.

(1) Every ~~Any~~ person must file a Florida Pollutant Tax Application (form DR-166, incorporated by reference in Rule 12B-5.150, F.A.C.) with the Department for a pollutant license before producing, selling, importing, or causing perc ~~who produces, sells, imports, or causes~~ to be imported into ~~perc in~~ Florida and obtain a pollutant license from ~~for any purpose is required to register and become licensed with~~ the Department. A $30 registration fee must accompany each application.

~~(2)(a) To apply for a license an applicant must submit to the Department Form DR-166, Application for Florida License to Produce or Import Taxable Pollutants, incorporated in Rule 12B-5.012, F.A.C., by reference.~~

~~(b)1. The Executive Director or the Executive Director's designee, upon receipt of such application, will grant to the applicant a Pollutants License (Form DR-110, incorporated in Rule 12B-5.012, F.A.C., by reference.~~

(2)~~2.~~ Producing in, importing into, selling in, or causing perc to be imported into Florida for any purpose without first obtaining a license or after such license has been canceled by the Executive Director or the Executive Director's designee is prohibited.

Specific Authority 212.17(6), 212.18(2), 213.06(1), 376.75(9)(b) FS. Law Implemented 376.75(2) FS. History–New 2-19-95, Amended 3-18-96, _____.

12B-12.006 Returns~~, Regulations~~ and Filing Requirements.

(1)(a) When perc is sold in Florida, the tax is due to the Department on the first day of the month following the month of sale.

(b) When a person who has purchased perc for use in a dry-cleaning facility in Florida cannot document that the tax has been paid, the tax is due to the Department on the first day of the month following the month of purchase or importation.

(c)~~1.~~ The tax is required to ~~should~~ be reported on the Pollutant Tax Return (form ~~Form~~ DR-904~~)~~, incorporated by reference in Rule 12B-5.150 ~~12B-5.012~~, F.A.C~~, by reference.~~

~~2. A return is required to be filed even if no tax is due.~~

~~3. There is no collection allowance for timely remitting the tax.~~

(2)(a) Except as provided in Rule Chapter 12-24, F.A.C., the ~~The~~ payment and the Pollutant Tax Return (form ~~Form~~ DR-904, incorporated by reference in Rule 12B-5.150, F.A.C.), must be delivered to ~~either reach the office of~~ the Department or be postmarked on or before the 20th day of the month following the month of the taxable transaction to avoid penalty and interest for late filing.

~~(b)1.~~ If the 20th day falls on a Saturday, Sunday, or ~~a~~ legal holiday, payments accompanied by returns will ~~shall~~ be accepted as timely if postmarked or delivered to the Department ~~department~~ on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

~~2.~~ For this purpose, a legal holiday means ~~shall mean~~ a holiday that is observed by federal or state agencies as a legal holiday, as this term is defined in Chapter 683, F.S., and s. 7503, Internal Revenue Code of 1986, as amended ~~and in effect on January 1, 1995, which is incorporated by reference in this rule~~. A "legal holiday" pursuant to s. 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(b) Payments and returns for reporting tax must be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C., when:

1. Payment of the tax is required to be made by electronic means;

2. Any return for reporting tax is required to be submitted by electronic means; or

3. No tax is due with a return for reporting tax.

(3) No change.

~~(4)(a) When any person fails to make a return or remit the tax, or any portion thereof, on or before the day when such tax is required to be paid, a delinquent penalty will be added to the unpaid tax in the amount of 10 percent of any unpaid tax if the failure is not for more than 30 days. An additional delinquent penalty of 10 percent of any unpaid tax will be assessed for each additional 30 days, or fraction thereof, during the time the failure continues, not to exceed, however, a total delinquent penalty of 50 percent in the aggregate.~~

~~(b) A mandatory minimum delinquent penalty of $10 applies to all delinquent returns.~~

Specific Authority 212.17(6), 212.18(2), 213.06(1), 376.75(9)(b) FS. Law Implemented 212.11(1)(b),(d), 212.12(2)(a),(3),(4), 213.235, 213.755, 376.75 FS. History–New 2-19-95, Amended 3-18-96, 4-2-00, _____.

12B-12.009 Public Use Forms.

Specific Authority 212.17(6), 212.18(2), 213.06(1), 376.75(9)(b) FS. Law Implemented 376.75(8) FS. History–New 2-19-95, Amended 3-18-96, Repealed _____.

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Tax on Perchloroethylene 12B-12
RULE TITLE: RULE NO.:
Refunds and Credits; Recordkeeping Requirements 12B-12.007

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12B-12.007, F.A.C., is to: (1) change the title to "Refunds and Credits; Recordkeeping Requirements"; and (2) provide the timing provisions of s. 215.26, F.S., and provide that an application for refund of tax must meet the requirements of s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is the proposed guidelines on how to obtain refunds of the tax on perchloroethylene consistent with the provisions of s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1), 376.75(9)(b) FS.

LAW IMPLEMENTED: 376.75(11) FS.

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

TIME AND DATE: 1:30 p.m., November 20, 2002

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0100

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 Nancy Purvis, (850)488-0712. If you are hearing-impaired or speech-impaired, please contact the Department by using the Florida Relay Service, which may be reached at 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

The Department's proposed rules are available on the Department's web site: http://www.myflorida.com/dor/rules.

THE PERSONS TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT WORKSHOP IS: Alan R. Fulton, Senior Tax Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)488-2577, e-mail: fultona@dor.state.fl.us

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12B-12.007 Refunds and Credits; ~~Required~~ Recordkeeping Requirements.

(1) No change.

(2)(a) Any person entitled to a refund of tax paid on perc must file form DR-26, Application for Refund (incorporated by reference in Rule 12-26.008, F.A.C.) in accordance with the timing provisions of s. 215.26(2), F.S. ~~use Form DR-26 (Application for Refund from the State of Florida).~~ An application for refund shall not be considered complete pursuant to s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C., and a refund shall not be approved until the documentation is provided to the Department.

1. Form DR-26, Application for Refund, must be filed with the Department for tax paid on or after October 1, 1994, and prior to July 1, 1999, within 5 years after the date the tax was paid.

2. Form DR-26, Application for Refund, must be filed with the Department for tax paid on or after July 1, 1999, within 3 years after the date the tax was paid.

~~(b) Form DR-26 (Application for Refund from the State of Florida), is incorporated in Rule 12-26.008, F.A.C., and made a part of this rule chapter by reference.~~

(b)~~(c)~~ No change.

(3) through (4) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1), 376.75(9)(b) FS. Law Implemented 376.75(11) FS. History–New 2-19-95, Amended 3-18-96, _____.

DEPARTMENT OF REVENUE

Child Support Enforcement Program

RULE TITLE: RULE NO.:
Overpayment Recovery 12E-1.022

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule Chapter 12E-1.022, F.A.C., is to update departmental policies and procedures concerning the method that is used to recover overpayments that are erroneously or fraudulently made to custodial parents in order to comply with federal directives. The proposed amendments provide a definition of overpayment; allow for custodial parents to agree in writing to withholding for overpayments; provide notice to the custodial parent of the overpayment; require the custodial parent to contact the department or withholding of 25% will occur automatically from current support collections; provide an agreement to withholding form with the notices; add a third notice provision; provide for automatic withholding for non-compliance with a written agreement; and provide that overpayments in public assistance cases will be reported to the Department of Children and Families. The effect of the rule change requires custodial parents to respond to notifications from the department or the department will presume permission to collect the overpayments from current support collections.

SUBJECT AREA TO BE ADDRESSED: The subject of this rule development workshop is to discuss the proposed changes to the departmental procedures specified above.

SPECIFIC AUTHORITY: 409.2557(3)(i), 409.2558(6),(7) FS.

LAW IMPLEMENTED: 409.2558(6),(7), 409.2564(13)(b) FS.

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

TIME AND DATE: 9:00 a.m., November 12, 2002

PLACE: Room 301, 4070 Esplanade Way, Tallahassee, Florida 32399-0350

Copies of the agenda for the rule development workshop may be obtained from: Lynn D. Chang, Government Analyst II, Department of Revenue, P. O. Box 8030, Tallahassee, Florida 32314-8030, (850)922-9573

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Child Support Enforcement Program is asked to advise the Department at least five (5) calendar days before such proceeding by contacting: Lynn D. Chang, (850)922-9573. If you are hearing or speech-impaired, please contact the Department by calling 1(800)DOR-TDD1 (1(800)367-8331).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Lynn D. Chang, Government Analyst II, Department of Revenue, P. O. Box 8030, Tallahassee, Florida 32314-8030, (850)922-9573 (The preliminary text of the proposed rule development is also available on the department website at http://myflorida.com/dor)

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

(Substantial Rewording of Rule 12E-1.022 follows. See Florida Administrative Code for present text.)

12E-1.022 Overpayment Recovery.

(1) For purposes of this rule:

(a) "Department" means the Department of Revenue or a contractor or a subcontractor when authorized by the Department of Revenue.

(b) "Overpayment" means the amount of a disbursement that is received by a custodial parent in a Title IV-D case that the custodial parent is not entitled to receive. The term includes, but is not limited to, a disbursement resulting from fraud or mistake, a disbursement made based on a non-sufficient funds instrument or electronic funds transfer, and a disbursement made from a collection that was partially or fully reversed by the Internal Revenue Service.

(2) When a custodial parent receives an overpayment for a period during which the custodial parent was receiving temporary cash assistance, the department shall report the amount of the overpayment to the Department of Children and Families.

(3) When a custodial parent receives an overpayment for a period during which the custodial parent was not receiving temporary cash assistance, the following shall apply:

(a) If the custodial parent has previously agreed in writing to have overpayments withheld from future collections received by the department that would otherwise be disbursed to the custodial parent, a percentage of each future collection received shall be applied toward the overpayment until it is repaid. The remaining amount of each collection will be disbursed in accordance with federal and state laws.

1. The department shall send the custodial parent a written notice of overpayment by regular mail to the custodial parent's last known address advising of the overpayment and advising that the custodial parent had previously agreed in writing to withholding as the means of repayment.

2. The notice will advise the custodial parent that unless the custodial parent contacts the department within 60 days from the mailing date of the notice or repays the overpayment, 25% of future collections will be withheld to repay the overpayment.

3. A written agreement will be enclosed with the notice that the custodial parent can sign and return to the department within the 60 day period specifying the payment terms agreeable to the custodial parent and the department.

4. If the custodial parent does not repay the overpayment or sign a written agreement within the 60 day period, 25% of each future collection shall be applied toward the overpayment until it is repaid. The remaining amount of each collection will be disbursed in accordance with federal and state laws.

(b) When a custodial parent receives an overpayment and has not previously agreed in writing to allow the department to withhold from future collections to repay the overpayment, the department shall send the custodial parent a written first notice of overpayment by regular mail to the custodial parent's last known address. The notice must state:

1. The amount of the overpayment;

2. The date of the overpayment;

3. That the custodial parent is required to repay the overpayment;

4. That the custodial parent may repay the overpayment in one lump sum;

5. That the custodial parent may repay the overpayment by agreeing to have the department withhold a percentage from future collections until the overpayment is repaid;

6. That the custodial parent may enter into a written agreement to repay the overpayment in installments;

7. That a written agreement is enclosed that the custodial parent can sign and return to the department specifying the payment terms being requested;

8. That the custodial parent should respond to the department in writing within 20 days from the date of the notice either by signing and returning the written agreement or declining all payment options; and

9. The method by which the custodial parent can request a reconsideration as provided by Rule 12E-1.006, F.A.C., Request for Reconsideration.

(c) If the custodial parent does not respond to the first written notice of overpayment sent pursuant to paragraph (3)(b), the department will send a second written notice of overpayment by regular mail to the custodial parent's last known address. The second written notice must state:

1. The same information required by paragraph (3)(b) of this rule.

2. The date of the first written notice of overpayment.

3. That this is a second written notice of overpayment.

4. That further collection action will be taken if the custodial parent does not contact the department in writing within 20 days.

(d) If the custodial parent does not respond to the second written notice of overpayment sent pursuant to paragraph (3)(c), the department will send a third written notice of overpayment by regular mail to the custodial parent's last known address. The third written notice of overpayment must state:

1. The same information required by paragraph (3)(b) of this rule.

2. That this is the third and final written notification of overpayment that will be sent.

3. That if the custodial parent does not repay the overpayment in one lump sum, repay the overpayment by signing a written agreement to have the department deduct a percentage from future collections until the overpayment is repaid, sign a written agreement to repay the overpayment in installments, request a reconsideration, respond to the department in writing within 10 days after the date of mailing of the final written notice, or respond with an inquiry but take no further action, the department will withhold 25% of future collections received until the overpayment has been repaid;

4. That recovery of the overpayment will be pursued whether the custodial parent's child support case is open or closed;

5. That the department may pursue other collection actions or legal remedies to recover the overpayment;

6. That if the custodial parent makes a timely request for reconsideration, no further collection action will be taken until the reconsideration process is concluded; and

7. That if an overpayment is established when the reconsideration process is concluded, and the custodial parent does not enter into a repayment agreement with the department, the department will attempt to recover the overpayment by withholding from future collections or by pursuing other collection actions or legal remedies.

(4) A custodial parent who is not satisfied with a reconsideration decision may request an administrative hearing as provided by subsection 12E-1.006(10), F.A.C., Request for Reconsideration.

(5) A written agreement will be provided with each written notice that is sent to the custodial parent. No further written notices will be sent and no further collection action will be taken if the custodial parent returns a signed written agreement on the specific overpayment within the time frames allowed by the written notices and the department accepts the terms of the agreement.

(6) The custodial parent may request the department to enter into a written agreement to repay the overpayment in installments. Upon request and after full disclosure by the custodial parent of available income and resources, the

department shall enter into a written agreement that is reasonably related to the custodial parent's current ability to pay.

(7) The department shall withhold 25% of future collections received until an overpayment has been repaid if the custodial parent does not respond to the three written notices sent pursuant to paragraphs (3)(b) through (3)(d).

(8) If the overpayment has not been recovered from collections, the department may pursue other collection actions or legal remedies to recover the overpayment from the custodial parent.

Specific Authority 409.2557(3)(i),(j),(p), 409.2558(7) FS. Law Implemented 409.2558(6), 409.2564(13)(b) FS. History–New 6-17-92, Amended 7-20-94, Formerly 10C-25.019, Amended 10-22-00, _____.

DEPARTMENT OF CITRUS

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Equalization Tax on Non-Florida, United States Juice 20-15
RULE TITLES: RULE NOS.:
Intent 20-15.001
Definitions 20-15.002
Collection 20-15.003

PURPOSE AND EFFECT: Proposed new rule to effectuate the collection of Equalization Taxes as required by Court order. Such taxes are owed by persons who, during the time period commencing on October 6, 1997, and ending on March 14, 2002, benefitted from the exemption for non-Florida, United States juice as set forth in the statutory provision which was ultimately severed by the Court from section 601.155(5), Florida Statutes, as unconstitutional.

SUBJECT AREA TO BE ADDRESSED: Effectuating the collection of Equalization Taxes as required by Court order.

SPECIFIC AUTHORITY: 601.02, 601.10, 601.15, 601.155 FS.

LAW IMPLEMENTED: 601.02, 601.10, 601.15, 601.155 FS.

IF REQUESTED AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE SCHEDULED AT A TIME, DATE AND PLACE TO BE ANNOUNCED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Alice P. Wiggins, Administrative Assistant, Legal Department, Florida Department of Citrus, P. O. Box 148, Lakeland, Florida 33802-0148

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

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Procedural 40D-1
RULE TITLE: RULE NO.:
Timeframe for Providing Requested Information 40D-1.1020

PURPOSE AND EFFECT: This proposed rulemaking will amend Rule 40D-1.1020, F.A.C., to provide that applications will be deemed withdrawn, as opposed to being denied, if additional information is not supplied within 30 days after notice by the District.

SUBJECT AREA TO BE ADDRESSED: The procedural rule governing the time frame for applicants to submit requested information.

SPECIFIC AUTHORITY: 120.54(5), 373.044, 373.113, 373.118, 373.4135, 373.4136, 373.414 FS.

LAW IMPLEMENTED: 120.54(5), 120.60, 373.084, 373.085, 373.116, 373.118, 373.119, 373.171, 373.229, 373.2295, 373.308, 373.309, 373.323, 373.413, 373.4136, 373.414, 373.416, 373.418, 373.426 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Jack R. Pepper, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, Extension 4651

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

40D-1.1020 Timeframe for Providing Requested Information

Within 30 days after receipt of an application, the District shall notify the applicant if the application is incomplete and request the additional information required to make the application complete. If additional information is not supplied within 30 days after notice by the District, the application will be deemed withdrawn by the applicant ~~denied for lack of completeness~~. If the application is still incomplete after additional information is provided, the District shall so notify the applicant, who shall have an additional 30 days to render the application complete or be deemed withdrawn by the applicant ~~denied for lack of completeness~~. Upon request by the applicant, an extension of time may be granted by the District staff upon a showing by the applicant that a good faith effort is being made to provide the additional information and the additional time is required. The District may, within 30 days after receiving information from the applicant, request only clarifications of the information or request answers to new questions raised or directly related to

the information previously furnished. ~~Denial of an application for lack of completeness is without prejudice to the applicant's right to file a new application on the same subject matter.~~

Specific Authority 120.54(5), 373.044, 373.113, 373.118, 373.4135, 373.4136, 373.414 FS. Law Implemented 120.54(5), 120.60, 373.084, 373.085, 373.116, 373.118, 373.119, 373.171, 373.229, 373.2295, 373.308, 373.309, 373.323, 373.413, 373.4136, 373.414, 373.416, 373.418, 373.426 FS. History–New 7-2-98, Amended _____.

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Procedural 40D-1
RULE TITLE: RULE NO.:
Forms and Instructions 40D-1.659

PURPOSE AND EFFECT: Section H of the Environmental Resource Permit Application contains a reference to the exemption for normal and necessary farming and forestry operations previously found in Rule 40D-4.051(7), Florida Administrative Code (F.A.C.). Several of the District's exemptions from obtaining an Environmental Resource Permit (ERP) were invalidated by an Administrative Law Judge and subsequently removed from 40D-4.051, F.A.C. As a result, the exemption for normal and necessary farming and forestry operations has been renumbered as Rule 40D-4.051(3), F.A.C. Also, to conform with recent rule amendments to make references to general permits consistent, this proposed rulemaking will delete the term "standard" from references in the form to a General ERP for Minor Surface Water Systems.

SUBJECT AREA TO BE ADDRESSED: This proposed rulemaking corrects the rule reference in Section H, Part 2 of the Environmental Resource Permit Application. This application form is incorporated by reference into Rule 40D-1.659, F.A.C.

SPECIFIC AUTHORITY: 373.044, 373.046, 373.113, 373.149, 373.171, 373.414, 373.414(9) FS.

LAW IMPLEMENTED: 373.0361, 373.114, 373.171, 373.403, 373.406, 373.413, 373.414, 373.414(9), 373.416, 373.429, 373.441 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Jack R. Pepper, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, Extension 4651

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT 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) through (19) No change.

SURFACE WATER

Application for Permit – Used for Docks or Piers and Bulkheads

(1) JOINT APPLICATION FOR: ENVIRONMENTAL RESOURCE PERMIT/AUTHORIZATION TO USE STATE OWNED SUBMERGED LANDS/FEDERAL DREDGE AND FILL PERMIT FORM 547.27/ERP (___/___) ~~(8/94)~~.

(2) through (14) 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, 6-26-01, 11-4-01, 6-12-02, _____.

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Consumptive Use of Water 40D-2
RULE TITLE: RULE NO.:
Exemptions 40D-2.051

PURPOSE AND EFFECT: Rule 40D-2.051(1)(c), Florida Administrative Code (F.A.C.), exempts from water use permitting "certified uses defined in Chapter 62-23 entitled Industrial Siting." While there used to be an Industrial Waste Siting Act, it has been repealed and there is no Chapter 62-23 in the Florida Administrative Code. Therefore, the exemption contained in paragraph 40D-2.051(1)(c), F.A.C., is obsolete. The proposed rulemaking will delete this obsolete exemption.

SUBJECT AREA TO BE ADDRESSED: The deletion of an obsolete exemption from the District's water use permitting rules.

SPECIFIC AUTHORITY: 373.044, 373.113, 373.149, 373.171, 373.216, 373.249 FS.

LAW IMPLEMENTED: 373.219, 373.223, 373.224, 373.226 FS., 76-243, Laws of Florida.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Jack R. Pepper, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, Extension 4651.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

40D-2.051 Exemptions.

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

~~(c) Those certified uses defined in Chapter62-23 entitled Industrial Siting effective January 3, 1980.~~

(d) through (f) renumbered (c) through (e) No change.

(2) No change.

Specific Authority 373.044, 373.113, 373.149, 373.171, 373.216, 373.249 FS. Law Implemented 373.219, 373.223, 373.224, 373.226 FS., Chapter 76-243, Laws of Florida. History–Readopted 10-5-74, Amended 12-31-74, 10-24-76, 9-4-77, 10-16-78, Formerly 16J-2.04(3), Amended 10-1-89,_____.

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Consumptive Use 40E-2

PURPOSE AND EFFECT: The purpose and effect of the rule development is to create Year Round Water Conservation Measures for Lee, Collier and a portion of Charlotte counties.

SUBJECT AREA TO BE ADDRESSED: Proposed conservation measures include regulations, procedures, and specific day of the week and time of day irrigation restrictions for residential and commercial landscape irrigation uses, golf courses, and recreation areas.

SPECIFIC AUTHORITY: 120.54, 373.044, 373.113 FS.

LAW IMPLEMENTED: 120.54, 373.103, 373.117, 373.609 FS.

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

TIME AND DATE: 1:00 p.m. – 3:00 p.m., November 8, 2002

PLACE: South Florida Water Management District, Lower West Coast Regional Service Center, 2301 McGregor Boulevard, Fort Myers, FL 33901

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including the testimony and evidence upon which any appeal is to be based.

Persons with disabilities or handicaps who need assistance may contact the District Clerk, (561)682-6206, at least two business days in advance to make appropriate arrangements.

THE PERSONS TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: For technical issues: Bruce Adams, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, Extension 6785, or (561)682-6785 (badams@sfwmd.gov). For procedural issues: Julie Jennison, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, Extension 6294 or (561)682-6294 (jjenniso@sfwmd.gov).

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE ON THE DISTRICT'S WEBSITE OR BY CONTACTING NILENE PERRY, (561)682-6273.

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Year Round Water Conservation Measures 40E-24

PURPOSE AND EFFECT: The purpose and effect of the rule development is to create Year Round Water Conservation Measures for Lee, Collier and a portion of Charlotte counties.

SUBJECT AREA TO BE ADDRESSED: Proposed conservation measures include regulations, procedures, and specific day of the week and time of day irrigation restrictions for residential and commercial landscape irrigation uses, golf courses, and recreation areas.

SPECIFIC AUTHORITY: 120.54, 373.044, 373.113 FS.

LAW IMPLEMENTED: 120.54, 373.103, 373.117, 373.609 FS.

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

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THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE ON THE DISTRICT'S WEBSITE OR BY CONTACTING NILENE PERRY, (561)682-6273.

DEPARTMENT OF ELDER AFFAIRS

Long-Term Care Ombudsman Program

RULE TITLE: RULE NO.:
Confidentiality and Disclosure 58L-1.001

PURPOSE AND EFFECT: This rule is being considered for possible amendment to ensure adequate protection of confidential records and to provide for disclosure consistent with State and Federal law.

SUBJECT AREA TO BE ADDRESSED: Confidentiality and disclosure of records relating to the State Long-Term Care Ombudsman Program.

SPECIFIC AUTHORITY: 400.0077(5) FS.

LAW IMPLEMENTED: 400.0077 FS.

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

TIME AND DATE: 10:00 a.m. – 11:00 a.m., November 8, 2002

PLACE: Hilton Tampa Airport Westshore Hotel, 2225 Lois Avenue, Tampa, Florida 33607

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT, IF AVAILABLE, IS: Tom Thomas, General Counsel, Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399-7000, (850)414-2000

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

DEPARTMENT OF ELDER AFFAIRS

Long-Term Care Ombudsman Program

RULE TITLES: RULE NOS.:
Definitions 58L-2.001
Purpose 58L-2.003
Prohibitions 58L-2.005
Procedures 58L-2.007
Removal of Existing Conflicts 58L-2.009

PURPOSE AND EFFECT: These rules are being considered for possible amendment to provide adequate direction and procedures regarding conflicts of interest for individuals participating in the State Long-Term Care Ombudsman Program and to ensure compliance with State and Federal law.

SUBJECT AREA TO BE ADDRESSED: Conflicts of interest for individuals participating in the State Long-Term Care Ombudsman Program.

SPECIFIC AUTHORITY: 400.0065(3), 400.0067(5), 400.0069(10), 400.0087 FS.

LAW IMPLEMENTED: 400.0065(1)(a),(3), 400.0067(5), 400.0069(4),(10), 400.0087(1),(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:

TIME AND DATE: 10:00 a.m. – 11:00 a.m., November 8, 2002

PLACE: Hilton Tampa Airport Westshore Hotel, 2225 Lois Avenue, Tampa, Florida 33607

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT, IF AVAILABLE, IS: Tom Thomas, General Counsel, Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399-7000, (850)414-2000

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

DEPARTMENT OF ELDER AFFAIRS

Long-Term Care Ombudsman Program

RULE TITLE: RULE NO.:
Access 58L-3.001

PURPOSE AND EFFECT: This rule is being considered for possible amendment to provide adequate direction and procedures regarding access to long-term care facilities for individuals participating in the State Long-Term Care Ombudsman Program and to ensure compliance with State and Federal law.

SUBJECT AREA TO BE ADDRESSED: Access to long-term care facilities for individuals participating in the State Long-Term Care Ombudsman Program.

SPECIFIC AUTHORITY: 400.0081(3) FS.

LAW IMPLEMENTED: 400.0081 FS.

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

TIME AND DATE: 10:00 a.m. – 11:00 a.m., November 8, 2002

PLACE: Hilton Tampa Airport Westshore Hotel, 2225 Lois Avenue, Tampa, Florida 33607

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT, IF AVAILABLE, IS: Tom Thomas, General Counsel, Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399-7000, (850)414-2000

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

AGENCY FOR HEALTH CARE ADMINISTRATION

Certificate of Need

RULE TITLE: RULE NO.:
Neonatal Intensive Care Services 59C-1.042

PURPOSE AND EFFECT: The agency is proposing to amend the rule currently used in certificate of need (CON) review of proposals to establish or expand Level II or Level III neonatal intensive care (NICU) services. At a minimum, the revised rule will project need for additional NICU providers rather than additional NICU beds, and will reduce some of the current occupancy standards and threshold numbers. These changes are intended to emphasize the CON review of service development proposals, making the NICU rule more like the rules for non-bed-based services; and to make the requirements respecting bed numbers less restrictive than the existing criteria. Additional changes will update or delete out-dated provisions in the rule; and there will be editorial changes to improve clarity. A preliminary partial draft of the rule amendments is included in this Notice. The agency also intends to delete subsections (14) through (16) of the current rule, which specify the original requirements for grandfathering and establishment of an inventory.

SUBJECT AREA TO BE ADDRESSED: Revisions in the current rule used in certificate of need review of neonatal intensive care unit proposals.

SPECIFIC AUTHORITY: 408.15(8), 408.034(6) FS.

LAW IMPLEMENTED: 408.034(3), 408.036(1)(a),(d),(f)-(h) FS.

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

TIME AND DATE: 2:00 p.m., November 12, 2002

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room C, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: John Davis, Certificate of Need, 2727 Mahan Drive, Building 1, Tallahassee, Florida

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

59C-1.042 Neonatal Intensive Care Services.

(1) Agency Intent. This rule implements the provisions of subsection 408.034(3) and paragraphs 408.036(1)(a), (d), (f), and (g), Florida Statutes, to regulate proposals subject to comparative review for the establishment of new neonatal intensive care services, the addition of new neonatal intensive care beds, and the conversion of licensed hospital beds to neonatal intensive care services beds. ~~This rule implements the provisions of subsection 408.032 (20), 408.034(3), 408.034(4), and paragraphs 408.036(1)(a), (d) and (g), Florida Statutes.~~ In addition, paragraph 408.036(1)(h)~~(k),~~ specifically requires the agency to regulate the establishment of tertiary health services, which include neonatal intensive care services, under the certificate of need program. It is the intent of the agency to regulate the establishment of Level II and Level III neonatal intensive care services as defined in this rule. This rule defines the minimum requirements for personnel, equipment, and support services for the two levels of neonatal intensive care services. ~~as defined in this rule. In addition, this rule includes need methodologies for determining the need for additional neonatal intensive care unit beds for each level of care. A separate inventory for each level of neonatal intensive care unit beds shall be established by the agency.~~ It is the intent of the agency to regulate the establishment of neonatal intensive care services which include ventilation to pre-term and severely ill neonates.

(2) Definitions.

(a) "Agency." The Agency for Health Care Administration.

(b)~~(a)~~ "Approved Neonatal Intensive Care Bed." A proposed Level II bed or Level III bed for which a certificate of need, a letter of intent to grant a certificate of need, a signed stipulated agreement, or a final order granting a certificate of need was issued, consistent with the provisions of paragraph 59C-1.008(2)(b), Florida Administrative Code, as of the most recent published deadline for agency initial decisions prior to publication of the fixed need pool, as specified in paragraph 59C-1.008(1)(g), Florida Administrative Code.

(c) "Charity Care." That portion of hospital charges reported to the agency for which there is no compensation for care provided to a patient whose family income for the 12 months preceding the determination is less than or equal to 200 percent of the federal poverty level, unless the amount of hospital charges due from the patient exceeds 25 percent of the annual family income. However, in no case shall the hospital charges for a patient whose family income exceeds four times the federal poverty level for a family of four be considered charity. Charity care does not include bad debt, which is the portion of health care provider charges for which there is no compensation for care provided to a patient who fails to qualify for charity care; and does not include administrative or courtesy discounts, contractual allowances to third-party payers, or failure of the hospital to collect full charges due to partial payment by government programs.

(d)~~(b)~~ "Complex Neonatal Surgery." Any surgical procedure performed upon a neonate by a surgically-credentialled practitioner licensed under the provisions of Chapter 458 or 459, F.S., which is associated with entry into or traversing a body cavity, such as the abdomen, thorax, or cranium, with a requirement for either general anesthesia or conscious sedation. Such procedures shall be performed only in hospitals licensed under the provisions of Chapter 395, F.S., which are also authorized to provide Level III neonatal services under the provisions of Chapter 59A-3.~~1200 to 3.231~~, Florida Administrative Code ~~F.A.C.~~.

~~(c) "Department." The Agency for Health Care Administration.~~

(e)~~(d)~~ "District." A district of the agency as defined in subsection 408.032(5), Florida Statutes.

(f)~~(e)~~ "Fixed ~~Bed~~ Need Pool." The numerical need for new providers of neonatal intensive care services for the applicable planning horizon, as established by the agency in accordance with this rule and subsection 59C-1.008(2) ~~fixed bed +need pool defined in subsection 59C-1.002(20)~~, Florida Administrative Code.

(g)~~(f)~~ "Local Health Councils." The councils referenced in Section 408.033, Florida Statutes.

(h)~~(g)~~ "Neonatal Care Services." The aspect of perinatal medicine pertaining to the care of neonates. Hospital units providing neonatal care are classified according to the intensity and specialization of the care which can be provided. The agency distinguishes three levels of neonatal care services:

1. "Level I Neonatal Services." Well-baby care services which include sub-ventilation care, intravenous feedings, and gavage to neonates ~~are defined as Level I neonatal services~~. Level I neonatal services do not include ventilator assistance except for resuscitation and stabilization. ~~Upon beginning ventilation,~~ T~~t~~he hospital shall ~~implement a patient treatment plan which shall include the~~ transfer ~~of~~ the neonate to a Level II or Level III neonatal intensive care service at such time that it becomes apparent that ventilation assistance will be required beyond the neonate's resuscitation and stabilization. The hospital shall establish a triage procedure to assess the need for transfer of obstetrical patients to facilities with Level II or Level III neonatal intensive care services prior to their delivery where there is an obstetrical indication that resuscitation will be required for their neonates. Facilities with Level I neonatal services may only perform Level I neonatal services.

2. "Level II Neonatal Intensive Care Services." Services which include the provision of ventilator services, and at least 6 hours of nursing care per day~~, shall be defined as Level II neonatal intensive care services~~. Level II services shall be restricted to neonates of 1000 grams birth weight and over ~~with the following exception.~~ except that v~~V~~entilation may be provided ~~in a facility with Level II neonatal intensive care services~~ for neonates of less than 1,000 grams birth weight ~~only~~ while waiting to transport the baby to a facility with Level III neonatal intensive care services. All neonates of 1,000 grams birth weight or less shall be transferred to a facility with Level III neonatal intensive care services. Neonates weighing more than 1,000 grams requiring one or more of the Level III services, as defined by this rule, shall also be transferred to a facility with Level III neonatal intensive care services. ~~If a facility with a Level III neonatal intensive care service refuses to accept the transfer patient, the facility with the Level II neonatal intensive care service will be found in compliance with this subparagraph upon a showing of continuous good faith effort to transfer the patient as documented in the patient's medical record.~~ Facilities with Level II neonatal intensive care services may perform only Level I neonatal services and Level II neonatal intensive care services as defined by this rule.

3. "Level III Neonatal Intensive Care Services." Services which include the provision of continuous cardiopulmonary support services, 12 or more hours of nursing care per day, complex neonatal surgery, neonatal cardiovascular surgery, pediatric neurology and neurosurgery, and pediatric cardiac catheterization~~, shall be classified as Level III neonatal intensive care services~~. These services cannot be performed in a facility with Level II neonatal intensive care services only. Facilities with Level III neonatal intensive care services may perform all neonatal care services. A facility with a Level III neonatal intensive care service that does not provide treatment of complex major congenital anomalies that require the services of a pediatric surgeon, or pediatric cardiac catheterization and cardiovascular surgery shall enter into a written agreement with a facility providing Level III neonatal intensive care services in the same or nearest service area for the provision of these services. All other services shall be provided at each facility with Level III neonatal intensive care services. The provision of pediatric cardiac catheterization or pediatric open heart surgery each require a separate certificate of need.

(i)~~(h)~~ "Neonatal Intensive Care Unit Bed." A patient care station within a Level II neonatal intensive care unit or Level III neonatal intensive care unit that includes, at a minimum, an incubator or other moveable or stationary devices which support the ill neonate. Beds in Level II or Level III neonatal intensive care units shall be separately listed in a hospital's licensed bed inventory.

1. "Level II Bed." A patient care station within a neonatal intensive care unit with the capability of providing neonatal intensive care services to ill neonates of 1,000 grams birth weight or over;~~,~~ ~~and~~ which is staffed to provide at least 6 hours of nursing care per neonate per day;~~,~~ and which has the capability of providing ventilator assistance~~,~~ and the services as defined in subparagraph (2)(h)~~(e)~~2. of this rule.

2. "Level III Bed." A patient care station within a neonatal intensive care unit with the capability of providing neonatal intensive care services to severely ill neonates regardless of birth weight;~~,~~ ~~and~~ which is staffed to provide 12 or more hours of nursing care per neonate per day; and can provide the services as defined in subparagraph (2)(h)~~(e)~~3. of this rule.

(j)~~(i)~~ "Neonatologist." A physician who is certified, or is eligible for certification, by an appropriate board in the area of neonatal-perinatal medicine.

(k)~~(j)~~ "Planning Horizon." The projected date by which a proposed new neonatal intensive care service would be licensed. For purposes of this rule, the planning horizon for applications submitted between January 1 and June 30 of each year is July of the year 2 years subsequent to the year the

application is submitted; the planning horizon for applications submitted between July 1 and December 31 of each year is January of the year 2 years subsequent to the year which follows the year the application is submitted. ~~The planning horizon for applications submitted between January 1 and June 30 of each year shall be July 2 years into the future subsequent to the application submission deadline; the planning horizon for applications submitted between July 1 and December 31 of each year shall be January 2 years into the future subsequent to the application deadline.~~

(l)~~(k)~~ "Regional Perinatal Intensive Care Center Program (RPICC)." The program authorized by Sections 383.15 through 383.21 ~~383.17~~, Florida Statutes.

~~(l) "Specialty Beds." Specialty beds include comprehensive medical rehabilitation beds, psychiatric beds, substance abuse beds, as specified in subsection 59C-1.002(1), Florida Administrative Code, and neonatal intensive care services beds as specified by this rule.~~

(m) "Specialty Children's Hospitals." Children's hospitals without maternity units on the same premises ~~The hospitals referenced in section 10C-7.0391, Florida Administrative Code, without maternity units in the same facility~~.

~~(n) "Step-Down Neonatal Special Care Unit." The step-down neonatal special care units affiliated with the Regional Perinatal Intensive Care Center Program as referenced in section 10J-7.004, Florida Administrative Code.~~

(3) Need Determination.

(a) Review Criteria. Applications for proposed new providers of Level II or Level III neonatal intensive care services shall be reviewed ~~competitively~~ within each district in accordance with the applicable review criteria in section 408.035, F.S., and the standards and need determination criteria set forth in this rule. Hospitals proposing to provide both Level II and Level III neonatal intensive care services shall require separate certificate of need approval for each level of care. ~~A favorable need determination for Level II or Level III beds will not normally be made unless a numeric bed need exists according to the need methodology specified in paragraphs (c) and (e) of this subsection.~~

(b) Publication of Need for New Providers. The future need for new providers of Level II or ~~and~~ Level III neonatal intensive care services shall be determined twice a year and published by the agency as a fixed ~~bed~~ need pool ~~by the agency~~ for the applicable ~~respective~~ planning horizon.

(c) Projected Future Number of Births. The projected future number of births for each district shall be determined by multiplying the district's estimated population of females aged 15 to 44 for the applicable planning horizon times a 3-year average resident live-birth rate. The 3-year average resident live birth rate will be calculated using the sum of the resident live births for the 3 most recent calendar years available from the Department of Health, Office of Vital Statistics at least 3 months prior to the beginning date of the quarter of the publication of the fixed need pool. The population estimate used to compute the 3-year average resident live birth rate shall be the sum of the July 1 estimates of the population of females aged 15 to 44 for the 3 years that are included in the 3-year total of resident live births. Population estimates for each year shall be the most recent population estimates published by the Office of the Governor at least 3 months prior to publication of the fixed need pool. ~~Level II Bed Need. The net bed need for Level II neonatal intensive care unit beds shall be calculated as follows:~~

~~NN2 = ((PD2 X PB/AB)/(365 X .80)) - LB2 - AB2~~

~~Where:~~

~~1. NN2 equals the net need for Level II beds in a district.~~

~~2. PD2 equals the number of patient days in Level II beds in a district for the most recent 12-month period ending 6 months prior to the beginning date of the quarter of the publication of the fixed bed need pool.~~

~~3. AB is the total number of resident live births in a district for the most recent calendar year available from the Department of Health and Rehabilitative Services' Office of Vital Statistics at least 3 months prior to the beginning date of the quarter of the publication of the fixed bed need pool.~~

~~4. PB is the projected number of resident live births for the applicable planning horizon. To determine the number of births projected for each district, a 3-year average resident live-birth rate for each district shall be calculated using the sum of the resident live births for the 3 most recent calendar years available from the Department of Health and Rehabilitative Services' Office of Vital Statistics at least 3 months prior to the beginning date of the quarter of the publication of the fixed bed need pool. The projected number of resident live births in each district shall be determined by multiplying the 3-year average resident live birth rate by the district's estimated population of females aged 15 to 44 for the applicable planning horizon. The population estimate used to compute the 3-year average resident live birth rate shall be the sum of the July 1 estimates of the population of females aged 15 to 44 for the 3 years that are included in the 3-year total of resident live births. Population estimates for each year shall be the most recent population estimates published by the Office of the Governor at least 3 months prior to publication of the fixed bed need pool.~~

~~5. (.80) equals the desired district average occupancy standard of 80 percent.~~

~~6. LB2 equals the number of licensed Level II beds as of the most recent published deadline for agency initial decisions prior to the publication of the fixed bed need pool.~~

~~7. AB2 equals the number of approved Level II beds as determined consistent with the provisions of paragraph (2)(a) of this rule.~~

(d) Level II Need. The district need for a new provider of Level II neonatal intensive care unit beds shall be calculated as follows: ~~Regardless of whether bed need is shown under the need formula above, the establishment of new Level II neonatal intensive care unit beds within a district shall not~~

~~normally be approved unless the average occupancy rate for Level II beds in the district equals or exceeds 80 percent for the most recent 12-month period ending 6 months prior to the beginning date of the quarter of the publication of the fixed bed need pool.~~

NN2 = {((UR2 X PB)/(365 X .70)) - LB2 - AB2} ≥ 10

where:

1. NN2 ≥ 10 indicates that one new provider of Level II beds may be approved for the district.

2. UR2 is a measure of current or estimated future utilization, used in projection of the future number of patient days in Level II units. UR2 equals DPD2/DB or SPD2/SB, whichever is greater, where:

a. DPD2 equals the district total number of patient days in Level II beds for the most recent 12-month period ending 6 months prior to the beginning date of the quarter of the publication of the fixed need pool.

b. DB is the total number of resident live births in a district for the most recent calendar year available from the Department of Health, Office of Vital Statistics at least 3 months prior to the beginning date of the quarter of the publication of the fixed need pool.

c. SPD2 is the statewide total of inpatient days in Level II beds for the 12-month period ending 6 months prior to the beginning date of the quarter of the publication of the fixed need pool.

d. SB is the statewide total of resident live births for the most recent calendar year available from the Department of Health Office of Vital Statistics at least 3 months prior to the beginning date of the quarter of the publication of the fixed need pool.

3. PB is the projected district total number of resident live births for the applicable planning horizon, as determined consistent with paragraph (c).

4. (.70) equals the desired annual average occupancy rate.

5. LB2 equals the district's number of licensed Level II beds as of the most recent published deadline for agency initial decisions prior to the publication of the fixed need pool.

6. AB2 equals the number of approved Level II beds, as determined consistent with the provisions of paragraph (2)(a) of this rule.

7. 10 equals the minimum value of NN2 necessary to allow approval of a new provider of Level II beds.

(e) Special Circumstances for Approval of a New Level II Provider. In the absence of need shown under the formula in paragraph (d), an applicant may demonstrate special circumstances which support the need for a new provider of Level II services in the district. Such special circumstances must include evidence of limited access to Level II services in the district, consistent with the health care access criteria in Rule 59C-1.030(2), Florida Administrative Code. ~~Level III Need. The net bed need for Level III neonatal intensive care unit beds shall be calculated as follows:~~

~~NN3 = ((PD3 X PB/AB)/(365 X .80)) - LB3 - AB3~~

~~where:~~

~~1. NN3 equals the net need for Level III beds in a district.~~

~~2. PD3 equals the number of patient days in Level III beds in a district for the most recent 12-month period ending 6 months prior to the beginning date of the quarter of the publication of the fixed bed need pool.~~

~~3. AB is the total number of resident live births in a district for the most recent calendar year available from the Department of Health and Rehabilitative Services' Office of Vital Statistics at least 3 months prior to the beginning date of the quarter of the publication of the fixed bed need pool.~~

~~4. PB is the projected number of resident live births for the applicable planning horizon. To determine the number of births projected for each district, a 3-year average resident live-birth rate for each district shall be calculated using the sum of the resident live births for the 3 most recent calendar years available from the Department of Health and Rehabilitative Services' Office of Vital Statistics at least 3 months prior to the beginning date of the quarter of the publication of the fixed bed need pool. The projected number of resident live births in each district shall be determined by multiplying the 3-year average resident live birth rate by the district's estimated population of females aged 15 to 44 for the applicable planning horizon. The population estimate used to compute the 3 year average resident live birth rate shall be the sum of the July 1 estimates of the population of females aged 15 to 44 for the 3 years that are included in the 3-year total of resident live births. Population estimates for each year shall be the most recent population estimates published by the Office of the Governor at least 3 months prior to publication of the fixed bed need pool.~~

~~5. (.80) equals the desired district average occupancy standard of 80 percent.~~

~~6. LB3 equals the number of licensed Level III beds as of the most recent published deadline for agency initial decisions prior to the publication of the fixed bed need pool.~~

~~7. AB3 equals the number of approved Level III beds, as determined consistent with the provisions of paragraph (2)(a) of this rule.~~

(f) Need for Level II Services Based on Birth Volume. Regardless of whether bed need is shown under the need formula above, and in context with other applicable statutory and rule review criteria, need for establishment of Level II neonatal services is demonstrated for a hospital that documents 1,500 livebirths during the 12-month period ending one month prior to the letter of intent deadline. ~~Regardless of whether bed need is shown under the need formula above, the establishment of new Level III neonatal intensive care unit beds within a~~

~~district shall not normally be approved unless the average occupancy rate for Level III beds in the district equals or exceeds 80 percent for the most recent 12-month period ending 6 months prior to the beginning date of the quarter of the publication of the fixed bed need pool.~~

(g) Additional Level II Beds at Existing Providers of Level II Services. ~~Special Circumstances for the Approval of Additional Neonatal Intensive Care Unit Beds at Existing Providers. Need for additional Level II neonatal intensive care beds at hospitals with Level II neonatal intensive care services seeking additional Level II beds is demonstrated in the absence of need shown under the formula specified in paragraph (3)(c) of this rule if the occupancy rate for their Level II beds exceeded an average of 90 percent as computed by the agency for the same time period specified in subparagraph (3)(c)2. Need for additional Level III neonatal intensive care beds at hospitals with Level III neonatal intensive care services seeking additional Level III beds is demonstrated in the absence of need shown under the formula specified in paragraph (3)(e) of this rule if the occupancy rate for their Level III beds exceeded an average of 90 percent as computed by the agency for the same time period specified in subparagraph (3)(e)2.~~

1. Need for additional Level II neonatal intensive care beds at a hospital with Level II beds is demonstrated if the average occupancy rate of the hospital's Level II beds during the 12-month period ending one month prior to the letter of intent deadline was at least 75 percent.

2. For the purpose of calculating occupancy under this paragraph, the 12-month total of Level II patient days shall be divided by 365 to determine an average daily census, and the average daily census shall then be divided by the total of licensed and approved Level II beds located or to be located at the premises of the facility as of the end of the 12-month period.

(h) Level III Need. The district need for a new provider of Level III neonatal intensive care unit beds shall be calculated as follows: ~~Consistency with Local Health Council and State Health Plans. Applicants shall provide evidence in their applications that the number of proposed Level II or Level III neonatal intensive care unit beds is consistent with the needs of the community as stated in Local Health Council Plans and the State Health Plan.~~

NN3 = {((UR3 X PB)/(365 X .80)) - LB3 - AB3} ≥ 10

where:

1. NN3 ≥ 10 indicates that one new provider of Level III beds may be approved for the district.

2. UR3 is a measure of current or estimated future utilization, used in projection of the future number of patient days in Level III units. UR3 equals DPD3/DB or SPD3/SB, whichever is greater, where:

a. DPD3 equals the district total number of patient days in Level III beds for the most recent 12-month period ending 6 months prior to the beginning date of the quarter of the publication of the fixed need pool.

b. DB is the total number of resident live births in a district for the most recent calendar year available from the Department of Health, Office of Vital Statistics at least 3 months prior to the beginning date of the quarter of the publication of the fixed need pool.

c. SPD3 is the statewide total of inpatient days in Level III beds for the 12-month period ending 6 months prior to the beginning date of the quarter of the publication of the fixed need pool.

d. SB is the statewide total of resident live births for the most recent calendar year available from the Department of Health Office of Vital Statistics at least 3 months prior to the beginning date of the quarter of the publication of the fixed need pool.

3. PB is the projected district total number of resident live births for the applicable planning horizon, as determined consistent with paragraph (c).

4. (.80) equals the desired annual average occupancy rate.

5. LB3 equals the district's number of licensed Level III beds as of the most recent published deadline for agency initial decisions prior to the publication of the fixed need pool.

6. AB3 equals the number of approved Level III beds, as determined consistent with the provisions of paragraph (2)(a) of this rule.

7. 10 equals the minimum value of NN3 necessary to allow approval of a new provider of Level III beds.

(i) Special Circumstances for Approval of a New Level III Provider. In the absence of need shown under the formula in paragraph (h), an applicant may demonstrate special circumstances which support the need for a new provider of Level III services in the district. Such special circumstances must include evidence of limited access to Level III services in the district, consistent with the health care access criteria in subsection 59C-1.030(2), Florida Administrative Code. ~~Regional Perinatal Intensive Care Centers and Step-Down Neonatal Special Care Units. Hospitals which are under contract with the Department of Health and Rehabilitative Services' Children's Medical Services Program for the provision of regional perinatal intensive care center or step-down neonatal special care unit care will be given priority over other applicants to expand or establish new neonatal intensive care services when a need is indicated for additional Level II or Level III neonatal intensive care unit beds.~~

(j) Additional Level III Beds at Existing Providers of Level III Services. ~~Conversion of Under-utilized Acute Care Beds. New Level II or Level III neonatal intensive care unit beds for shall normally be approved only if the applicant converts a number of acute care beds as defined in Rule 59C-1.038, excluding specialty beds, which is equal to the~~

~~number of Level II or Level III beds proposed, unless the applicant can reasonably project an occupancy rate of 75 percent for the applicable planning horizon, based on historical utilization patterns, for all acute care beds, excluding specialty beds. If the conversion of the number of acute care beds which equals the number of proposed Level II or Level III beds would result in an acute care occupancy exceeding 75 percent for the applicable planning horizon, the applicant shall only be required to convert the number of beds necessary to achieve a projected 75 percent acute care occupancy for the applicable planning horizon, excluding specialty beds.~~

1. Need for additional Level III neonatal intensive care beds at a hospital with Level III beds is demonstrated if the average occupancy rate of the hospital's Level III beds during the 12-month period ending one month prior to the letter of intent deadline was at least 85 percent.

2. For the purpose of calculating occupancy under this paragraph, the 12-month total of Level III patient days shall be divided by 365 to determine an average daily census, and the average daily census shall then be divided by the total of licensed and approved Level III beds located or to be located at the premises of the facility as of the end of the 12-month period.

(k) Regardless of numeric need shown in paragraphs (d) or (h), a hospital with licensed Level II and Level III NICU beds may convert beds from one level of care to the other within its existing licensed total of all NICU beds, so that the proportional allocation of the total beds between the two levels of care better reflects, but does not exceed, the proportional allocation between the two levels of its most recent 12-month total of all NICU patient days. The 12-month period used shall be the 12 months ending one month prior to the letter of intent deadline. ~~Services to Medically Indigent and Medicaid Patients. In a comparative review, preference shall be given to hospitals which propose to provide neonatal intensive care services to Children's Medical Services patients, Medicaid patients, and non-Children's Medical Services patients who are defined as charity care patients according to the Health Care Board, Florida Hospital Uniform Reporting System Manual, Chapter III, Section 3223. The applicant shall estimate, based on its historical patient data by type of payer, the percentage of neonatal intensive care services patient days that will be allocated to:~~

~~1. Charity Care Patients;~~

~~2. Medicaid patients;~~

~~3. Private pay patients, including self pay; and~~

~~4. Regional Perinatal Intensive Care Center Program and Step Down Neonatal Special Care Unit patients.~~

(4) Service Continuity ~~Level II and Level III Service Continuity~~. To help assure the continuity of services provided to neonatal intensive care services patients:

(a) The establishment of Level III neonatal intensive care services shall not normally be approved unless the hospital also provides Level II neonatal intensive care services. Hospitals may be approved for Level II neonatal intensive care services without providing Level III services. ~~In a comparative review, preference for the approval of Level II beds shall be given to hospitals which have both Level II neonatal intensive care unit beds and Level III neonatal intensive care unit beds.~~

(b) Applicants proposing to provide Level II or Level III neonatal intensive care services shall ensure developmental follow-up on patients after discharge to monitor the outcome of care and assure necessary referrals to community resources.

(5) Minimum Unit Size. Hospitals proposing the establishment of new Level III neonatal intensive care services shall propose a Level III neonatal intensive care unit of at least 10 ~~15~~ beds, and should have 10 ~~15~~ or more Level II neonatal intensive care unit beds. A provider shall not normally be approved for Level III neonatal intensive care services only. Hospitals proposing the establishment of new Level II neonatal intensive care services only shall propose a Level II neonatal intensive care unit with a minimum of 10 beds. Hospitals under contract with the Department of Health ~~and Rehabilitative Services'~~ Children's Medical Services Program for the provision of regional perinatal intensive care center services ~~or step-down neonatal special care unit care~~ are exempt from these requirements.

(6) Minimum Birth Volume Requirement. A hospital shall not normally be approved to establish ~~for~~ Level III neonatal intensive care services unless the hospital had a minimum service volume of 1,500 live births for the most recent 12-month period ending 6 months prior to the beginning date of the quarter of the publication of the fixed ~~bed~~ need pool. Hospitals applying for Level II neonatal intensive care services shall not normally be approved to establish Level II neonatal intensive care services unless the hospital had a minimum service volume of 1,000 live births for the most recent 12-month period ending 6 months prior to the beginning date of the quarter of the publication of the fixed ~~bed~~ need pool. Specialty children's hospitals are exempt from these requirements.

(7) through (10) No change.

(11) Other Requirements for Applicants.

(a) Payment Sources. The applicant shall estimate, based on its historical patient data by type of payer, the percentage of neonatal intensive care services patient days that will be allocated to:

1. Charity care patients;

2. Medicaid patients;

3. Private pay patients, including self pay; and

4. Regional Perinatal Intensive Care Center Program patients.

(b) Consistency With Local Health Council Plans. The applicant shall provide evidence in its application that a proposed Level II or Level III neonatal intensive care service is consistent with the needs of the community as stated in Local Health Council Plans.

(c) Transfer Agreements. An applicant for Level II neonatal intensive care services shall provide documentation of a transfer agreement with a facility providing Level III neonatal intensive care services in the same or nearest service district for patients in need of Level III services. An applicant for Level II or Level III neonatal intensive care services shall include, as part of the application, a written protocol governing the transfer of neonatal intensive care services patients to other inpatient facilities.

(d) Emergency Transportation Services. Each hospital providing Level II or Level III neonatal intensive care services ~~or Level III neonatal intensive care services~~ shall have or participate in an emergency 24-hour patient transportation system.

1.~~(a)~~ Provision of Emergency Transportation. Hospitals providing Level II or Level III neonatal intensive care services must operate a 24-hour emergency transportation system directly, or contract for this service, or participate through a written financial or non-financial agreement with a provider of emergency transportation services. Applicants shall indicate how they will meet this requirement.

2.~~(b)~~ Requirements for Emergency Transportation System. Emergency transportation systems~~, as defined in paragraph (11)(a),~~ shall conform to section 64E-2.006 ~~10D-66.52~~, Florida Administrative Code.

(12) Preferences Among Applicants for Neonatal Intensive Care Services. In weighing and balancing statutory and rule review criteria, the agency will give preference to: ~~Transfer Agreements. A hospital providing only Level II neonatal intensive care services shall provide documentation of a transfer agreement with a facility providing Level III neonatal intensive care services in the same or nearest service district for patients in need of Level III services. Facilities providing Level III neonatal intensive care services shall not unreasonably withhold consent to transfer agreements which provide for transfers based upon availability of service in the Level III facility, and which will be applied uniformly to all patients requiring transfer to Level III, as defined in subparagraph (2)(e)2. An applicant for Level II or Level III neonatal intensive care services shall include, as part of the application, a written protocol governing the transfer of neonatal intensive care services patients to other inpatient facilities.~~

(a) An applicant who agrees that an awarded CON will be predicated on one or more of the following conditions that are subject to annual monitoring under Rule 59C-1.013(4), F.A.C.:

1. For Level II and Level II units:

a. All registered nurses providing direct patient care will have education or experience in neonatal nursing.

b. All nursing staff will have formal training in neonatal resusitation.

c. Specified levels of neonatal intensive care services will be provided to Children's Medical Services patients, Medicaid patients, and non-Children's Medical Services patients who are defined as charity care patients.

d. Specified actions will occur to promote enhanced access to neonatal intensive care units in the district, if approval is based on special circumstances in the absence of numeric need.

2. For Level II units, there will be a minimum staffing ratio of one registered nurse to every four neonates, with additional staffing as required by the acuity level of the neonates.

3. For Level III units, there will be a minimum staffing ratio in Level III units of one registered nurse to every two neonates, with additional staffing as required by the acuity level of the neonates.

(b) An applicant that is a designated Regional Perinatal Intensive Care Center.

(c) An applicant that is a disproportionate share hospital as determined under the provisions of sections 409.911 through 409.9119, Florida Statutes.

(13) Quarterly Reports. ~~Data Reporting Requirements. All hospitals with Level II or Level III neonatal intensive care services shall provide the agency or its designee, with patient utilization and fiscal reports which contain data relating to patient utilization of Level II and Level III neonatal intensive care services. The following data shall be provided to the agency or its designee.(a) Utilization Data. Level II or Level III neonatal intensive care services providers shall report the number of admissions and patient days by type of payer for Level II and Level III neonatal intensive care services. Payer types shall include Medicaid, Regional Perinatal Intensive Care Center Program, Insurance, Self-Pay, and Charity Care as defined by the Health Care Board, Florida Hospital Uniform Reporting Manual, Chapter III, Section 3223. These data shall be reported to the agency or its designee within 45 days after the end of each calendar quarter.~~

(a) Except as provided in paragraph (b), hospitals with Level II or Level III neonatal intensive care services shall report to the agency or its designee, within 45 days after the end of each calendar quarter, the number of admissions and patient days for Level II and Level III neonatal intensive care services.

(b) In the case of a hospital with both Level II and Level III services, the report of patient days required by paragraph (a) shall be by level of care rendered, rather than by type of bed used. Admissions shall be reported as single admissions to the NICU service at the hospital, rather than as admissions to specific levels of care.

~~(b) Patient Origin Data. Level II or Level III neonatal intensive care services providers shall report patient origin data for Level II and Level III neonatal intensive care services patients. The mother's county of residence shall be reported for patients born in the hospital and also for patients who were transferred to the hospital from other hospitals. These data shall be reported to the agency or its designee within 45 days after the end of each calendar quarter.~~

Specific Authority 408.15(8), 408.034(6)~~,(3),(5), 408.039(4)(a)~~ FS. Law Implemented 408.034(3), ~~408.035,~~ 408.036(1)(a),(d),(f),(g),(h),~~(e),(e),(m), 408.039(4)(a)~~ FS. History–New 1-1-77, Amended 11-1-77, 6-5-79, 4-24-80, 2-1-81, 4-1-82, 11-9-82, 2-14-83, 4-7-83, 6-9-83, 6-10-83, 12-12-83, 3-5-84, 5-14-84, 7-16-84, 8-30-84, 10-15-84, 12-25-84, 4-9-85, Formerly 10-5.11, Amended 6-19-86, 11-24-86, 1-25-87, 3-2-87, 3-12-87, 8-11-87, 8-7-88, 8-28-88, 9-12-88, 4-19-89, 10-19-89, 5-30-90, 7-11-90, 8-6-90, 10-10-90, 12-23-90, Formerly 10-5.011(1)(v), Formerly 10-5.042, Amended 1-3-93, 8-24-93, 2-22-95, 4-10-96, _____.

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: RULE NO.:

Administration of Medication to DS Waiver Beneficiaries 59G-8.201

PURPOSE AND EFFECT: The purpose of this rule amendment is to provide to all unlicensed direct care staff who provide DS Waiver services to beneficiary's with developmental disabilities in adult day programs, foster homes, group homes, independent living and supported living arrangements with guidelines regarding: (1) when supervision of self-administration of medication is appropriate; (2) what may and may not be done in supervising the self-administration of medication; (3) when they may not administer mediations; (4) when appropriate, how to safely administer oral, patch, inhaled and topical medications, and medication administered through inhalers; and (5) the safe handling of medications. This policy does not apply to family members who administer mediation or who assist in self-administering medication for other family members, without compensation. The effect will be to permit the administration of medications to DS Wavier beneficiaries by unlicensed direct care staff that provides DS Waiver services to beneficiaries with developmental disabilities.

SUBJECT AREA TO BE ADDRESSED: Administration of Medication to DS Waiver Beneficiaries.

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.906, 409.908 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Karen Henderson, Medicaid Health Systems Development, P. O. Box 12600, Tallahassee, Florida 32317-2600, (850)414-9756

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

DEPARTMENT OF HEALTH

Board of Medicine

RULE TITLES: RULE NOS.:

Notice of Noncompliance 64B8-8.011

Citation Authority 64B8-8.017

PURPOSE AND EFFECT: The Board proposes the development of rule amendments to address various violations with regard to responsibilities of medical directors of clinics.

SUBJECT AREA TO BE ADDRESSED: Notices of Noncompliance and the issuance of citations for various violations regarding the responsibilities of medical directors of clinics.

SPECIFIC AUTHORITY: 456.073(3), 456.077, 458.309 FS.

LAW IMPLEMENTED: 456.073(3), 456.072(2)(d), 456.077 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Larry G. McPherson, Jr., Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64B8-8.011 Notice of Noncompliance.

(1) through (2) No change.

(3) The following violations are those for which the board authorizes the Department ~~Agency~~ to issue a notice of noncompliance.

(a) No change.

(b) Failure to perform one of the following statutory or legal obligations:

1. through 4. No change.

5. Dispensing medication without proper labeling ~~labelling~~, contrary to the provisions of Section 893.05(2), Florida Statutes, and Rule 64B16-28.108, Florida Administrative Code. This applies to dispensing practitioners only.

6. For a physician who is not required to register as a dispensing practitioner, failing to dispense drugs in the manufacturer's labeled ~~labelled~~ package with the practitioner's name, patient's name, and the date dispensed or, if such drugs are not dispensed in the manufacturer's labeled package, failing to dispense the medication in a container which bears

the following information: practitioner's name; patient's name; date dispensed; name and strength of the drug; and directions for use, contrary to Section 465.0276, Florida Statutes.

7. through 8. No change.

9. Failing to have proper labeled ~~labelling~~ on all stock medications, contrary to Section 499.007(2), Florida Statutes.

10. through 17. No change.

(c) No change.

(d) Violation of the following medical director clinic responsibilities, as set forth in Section 458.0375(2) and (3), Florida Statutes:

1. Failure to file or renew clinic registration form.

2. Failure to display clinic registration certificate.

3. Failure to post signs identifying medical/clinical director in a conspicuous location.

4. Failure to ensure compliance with adverse incident reporting requirements.

Specific Authority 456.073(3), 458.309 FS. Law Implemented 456.073(3) FS. History–New 11-15-90, Formerly 21M-20.011, 61F6-20.011, 59R-8.011, Amended 1-27-00, 1-8-02, _____.

64B8-8.017 Citation Authority.

(1) through (2) No change.

(3) The following violations with accompanying penalty may be disposed of by citation with the specified penalty:

VIOLATIONS	PENALTY
(a) through (l) No change.	
(m) Failure to display a clinic registration certificate (after failure to comply with issuance of a notice of non-compliance.)	$ 500 fine.
(n) Failure to post signs identifying medical/clinical director of clinic in conspicuous location (after failure to comply with issuance of a notice of non-compliance.)	$500 fine.

(4) through (7) No change.

Specific Authority 456.073(3), 458.309 Law Implemented 456.072(2)(d), 456.077 FS. History–New 12-30-91, Formerly 21M-20.017, Amended 11-4-93, Formerly 61F6-20.017, Amended 8-23-95, Formerly 59R-8.017, Amended 4-7-99, 1-27-00, 1-31-02, _____.

DEPARTMENT OF HEALTH

Board of Nursing Home Administrators

RULE TITLE: RULE NO.:
Disciplinary Guidelines; Range of Penalties;
Aggravating and Mitigating Circumstances 64B10-14.004

PURPOSE AND EFFECT: The Board proposes to review the existing language in this rule to determine if amendments are necessary.

SUBJECT AREA TO BE ADDRESSED: Disciplinary guidelines; range of penalties; aggravating and mitigating circumstances.

SPECIFIC AUTHORITY: 456.079, 468.1685(1) FS.

LAW IMPLEMENTED: 456.072, 456.079, 468.1685(4), (5),(6), 468.1755(1)(a),(j) FS.

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

THE PERSON TO BE CONTACED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: John Taylor, Executive Director, Board of Nursing Home Administrators, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-1753

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

DEPARTMENT OF HEALTH

Board of Opticianry

RULE TITLE: RULE NO.:
Demonstrating Knowledge of Laws and
Rules for Licensure 64B12-9.0016

PURPOSE AND EFFECT: The Board proposes to create a new rule that will require applicants for licensure to demonstrate knowledge of laws and rules associated with the profession of opticianry.

SUBJECT AREA TO BE ADDRESSED: Demonstrating Knowledge of Laws and Rules for Licensure.

SPECIFIC AUTHORITY: 484.005, 484.002(6) FS.

LAW IMPLEMENTED: 456.017(6) 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 TO BE ANNOUNCED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND FOR A COPY OF THE PRELIMINARY DRAFT IS: Sue Foster, Board Executive Director, Board of Opticianry, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64B12-9.0016 Demonstrating Knowledge of Laws and Rules for Licensure.

An applicant for licensure as an optician shall demonstrate knowledge of the laws and rules for licensure in the following manner:

(1) An applicant shall complete an approved course consisting of a minimum of two hours which shall include the following subject areas:

(a) Chapter 484, Part I, F.S.

(b) Chapter 64B12, F.A.C.

(c) Chapter 456, F.S.

(2) The laws and rules course must provide integration of the above subject areas into the competencies required for the practice of opticianry and interactive discussion of examples applying the laws and rules that govern opticianry.

(3) Upon completion of the course, the applicant shall receive a certificate of completion and submit the original certificate of completion to the Board.

(4) A laws and rules course offered by a Board approved laws and rules course provider shall qualify for continuing education credit even if the provider is not an approved continuing education provider pursuant to Rule 64B12-15.004, F.A.C.

(5) For purposes of this rule, an hour is defined as a 60-minute clock hour in which there is no less than 50 minutes of uninterrupted instruction.

Specific Authority 484.005, 484.002(6) FS. Law Implemented 456.017(6) FS. History–New _____.

DEPARTMENT OF HEALTH

Division Environmental Health

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Rural Health Networks 64E-26

PURPOSE AND EFFECT: Rural Health Networks – To establish rules for the creation, certification and establishment of outcome measures for networks.

Rural Health Cooperative Agreements – To establish a process for network providers to seek Department approval for consolidation of services and technologies or to establish cooperative agreements. To establish a process for the Department to review such agreements biennially.

SUBJECT AREA TO BE ADDRESSED: Rural Health Networks and Cooperative Agreements.

SPECIFIC AUTHORITY 381.0406(17), 381.04065(5) FS.

LAW IMPLEMENTED: 381.0406, 381.04065 FS.

RULE DEVELOPMENT WORKSHOPS WILL BE HELD AT THE TIMES, DATES AND PLACES SHOWN BELOW:

TIME AND DATE: 10:00 a.m., EST, November 12, 2002

PLACE: Department of Health, Division of EMS and Community Health Services, Office of Rural Health, Southwood Office Complex, 4025 Esplanade Way, Room 301 A & B, Tallahassee, Florida

TIME AND DATE: 12:30 p.m., EST, November 13, 2002

PLACE: Tampa Airport Marriott Conference Center, Tampa International Airport, Tampa, Florida 33607, (813)874-6085

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Susan Gay, Director, Office of Rural Health, Department of Health, 4052 Bald Cypress Way, Bin #C15, Tallahassee, Florida 32399-1738, (850)245-4340, Ext. 2706, E-mail: Susan_Gay@doh.state.fl.us

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT MAY BE OBTAINED BY CONTACTING: DOROTHY JOWERS, (850)245-4340, Ext. 2710, E-mail: Dorothy_Jowers@dosh.state.fl.us

NAVIGATION DISTRICTS

Florida Inland Navigation District

RULE TITLES:	RULE NOS.:
Definitions	66B-1.003
Application Process	66B-1.006
Project Eligibility	66B-1.008
Small-Scale Spoil Island Restoration and Enhancement Projects	66B-1.014

PURPOSE AND EFFECT: The purpose of the proposed rule development is to include the following provisions in the program rule: Add specific waterways essential to the Inland Waterway Navigation system to the definition of eligible waterways; Revise the application process to clarify a complete application; include additional language clarifying the property control requirement; and add a new section to include the small scale spoil-island restoration program for eligible state and regional governments.

The effect of the rule development is to implement changes in the administration of the District's Cooperative Assistance Program that will assist the District and program applicants in the review and evaluation of applications submitted pursuant to the rule.

SUBJECT AREA TO BE ADDRESSED: Cooperative Assistance Program rule sections: Definitions, Application Process, Project Eligibility, and the addition of a Small-Scale Spoil Island Restoration and Enhancement Projects program.

SPECIFIC AUTHORITY: 374.976(2) FS.

LAW IMPLEMENTED: 374.976(1)-(3) FS.

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

TIME AND DATE: 11:00 a.m., November 13, 2002

PLACE: District Office, 1314 Marcinski Road, Jupiter, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Mark Crosley, Assistant Executive Director, Florida Inland Navigation District, 1314 Marcinski Road, Jupiter, Florida 33477, (561)627-3386

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

NAVIGATION DISTRICTS

Florida Inland Navigation District

RULE CHAPTER TITLE:	RULE NOS.:
Definitions	66B-2.003
Application Process	66B-2.006
Project Eligibility	66B-2.008

PURPOSE AND EFFECT: The purpose of the proposed rule development is to include the following provisions in the program rule: Add specific waterways essential to the Inland Waterway Navigation system to the definition of eligible waterways; Revise the application process to clarify a complete application; and include additional language clarifying the property control requirement.

The effect of the rule development is to implement changes in the administration of the District's Waterways Assistance Program that will assist the District and program applicants in the review and evaluation of applications submitted pursuant to the rule.

SUBJECT AREA TO BE ADDRESSED: Waterways Assistance Program rule sections: Definitions, Application Process, Project Eligibility, and the addition of a Small-Scale Spoil Island Restoration and Enhancement Projects program.

SPECIFIC AUTHORITY: 374.976(2) FS.

LAW IMPLEMENTED: 374.976(1)-(3) FS.

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

TIME AND DATE: 11:00 a.m., November 13, 2002

PLACE: District Office, 1314 Marcinski Road, Jupiter, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Mark Crosley, Assistant Executive Director, Florida Inland Navigation District, 1314 Marcinski Road, Jupiter, Florida 33477, (561)627-3386

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

Section II
Proposed Rules

DEPARTMENT OF INSURANCE

RULE TITLES:	RULE NOS.:
Applicability and Scope	4-154.102
Guaranteed Availability of Individual Health Coverage to Eligible Individuals	4-154.112

PURPOSE, EFFECT AND SUMMARY: To amend Florida Administrative Code to reflect out-of state insurers obligation to comply with Chapter 4-154. Additionally, the amendment clarifies requirements for quoting insurance coverage.

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, 627.643, 627.6487(4)(b) FS.

LAW IMPLEMENTED: 624.307(1), 627.642, 627.643, 627.6487 FS.

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

TIME AND DATE: 9:00 a.m., Thursday, December 12, 2002

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

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 the person listed below.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Frank Dino, Actuary, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0328, (850)413-5014

THE FULL TEXT OF THE PROPOSED RULES IS:

4-154.102 Applicability and Scope.

(1) These rules shall apply to all individual and family accident and health insurance policies, subscriber contracts of medical, surgical, or health maintenance organizations and to franchise insurance policies issued or issued for delivery in this state on and after the effective date hereof (except for policies issued to employees or members who are being added to existing franchise plans). The requirements contained in these rules shall be in addition to any other applicable rules previously adopted.

(2) Rules 4-154.110 through 4-154.112 and Rules 4-154.114 through 4-154.116, F.A.C., shall also apply to insurance coverage subject to the provisions of Section 627.6487, Florida Statutes.

Specific Authority 624.308, 627.643 FS. Law Implemented 624.307(1), 627.642, 627.6425, 627.643, 627.6487 FS. History–New 1-1-75, Formerly 4-37.02, 4-37.002, Amended 9-19-00, _____.

4-154.112 Guaranteed Availability of Individual Health Coverage to Eligible Individuals.

(1) through (2) No change.

(3)~~(a)~~ To enable the Department to monitor this coverage, the issuer shall file, no later than March 1 of each year, ~~report the information in 1. through 5. on an annual (calendar year)~~